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The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0204; Product Identifier 2018–CE–003–AD; Amendment 39–19339; AD 2018–15–07]

RIN 2120–AA64

Airworthiness Directives; Costruzioni Aeronautiche Tecnam srl Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Costruzioni Aeronautiche Tecnam srl Model P2006T airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an incorrect part number for the rudder trim actuator is referenced in the Airworthiness Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual) and the life limit for that part may not be properly applied in service. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective September 4, 2018.

ADDRESSES: You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0204; or in person at U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

For service information identified in this AD, contact Costruzioni Aeronautiche Tecnam srl, Via Tasso, 478, 80127 Napoli, Italy, phone: +39 0823 620134, fax: +39 0823 622899, email: *airworthiness@tecnam.com,* internet: *https://www.tecnam.com/us/support/.*

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Costruzioni Aeronautiche Tecnam srl Model P2006T airplane. The NPRM was published in the **Federal Register** on March 19, 2018 (83 FR 11903). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI states:

> It was identified that the Part Number (P/N) of the rudder trim actuator mentioned in the P2006T Aircraft Maintenance Manual (AMM) Airworthiness Limitations Section (ALS) document was erroneously mentioned. As a result, it cannot be excluded that the life limit applicable to this actuator is not being applied in service.
>
> This condition, if not corrected, could lead to failure of the rudder control system, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, TECNAM published Service Bulletin (SB)–285–CS Ed. 1 Rev. 0 (later revised) to inform operators about this typographical error. It is expected that, during the next revision of the P2006T AMM ALS document, it will list the correct the P/N for that rudder trim actuator.
>
> For the reason described above, this [EASA] AD requires implementation of a life limit for rudder trim actuator.

The MCAI can be found in the AD docket on the internet at *https://www.regulations.gov/document?D=FAA-2018-0204-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Changes Made to This AD

We changed the incorporation by reference of the service information for adding a life limit to the Airworthiness Limitations section of the maintenance program to only a reference. The service information does not provide any specific procedures or instructions for establishing the life limit.

We also inadvertently omitted information for ''Contacting the Manufacturer,'' which is a standard paragraph for FAA ADs related to MCAIs. We have added that paragraph in the final rule as paragraph (g)(2).

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for the changes stated above and other minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information

Costruzioni Aeronautiche Tecnam srl has issued Service Bulletin No. SB 285–CS–Ed 1, Revision 2, dated February 2, 2018. The service information describes procedures for correcting the part number of the rudder trim actuator in the Airworthiness Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual).

Costs of Compliance

We estimate that this AD will affect 20 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with this requirement to incorporate a correction to the Airworthiness Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual). The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,700, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

Regulatory Findings

We determined that 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.

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–2018–0204; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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):

2018–15–07 Costruzioni Aeronautiche Tecnam srl: Amendment 39–19339; Docket No. FAA–2018–0204; Product Identifier 2018–CE–003–AD.

(a) Effective Date

This AD becomes effective September 4, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Costruzioni Aeronautiche Tecnam srl Model P2006T airplanes, all serial numbers that do not incorporate design change TECNAM modification (Mod) 2006/322 at production, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an incorrect part number for the rudder trim actuator is referenced in the Airworthiness Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual), and the life limit for that part may not be properly applied in service. We are issuing this AD to prevent failure of the rudder trim actuator, which could cause the rudder control system to fail. This failure could result in reduced control of the airplane.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (3) of this AD. The hours time-in-service (TIS) specified in paragraph (f)(1) of this AD are those accumulated on the rudder trim actuator, part number (P/N) B6–7T, since first installed on an airplane. If the total hours TIS are unknown, the hours TIS on the airplane must be used.

(1) Initially replace the rudder trim actuator, P/N B6–7T, at the compliance time in paragraph (f)(1)(i) or (ii) of this AD that occurs later:

(i) Before accumulating 1,000 hours TIS; or

(ii) Within the next 25 hours TIS after September 4, 2018 (the effective date of this AD) or within the next 30 days after September 4, 2018 (the effective date of this AD), whichever occurs first.

(2) After the initial replacement required in paragraph (f)(1) of this AD, repetitively thereafter replace the rudder trim actuator, P/N B6–7T, at intervals not to exceed 1,000 hours TIS.

(3) Within the next 12 months after September 4, 2018 (the effective date of this AD), revise the Airworthiness Limitations section of the FAA-approved maintenance program (*e.g.,* maintenance manual) by establishing a 1,000-hour life limit for the rudder trim actuator P/N B6–7T. You may refer to Costruzioni Aeronautiche Tecnam srl (TECNAM) Service Bulletin No. SB 285–CS–Ed 1, Revision 1 (dated November 7, 2017) or Revision 2 (dated February 2, 2018) for more information.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, Small Airplane Standards Branch, FAA; or the European Aviation Safety Agency (EASA).

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2018–0029, dated January 31, 2018, and Costruzioni Aeronautiche Tecnam srl Service Bulletin No. SB 285–CS–Ed 1, Revision 1, dated November 7, 2017, and Revision 2, dated February 2, 2018, for related information. You may examine the MCAI on the internet *https://www.regulations.gov/document?D=FAA-2018-0204-0002.*

Issued in Kansas City, Missouri, on July 19, 2018.

Pat Mullen,

Acting Deputy Director, Policy & Innovation Division (AIR–601), Aircraft Certification Service.

[FR Doc. 2018–15981 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0754; Airspace Docket No. 17–ASO–16]

Amendment of Class E Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface at Memphis International Airport, Memphis, TN. Airspace reconfiguration is necessary due to the decommissioning of the Elvis non-directional radio beacon (NDB), and for the safety and management of instrument flight rules (IFR) operations at this airport. Olive Branch Airport, Olive Branch, MS, is removed from the airspace description to be reestablished in a separate rulemaking.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 19471, May 3, 2018) Docket No. FAA–2017–0754 to amend Class E airspace extending upward from 700 feet above the surface at Memphis International Airport, Memphis, TN, due to the decommissioning of the Elvis NDB and cancellation of the NDB approach, and removal of Olive Branch Airport, Olive Branch, MS, from the legal description to redesignate it in a separate rulemaking.

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, Memphis, TN. The segment extending from the 8-mile radius of the airport to 16 miles west of the Elvis NDB is removed due to the decommissioning of the Elvis NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport.

Also, this action removes the language that excludes the Millington, TN, airspace area to comply with FAA Order 7400.2L, Procedures for Handling Airspace Matters.

Additionally, the airspace listed in the legal description for Olive Branch Airport, Olive Branch, MS, is removed and redesignated in a separate rulemaking.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO TN E5 Memphis, TN [Amended]

Memphis International Airport, TN
(Lat. 35°02′33″ N, long. 89°58′36″ W)
General DeWitt Spain Airport
(Lat. 35°12′03″ N, long. 90°03′14″ W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Memphis International Airport, and within a 6.4-mile radius of General DeWitt Spain Airport.

Issued in College Park, Georgia, on July 19, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–16142 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0866; Airspace Docket No. 17–ASO–20]

RIN 2120–AA66

Amendment of Class D Airspace, Removal of Class E Airspace, and Establishment of Class E Airspace; Olive Branch, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, removes Class E airspace designated as an extension, and establishes Class E airspace extending upward from 700 feet or more above the surface at Olive Branch Airport, Olive Branch, MS. The Olive Branch non-directional radio beacon (NDB) has been decommissioned, requiring the redesign of the airspace. This action, also replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the Class D legal description.

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

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 19472, May 3, 2018) for Docket No. FAA–2017–0866 to amend Class D airspace, remove Class E airspace, and establish Class E airspace at Olive Branch Airport, Olive Branch, MS.

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class D airspace to a 4.1-mile radius, (from a 4-mile radius) at Olive Branch Airport, Olive Branch, MS, and removes Class E airspace designated as an extension to Class D, due to the decommissioning of the Olive Branch NDB and cancellation of the NDB approach. Also, this action establishes Class E airspace extending upward from 700 feet or more above the surface at Olive Branch Airport, Olive Branch, MS, (this airspace was removed the from Memphis, TN, airspace in a separate rulemaking).

Additionally, this action makes an editorial change to the Class D airspace legal description replacing Airport/Facility Directory with the term Chart Supplement.

Class D and Class E airspace designations are published in Paragraph 5000, 6004, and 6005, respectively, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations 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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO MS D Olive Branch, MS [Amended]

Olive Branch Airport, MS
(Lat. 34°58′44″ N, long. 89°47′13″ W)

That airspace extending upward from the surface to and including 2,900 feet within a 4.1-mile radius of Olive Branch Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Chart Supplement.

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

* * * * *

ASO MS E4 Olive Branch, MS [Removed]

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

* * * * *

ASO MS E5 Olive Branch, MS [New]

Olive Branch Airport, MS
(Lat. 34°58′44″ N, long. 89°47′13″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Olive Branch Airport.

Issued in College Park, Georgia, on July 19, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–16144 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31204; Amdt. No. 3809]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 30, 2018. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of July 30, 2018.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box

25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on July 13, 2018.

John S. Duncan,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 16 August 2018

Moline, IL, Quad City Intl, Takeoff Minimums and Obstacle DP, Amdt 2
New Iberia, LA, Acadiana Rgnl, RNAV (GPS) RWY 17, Amdt 1A
St Ignace, MI, Mackinac County, RNAV (GPS) RWY 7, Orig-B
Midland, TX, Midland Airpark, Takeoff Minimums and Obstacle DP, Amdt 4

Effective 13 September 2018

Iliamna, AK, Iliamna, NDB RWY 36, Amdt 2A
Iliamna, AK, Iliamna, RNAV (GPS) RWY 8, Amdt 4
Iliamna, AK, Iliamna, RNAV (GPS) RWY 18, Amdt 2
Iliamna, AK, Iliamna, RNAV (GPS) RWY 26, Amdt 2
Iliamna, AK, Iliamna, RNAV (GPS) RWY 36, Amdt 3
Iliamna, AK, Iliamna, Takeoff Minimums and Obstacle DP, Amdt 2A
Nondalton, AK, Nondalton, ILIAMNA TWO, Graphic DP
Nondalton, AK, Nondalton, RNAV (GPS) RWY 2, Amdt 1
Sand Point, AK, Sand Point, BORLAND TWO, Graphic DP
Sand Point, AK, Sand Point, NDB RWY 14, Amdt 2
Sand Point, AK, Sand Point, NDB RWY 32, Amdt 1
Sand Point, AK, Sand Point, RNAV (GPS) RWY 14, Amdt 1
Sand Point, AK, Sand Point, RNAV (GPS) RWY 32, Orig
Sand Point, AK, Sand Point, Takeoff Minimums and Obstacle DP, Amdt 4A
St George, AK, St George, ILS OR LOC RWY 11, Amdt 1
St George, AK, St George, LOC/DME–C, Orig-A, CANCELED
St George, AK, St George, RNAV (GPS) RWY 11, Orig
St George, AK, St George, RNAV (GPS)-B, Orig-A, CANCELED
St George, AK, St George, RNAV (GPS)-D, Amdt 1
Long Beach, CA, Long Beach/Daugherty Field/, RNAV (GPS) Z RWY 30, Amdt 3A
Sacramento, CA, Sacramento Mather, ILS OR LOC RWY 22L, Amdt 6
Sacramento, CA, Sacramento Mather, RNAV (GPS) RWY 4R, Amdt 1C
Sacramento, CA, Sacramento Mather, RNAV (GPS) RWY 22L, Amdt 3
Denver, CO, Front Range, ILS OR LOC RWY 17, Amdt 1B
Denver, CO, Front Range, ILS OR LOC RWY 26, Amdt 6
Denver, CO, Front Range, ILS OR LOC RWY 35, Amdt 2
Denver, CO, Front Range, NDB RWY 26, Amdt 5A, CANCELED
Denver, CO, Front Range, RNAV (GPS) RWY 17, Amdt 1B
Denver, CO, Front Range, RNAV (GPS) RWY 26, Amdt 2
Denver, CO, Front Range, RNAV (GPS) RWY 35, Amdt 2

Dunnellon, FL, Marion County, Takeoff Minimums and Obstacle DP, Amdt 1A
Charles City, IA, Northeast Iowa Rgnl, LOC RWY 12, Amdt 1A
Chicago/Aurora, IL, Aurora Muni, ILS OR LOC RWY 9, Amdt 4
Chicago/Aurora, IL, Aurora Muni, LOC RWY 33, Amdt 1
Chicago/Aurora, IL, Aurora Muni, RNAV (GPS) RWY 9, Amdt 2
Chicago/Aurora, IL, Aurora Muni, RNAV (GPS) RWY 15, Amdt 1
Chicago/Aurora, IL, Aurora Muni, RNAV (GPS) RWY 33, Amdt 1A
Chicago, IL, Chicago Midway Intl, ILS OR LOC RWY 13C, Amdt 1
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY4L, Amdt 1
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY 22R, Amdt 1
Chicago, IL, Chicago Midway Intl, RNAV (GPS) RWY 31R, Amdt 1
Chicago, IL, Chicago Midway Intl, RNAV (GPS) Z RWY 13C, Amdt 1
Lewisport, KY, Hancock Co-Ron Lewis Field, Takeoff Minimums and Obstacle DP, Orig-A Picayune, MS, Picayune Muni, RNAV (GPS) Y RWY 18, Orig-A
Mansfield, OH, Mansfield Lahm Rgnl, NDB RWY 32, Amdt 11E
Mansfield, OH, Mansfield Lahm Rgnl, RNAV (GPS) RWY 5, Amdt 1A
Mansfield, OH, Mansfield Lahm Rgnl, RNAV (GPS) RWY 23, Amdt 1A
Fairview, OK, Fairview Muni, RNAV (GPS) RWY 17, Amdt 1
Gallatin, TN, Sumner County Rgnl, VOR–A, Amdt 3
Millington, TN, Millington-Memphis, ILS OR LOC RWY 22, Amdt 5
Millington, TN, Millington-Memphis, RNAV (GPS) RWY 4, Amdt 1B
Millington, TN, Millington-Memphis, RNAV (GPS) RWY 22, Amdt 2
Millington, TN, Millington-Memphis, Takeoff Minimums and Obstacle DP, Orig-B
Millington, TN, Millington-Memphis, VOR OR TACAN RWY 22, Amdt 3
Rogersville, TN, Hawkins County, NDB RWY 7, Amdt 3
Rogersville, TN, Hawkins County, Takeoff Minimums and Obstacle DP, Amdt 3
Killeen, TX, Skylark Field, LOC RWY 1, Orig-A
Yakima, WA, Yakima Air Terminal/McAllister Field, RNAV (GPS) W RWY 27, Amdt 1B, CANCELED
Yakima, WA, Yakima Air Terminal/McAllister Field, RNAV (GPS) X RWY 27, Amdt 1E
Milwaukee, WI, General Mitchell Intl, ILS OR LOC RWY 1L, ILS RWY 1L (CAT II), ILS RWY 1L (CAT III), Amdt 10
Milwaukee, WI, General Mitchell Intl, ILS OR LOC 7R, Amdt 16C
Milwaukee, WI, General Mitchell Intl, ILS OR LOC RWY 19R, Amdt 13
Milwaukee, WI, General Mitchell Intl, LOC RWY 25L, Amdt 6
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 1L, Amdt 2
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 1R, Amdt 1
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 7L, Amdt 1
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 13, Amdt 1
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 19L, Amdt 1
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 25R, Amdt 1
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 31, Amdt 1
Milwaukee, WI, General Mitchell Intl, RNAV (RNP) Y RWY 7R, Orig-B
Milwaukee, WI, General Mitchell Intl, RNAV (RNP) Y RWY 25L, Orig-B
Morgantown, WV, Morgantown Muni-Walter L Bill Hart Fld, VOR–A, Amdt 13, CANCELED

[FR Doc. 2018–16140 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31205; Amdt. No. 3810]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 30, 2018. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 2018.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on July 13, 2018.

John S. Duncan,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
16–Aug–18	IA	West Union	George L Scott Muni	8/0137	6/27/18	RNAV (GPS) RWY 17, Amdt 1.
16–Aug–18	IA	West Union	George L Scott Muni	8/0138	6/27/18	RNAV (GPS) RWY 35, Amdt 1.
16–Aug–18	LA	Mansfield	C E 'Rusty' Williams	8/0464	6/27/18	RNAV (GPS) RWY 18, Orig.
16–Aug–18	LA	Mansfield	C E 'Rusty' Williams	8/0465	6/27/18	NDB RWY 18, Amdt 2.
16–Aug–18	MN	Morris	Morris Muni-Charlie Schmidt Fld.	8/0575	6/27/18	RNAV (GPS) RWY 14, Amdt 1A.
16–Aug–18	MN	Morris	Morris Muni—Charlie Schmidt Fld.	8/0577	6/27/18	RNAV (GPS) RWY 32, Amdt 1A.
16–Aug–18	NM	Albuquerque	Albuquerque Intl Sunport	8/1022	7/5/18	RNAV (RNP) Y RWY 26, Amdt 1A.
16–Aug–18	NM	Albuquerque	Albuquerque Intl Sunport	8/1023	7/5/18	RNAV (RNP) Z RWY 26, Amdt 2.
16–Aug–18	TN	Elizabethton	Elizabethton Muni	8/1292	7/5/18	Takeoff Minimums and Obstacle DP, Orig.
16–Aug–18	GA	Brunswick	Brunswick Golden Isles	8/1305	6/27/18	ILS OR LOC RWY 7, Amdt 10.
16–Aug–18	GA	Brunswick	Brunswick Golden Isles	8/1306	6/27/18	RNAV (GPS) RWY 7, Amdt 1A.
16–Aug–18	GA	Brunswick	Brunswick Golden Isles	8/1307	6/27/18	RNAV (GPS) RWY 25, Amdt 1.
16–Aug–18	GA	Americus	Jimmy Carter Rgnl	8/1343	6/27/18	RNAV (GPS) RWY 23, Amdt 1A.
16–Aug–18	GA	Americus	Jimmy Carter Rgnl	8/1344	6/27/18	ILS OR LOC RWY 23, Amdt 1B.
16–Aug–18	NJ	Manville	Central Jersey Rgnl	8/1456	6/27/18	Takeoff Minimums and Obstacle DP, Amdt 3.
16–Aug–18	OH	Piqua	Piqua Airport—Hartzell Field	8/1753	6/27/18	VOR RWY 26, Amdt 6B.
16–Aug–18	NY	Kingston	Kingston-Ulster	8/1772	6/27/18	RNAV (GPS) RWY 33, Amdt 1.
16–Aug–18	FL	Naples	Naples Muni	8/1781	7/10/18	RNAV (GPS)–A, Orig.
16–Aug–18	FL	Naples	Naples Muni	8/1782	7/10/18	RNAV (GPS)–B, Orig.
16–Aug–18	NJ	Vineland	Kroelinger	8/2485	7/5/18	Takeoff Minimums and Obstacle DP, Amdt 1.
16–Aug–18	OH	Lima	Lima Allen County	8/2919	7/5/18	Takeoff Minimums and Obstacle DP, Amdt 1.
16–Aug–18	MN	Crookston	Crookston Muni Kirkwood Fld.	8/2927	7/5/18	NDB RWY 13, Amdt 9.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
16–Aug–18	MN	Crookston	Crookston Muni Kirkwood Fld.	8/2928	7/5/18	RNAV (GPS) RWY 13, Orig.
16–Aug–18	MN	Crookston	Crookston Muni Kirkwood Fld.	8/2929	7/5/18	RNAV (GPS) RWY 31, Orig–A.
16–Aug–18	MN	Crookston	Crookston Muni Kirkwood Fld.	8/2930	7/5/18	VOR/DME RWY 13, Orig–A.
16–Aug–18	GA	Thomaston	Thomaston-Upson County	8/3028	6/27/18	ILS OR LOC RWY 30, Amdt 2A.
16–Aug–18	IL	Mattoon/Charleston	Coles County Memorial	8/3782	7/5/18	RNAV (GPS) RWY 11, Orig–A.
16–Aug–18	FL	Fernandina Beach	Fernandina Beach Muni	8/3809	7/5/18	RNAV (GPS) RWY 13, Amdt 2A.
16–Aug–18	FL	Fernandina Beach	Fernandina Beach Muni	8/3813	7/5/18	RNAV (GPS) RWY 22, Amdt 1B.
16–Aug–18	KS	Abilene	Abilene Muni	8/3819	7/5/18	Takeoff Minimums and Obstacle DP, Orig.
16–Aug–18	IA	Webster City	Webster City Muni	8/3826	7/5/18	NDB RWY 32, Amdt 8.
16–Aug–18	WY	Jackson	Jackson Hole	8/4092	7/5/18	RNAV (GPS) Z RWY 19, Amdt 1A.
16–Aug–18	IL	Morris	Morris Muni—James R Washburn Field.	8/4370	7/5/18	RNAV (GPS) RWY 18, Amdt 1.
16–Aug–18	IA	Harlan	Harlan Muni	8/4397	7/5/18	GPS RWY 15, Orig–B.
16–Aug–18	IA	Harlan	Harlan Muni	8/4408	7/5/18	GPS RWY 33, Orig–B.
16–Aug–18	TX	Hereford	Hereford Muni	8/4517	6/27/18	RNAV (GPS) RWY 20, Orig–A.
16–Aug–18	WI	Madison	Dane County Rgnl-Truax Field.	8/4627	6/27/18	VOR RWY 14, Orig–D.
16–Aug–18	IL	Springfield	Abraham Lincoln Capital	8/4856	7/5/18	ILS OR LOC RWY 31, Amdt 2A.
16–Aug–18	OH	Cadiz	Harrison County	8/4975	7/5/18	VOR–A, Amdt 1.
16–Aug–18	GA	Americus	Jimmy Carter Rgnl	8/5187	6/27/18	RNAV (GPS) RWY 5, Amdt 1A.
16–Aug–18	TX	Houston	William P Hobby	8/5265	7/5/18	RNAV (GPS) RWY 35, Amdt 1A.
16–Aug–18	NY	Westhampton Beach.	Francis S Gabreski	8/5268	7/5/18	ILS OR LOC RWY 24, Amdt 11.
16–Aug–18	FL	Immokalee	Immokalee Rgnl	8/5921	6/27/18	RNAV (GPS) RWY 9, Amdt 1.
16–Aug–18	FL	Immokalee	Immokalee Rgnl	8/5922	6/27/18	RNAV (GPS) RWY 18, Amdt 1.
16–Aug–18	FL	Immokalee	Immokalee Rgnl	8/5924	6/27/18	RNAV (GPS) RWY 27, Amdt 1.
16–Aug–18	FL	Immokalee	Immokalee Rgnl	8/5925	6/27/18	RNAV (GPS) RWY 36, Amdt 1.
16–Aug–18	SC	Cheraw	Cheraw Muni/Lynch Bellinger Field.	8/6174	7/5/18	RNAV (GPS) RWY 8, Orig–A.
16–Aug–18	FL	Inverness	Inverness	8/6407	7/9/18	RNAV (GPS) RWY 19, Orig–A.
16–Aug–18	IN	Valparaiso	Porter County Rgnl	8/6943	7/9/18	ILS RWY 27, Amdt 3.
16–Aug–18	PA	Philadelphia	Wings Field	8/6979	6/27/18	RNAV (GPS) RWY 6, Amdt 1A.
16–Aug–18	PA	Philadelphia	Wings Field	8/6980	6/27/18	RNAV (GPS) RWY 24, Amdt 1A.
16–Aug–18	PA	Harrisburg	Harrisburg Intl	8/7378	6/27/18	ILS OR LOC RWY 31, Amdt 1C.
	FL	Orlando	Executive	8/8391	7/9/18	ILS OR LOC RWY 7, Amdt 24.
16–Aug–18	FL	Orlando	Executive	8/8393	7/9/18	RNAV (GPS) RWY 7, Amdt 2A.
16–Aug–18	MO	Bowling Green	Bowling Green Muni	8/8445	7/9/18	VOR/DME–A, Amdt 2.
16–Aug–18	MO	Bowling Green	Bowling Green Muni	8/8453	7/9/18	RNAV (GPS) RWY 13, Orig.
16–Aug–18	MO	Bowling Green	Bowling Green Muni	8/8454	7/9/18	RNAV (GPS) RWY 31, Orig.
16–Aug–18	MS	Brookhaven	Brookhaven-Lincoln County	8/8668	6/27/18	RNAV (GPS) RWY 22, Orig.
16–Aug–18	NH	Keene	Dillant-Hopkins	8/9189	6/27/18	ILS OR LOC RWY 2, Amdt 4.
16–Aug–18	NH	Keene	Dillant-Hopkins	8/9190	6/27/18	RNAV (GPS) RWY 2, Orig.
16–Aug–18	NH	Keene	Dillant-Hopkins	8/9191	6/27/18	VOR RWY 2, Amdt 13.

[FR Doc. 2018–16139 Filed 7–27–18; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 641

[Docket No. ETA–2017–0005]

RIN 1205–AB79

Senior Community Service Employment Program; Performance Accountability

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is adopting as a final rule without change the interim final rule (IFR) published by the Department in the **Federal Register** on December 1, 2017. The IFR revised performance accountability measures for the Senior Community Service Employment Program (SCSEP). The Older Americans Act (OAA) Reauthorization Act of 2016 (2016 OAA) amended the measures of performance for the SCSEP program in large part to align them with the performance measures mandated for programs under the Workforce Innovation and Opportunity Act (WIOA) and required implementation, including through regulation by December 31, 2017. The IFR revised the Performance Accountability subpart of the SCSEP regulations to reflect changes necessitated by the passage of the 2016 OAA. In addition, the IFR made minor, non-substantive amendments to other subparts of the SCSEP regulations to reflect the 2016 OAA amendments that aligned the SCSEP program statutory language with WIOA, such as updating outdated terminology and outdated references to the Workforce Investment Act of 1998 (WIA), which WIOA superseded. The implemented regulations, referred to as an IFR, took effect on January 2, 2018. The Department solicited public comment on the IFR, and the Department considered these comments when it prepared this final rule.

DATES:

Effective date: This final rule is effective August 29, 2018.

Compliance date: Grantees must report performance information under the measures implemented in the IFR and adopted without change in this final rule beginning July 1, 2018. This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

FOR FURTHER INFORMATION CONTACT:

Amanda Ahlstrand, Administrator, Office of Workforce Investment, *ahlstrand.amanda@dol.gov,* 202–693–3980. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

I. Background
II. Summary of Public Comments Received on the Interim Final Rule
III. Section-by-Section Discussion of the Final Rule
IV. Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act
V. Other Regulatory Considerations

I. Background

The SCSEP, authorized by title V of the OAA, is the only federally sponsored employment and training program targeted specifically to low-income, older individuals who want to enter or re-enter the workforce. Participants must be 55 years of age or older, with incomes no more than 125 percent of the Federal poverty level. The program offers participants training at community service assignments in public and non-profit organizations and agencies so that they can gain on-the-job experience. The dual goals of the program are to promote useful opportunities in community service activities and also to move SCSEP participants into unsubsidized employment, where appropriate, so that they can achieve economic self-sufficiency.

The 2016 OAA, Public Law 114–144 (Apr. 19, 2016), amended the statutory provisions authorizing SCSEP and requires the Department to implement the amendments to the SCSEP performance measures by December 31, 2017. *See* OAA sec. 513(d)(4) (42 U.S.C. 3056k(d)(4), as amended by 2016 OAA sec. 6(d)(4) [1]). The Department met this statutory deadline when it published the IFR on December 1, 2017 (82 FR 56869). This final rule responds to public comments received and finalizes the IFR.

The IFR included both the definitions of the measures (as required by OAA sec. 513(b)(2)) and the processes used to implement these measures in the conduct of the SCSEP grants. These processes include how the Department and grantees initially determine and then adjust expected levels of performance for the grants, and how the Department determines whether a grantee fails, meets, or exceeds the levels of performance.

The Administrative Procedure Act (APA) authorizes agencies to issue a rule without notice and comment upon a showing of good cause. 5 U.S.C. 553(b)(B). The APA's good cause exception to public participation applies upon a finding that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). According to the legislative history of the APA, ''unnecessary'' means ''unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved.'' Senate Report No. 752 at p. 200, 79th Cong. 1st Sess. (1945). As explained by the U.S. Court of Appeals for the D.C. Circuit, ''when regulations merely restate the statute they implement, notice-and-comment procedures are unnecessary.'' *Gray Panthers Advocacy Comm.* v. *Sullivan,* 936 F.2d 1284, 1291 (DC Cir. 1991). The Department determined that there was good cause to find that a pre-publication comment period was unnecessary for the IFR. The revisions set forth in the IFR to the previous regulations at 20 CFR part 641 codified statutory changes requiring little to no agency discretion or were technical amendments updating terminology or outdated references to WIA, which WIOA superseded. Therefore, the Department's issuance of the IFR, with provision for post-promulgation public comment, was in accordance with sec. 553(b) of the APA.

The 2016 OAA requires the Department to establish and implement the new SCSEP performance measures after consultation with stakeholders. OAA sec. 513(b)(2). The Department satisfied these statutory requirements when it solicited public input on the definitions and implementation of the statutory performance measures in April and May of 2017. On May 8, 2017, the Department sent an email to 4,529 stakeholders, inviting them to register for the consultation. The Department also informed stakeholders that they could submit written comments after the consultation.

Of the 394 registered participants, 273 attended the consultation on May 16, 2017. The IFR discussed at length the comments received during and after the consultation and, in response to some of those comments, made the following clarifications:

- The changes in the IFR to the SCSEP performance measurement system reflect in large part an alignment of the SCSEP performance measures with the three employment outcome indicators mandated for WIOA core programs under WIOA sec. 116(b)(2)(A)(i)(I) through (III). In addition to these three WIOA employment outcome indicators of performance, SCSEP has three measures related to participation in the program: service level, hours of community service employment, and service to the most-in-need. These three measures are unique to SCSEP and the 2016 OAA amendments retained them unchanged. Although WIOA has several similar measures, these SCSEP measures are not directly applicable to WIOA. In addition, the WIOA primary indicators of performance include effectiveness in serving employers; the corresponding measure for SCSEP under the OAA, as discussed below at § 641.720, is not directly parallel because it includes participants and host agencies, as well as employers.
- All the SCSEP measures will be incorporated into the Participant Individual Record Layout (PIRL, the WIOA performance reporting system), along with other aspects of SCSEP performance.
- Although the 2016 OAA amendments require SCSEP to adopt several of WIOA's primary indicators of performance, SCSEP is independent of WIOA, and SCSEP performance is not included in the WIOA State program or indicator scores.
- While the Department is exploring a new case management system that may replace the SCSEP Performance and Results Quarterly Progress Report (SPARQ) system in whole or in part, grantees must continue using SPARQ until the Department informs them that a new system is available.
- Like the current measures, the new performance measures apply to all grantees, including both State and national grantees.

See Section I of the IFR for a more detailed discussion of the comments received during stakeholder consultation process.

The 2016 OAA changes to the SCSEP performance measurement system reflect in large part an alignment of the SCSEP performance measures with those mandated for WIOA core

[1] Section 6 of the 2016 OAA amended secs. 502–518 of title V of the original (1965) OAA (42 U.S.C. 3056 *et seq.*). For ease of reference, this preamble will refer to the changes to title V made by the 2016 OAA by referring to the amended sections of the OAA, and will not continue to provide the citations to sec. 6 of the 2016 OAA.

programs under WIOA sec. 116(b)(2)(A)(i). The WIOA performance measures were implemented in a joint final rule issued by the Departments of Labor and Education on August 19, 2016 (81 FR 55792) (Joint WIOA final rule), after notice-and-comment rulemaking, and are codified in 20 CFR part 677. The IFR, which this final rule finalizes, revised the SCSEP regulations at 20 CFR part 641, subpart G (Performance Accountability) to codify the revised SCSEP performance measures in 2016 OAA sec. 513, which in large part aligns the SCSEP performance measures with the WIOA performance measures. In addition, the IFR made (and this final rule carries forward) technical amendments to other subparts of part 641 to reflect 2016 OAA amendments that aligned the SCSEP program statutory language with WIOA, such as updating outdated terminology and outdated references to WIA, which WIOA superseded.

Coordination between the SCSEP and the WIOA programs continues to be an important objective of the OAA. SCSEP is a required partner in the workforce development system (per WIOA sec. 121(b)(1)(B)(v)), and SCSEP is required to coordinate with the WIOA One-Stop delivery system (OAA sec. 511, 42 U.S.C. 3056i), such as by accepting each other's assessments and Individual Employment Plans (IEPs) (OAA sec. 502(b)(3), 42 U.S.C. 3056(b)(3)). The underlying notion of the One-Stop delivery system is the coordination of programs, services, and governance structures, to ensure customer access to a seamless system of workforce development services. Although there are many similarities to the system established under WIA, there are also significant changes under WIOA that are intended to make substantial improvements to the public workforce delivery system. The Joint WIOA final rule requires partners to collaborate to support a seamless customer-focused service delivery network; requiring that programs and providers co-locate, coordinate, and integrate activities and information, so that the system as a whole is cohesive and accessible for individuals and employers alike.

The Department remains committed to a system-wide continuous improvement approach grounded upon proven quality principles and practices. Although many of the SCSEP regulations remain unchanged from the 2010 SCSEP final rule (75 FR 53786; Sept. 1, 2010), the IFR codified the 2016 OAA revisions to the program that align senior employment services with the workforce development system under WIOA. In particular, the IFR aligned the SCSEP performance measures related to employment and earnings with the performance measures established by WIOA to enhance consistency and coordination between the programs and ensure effective services for older Americans. Section III discusses in more detail the changes implemented by the IFR and finalized by this final rule.

II. Summary of Public Comments Received on the Interim Final Rule

The Department received comments from seven organizations and individuals. Four organizations (three national grantees and an association representing State grantees) submitted substantive comments that addressed issues within the scope of the IFR: Associates for Training and Development (A4TD), Vantage Aging (previously known as Mature Services), Senior Service America (SSAI), and the National Association of States United for Aging and Disabilities (NASUAD); the three individuals submitted non-substantive comments.

The Department considered all substantive comments received as it developed this final rule. In Section III below, ''Section-by-Section Discussion of the Final Rule,'' the Department summarizes and discusses the input received from A4TD, Vantage Aging, and NASUAD. SSAI resubmitted the same comments it submitted on June 6, 2017, in response to the May 16, 2017 stakeholder webinar, prior to the publication of the IFR. Because the Department fully responded to the SSAI comments in the preamble to the IFR, the Department will not respond further in this preamble except to clarify some of its prior responses.

Three comments from individuals described general dissatisfaction with the SCSEP program and its grantees based on either negative personal experiences or unfavorable anecdotal evidence. The preamble does not address these comments, as they were not in the scope of the rulemaking.

III. Section-by-Section Discussion of the Final Rule

The Department has made no changes to the regulatory text issued in the IFR.

Non-Substantive Technical Amendments

In addition to the changes made to part 641, subpart G (Performance Accountability) codifying the 2016 OAA statutory revisions as described more fully below, the IFR made non-substantive, technical amendments throughout all of part 641 to reflect the 2016 OAA amendments and to align the SCSEP program language with WIOA, such as updating outdated terminology and outdated references to WIA, which WIOA superseded. The Department did not receive any comments on these technical amendments and the final rule adopts them as issued in the IFR.

The remainder of this section-by-section discussion describes in detail only the substantive subpart G revisions.

Subpart G—Performance Accountability

Throughout this subpart, the Department has revised the term ''core indicator(s)'' to ''core measure(s)'' to align the regulation with the 2016 OAA, specifically sec. 513(a), 42 U.S.C. 3056k(a). The amended statute also refers to ''indicators.'' However, because the statute uses the terms interchangeably, for consistency and to reduce the possibility of confusion, the Department uses only the term ''measures'' throughout this subpart. Other changes made to the sections of subpart G are described below.

Section 641.700 What performance measures apply to Senior Community Service Employment Program grantees?

The Department did not receive any comments on this section. The final rule adopts the provision as originally issued in the IFR.

Section 641.710 How are the performance measures defined?

This section of the rule provides definitions of the core measures. The IFR revised the core indicator (now ''core measure'') definitions contained in this section to align with the revised core measures set forth in § 641.700 of the IFR. As discussed below and in the IFR, the Department deleted the entirety of former paragraph (b) to remove the definitions for the former ''additional indicators,'' which the 2016 OAA removed. Thus, as an initial change, the IFR renumbered paragraphs (a)(1) through (6) to (a) through (g) (to include the definition for an added core measure, as discussed below).

Employment Measures

The IFR did not revise paragraph (a), renumbered from former paragraph (a)(1), which contains the definition for the first core measure for hours of community service employment as currently implemented.

In paragraph (b), renumbered from former paragraph (a)(2), the IFR included a definition for the second performance measure, ''percentage of project participants who are in unsubsidized employment during the second quarter after exit from the project.'' The IFR defined this

performance measure by the following formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the second quarter after the exit quarter, divided by the number of participants who exited during the reporting period, multiplied by 100 so as to be reported as a percentage. This definition aligns with the definition of the corresponding WIOA performance measure, as explained in Training and Employment Guidance Letter (TEGL) 10–16, *Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III and Title IV Core Programs,* published December 19, 2016.

In paragraph (c), renumbered from former paragraph (a)(3), the IFR included a definition for the third performance measure, ''percentage of project participants who are in unsubsidized employment during the fourth quarter after exit from the project.'' This performance measure is defined by the following formula: The number of participants who exited during the reporting period who are employed in unsubsidized employment during the fourth quarter after the exit quarter, divided by the number of participants who exited during the reporting period, multiplied by 100 so as to be reported as a percentage. This definition aligns with the definition of the corresponding WIOA performance measure, as explained in TEGL 10–16.

In response to the IFR, the Department received one public comment relating to the employment measures set forth in this section. Specifically, with regard to the fourth quarter unsubsidized employment measure at paragraph (c), the commenter expressed concern that the new fourth quarter unsubsidized employment measure, while simplifying the current measure for employment retention, will require grantees to follow participants for at least an entire year even if the participants did not leave the program for unsubsidized employment. The commenter contended that this core performance measure will place a significant burden on grantees while producing little increase in performance data.

The commenter is correct that the new measure is no longer conditioned on a participant's having been employed in the first quarter after the exit quarter (as the current core measure for employment retention and the additional measure for retention at 1 year require) and, therefore, includes in the pool every participant who exits from SCSEP unless the participant has one of the exclusions from exit. The Department, however, declines to revise the definition for this core measure. Once wage records are available to all grantees, nearly all data for this measure will be gathered without the need for follow-up, and there will be little additional burden on the grantees. *See* discussion of the use of wage records at § 641.720. Until that time, grantees should first focus their follow-up efforts on those participants who leave the program for unsubsidized employment or who are employed in the second quarter after the exit quarter. Grantees should then follow participants who did not have employment at exit or in the second quarter after exit but who grantees have reason to believe might become employed thereafter. The Department will provide technical assistance and guidance on the new timing and reporting requirements for § 641.710(b) through (d), which are hereinafter called the ''three new employment outcome measures''.

Earnings Measure

In paragraph (d), renumbered from former paragraph (a)(4), the IFR included a definition for the fourth performance measure, ''median earnings of project participants who are in unsubsidized employment during the second quarter after exit from the project.'' This performance measure is defined by the following formula: For all participants who exited and are in unsubsidized employment during the second quarter after the exit quarter, the wage that is at the midpoint (of all the wages) between the highest and lowest wage earned in the second quarter after the exit quarter. This definition aligns with the definition of the corresponding WIOA performance measure, as explained in TEGL 10–16.

The Department did not receive any comments relating to paragraph (d). The final rule adopts the provision as originally issued in the IFR.

Effectiveness Measure

The IFR added a definition in paragraph (e) for the fifth performance measure, ''effectiveness in serving employers, host agencies, and project participants.'' While this definition is similar to the definition used for this indicator under the 2006 OAA, when it was an additional indicator, the 2016 OAA revised the definition so that it focuses more specifically on effectiveness rather than satisfaction in general. The Department received no comments in response to this definition. The final rule adopts the provision as originally issued in the IFR.

Although the new SCSEP measure of effectiveness parallels the language of the WIOA measure, it differs because it also measures the effectiveness in serving participants and host agencies, as well as employers. The WIOA approach to the measure, which is being piloted until 2019, does not have obvious application to SCSEP's other two customer groups. As a result, for the SCSEP measure, the Department has decided to continue surveying all three customer groups to assess the effectiveness of the services received as an interim measure at least until the WIOA pilot is complete and a WIOA measure is defined in final form. By using the same definition as that of the current customer satisfaction measure during this period, the Department will not require SCSEP customers to change their current practices or take on any additional burden.

Other Changes

To conform to the changes outlined above, the IFR renumbered former paragraph (a)(5) to (f). The IFR also renumbered former paragraph (a)(6)(i) through (xiii) to (g)(1) through (13). Renumbered paragraphs (f) and (g) correspond to the sixth and seventh SCSEP performance measures, the definitions of which were unchanged by the IFR. The Department received no comments in response to these technical changes and they are incorporated into this final rule without change.

The 2016 OAA removed the additional indicators of performance previously established in sec. 513(b)(2) of the 2006 OAA. Therefore, the IFR deleted former paragraphs (b)(1) through (3) that contained definitions for the additional indicators. The Department received no comments in response to these deletions.

In addition to the regulatory text changes discussed above, the IFR made various non-substantive changes to the regulations for purposes of correcting typographical errors and improving clarity.

Section 641.720 How will the Department and grantees initially determine and then adjust expected levels of the core performance measures?

The Department received several comments related to this provision. The comments are addressed below in the ''Employment Outcome Measure'' heading.

The IFR made substantial revisions to this section to align with the 2016 OAA, which in large part mirrors the process for establishing the expected performance levels required by WIOA

for the title I core programs, as implemented in 20 CFR 677.170.

The IFR revised paragraph (a), which requires agreement between the grantee and the Department for expected levels of performance for the first 2 program years of the grant, to mirror the statutory language in 2016 OAA sec. 513(a)(2)(B) and (C)(i) and align with WIOA sec. 116(b)(3)(A)(iv)(I). Specifically, paragraph (a) of the IFR stated that each grantee must reach agreement with the Department on levels of performance for each measure listed in § 641.700 for each of the first 2 program years covered by the grant agreement. In reaching the agreement, the grantee and the Department must take into account the expected levels of performance proposed by the grantee and the factors described in paragraph (c) of this section. This paragraph also stated that the levels agreed to will be considered to be the expected levels of performance for the grantee for such program years, and the Department may not award funds under the grant until such agreement is reached. Lastly, this paragraph stated that, at the conclusion of negotiations concerning the performance levels with all grantees, the Department would make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

The IFR explained that the Department considers PY 2016 and PY 2017 to be the first 2 program years under the current SCSEP grants (*i.e.,* the four-year grant cycle that began in PY 2016). For national grantees, these were the first 2 program years following the last (PY 2016) grant competition. For State grantees, these were the first 2 program years of the current (PY 2016) SCSEP State Plans.

The IFR also revised paragraph (b), which required agreement for expected levels of performance for the third and fourth program years of the grant, to mirror the statutory language provided in 2016 OAA sec. 513(a)(2)(B) and (C)(ii) and to align with WIOA sec. 116(b)(3)(A)(iv)(II). The IFR explained, in keeping with paragraph (a) above, that the Department considers PY 2018 and PY 2019 to be the third and fourth program years of the current (PY 2016) SCSEP grant agreements. Specifically, paragraph (b) stated that each grantee must reach agreement with the Department, prior to the third program year covered by the grant agreement, on levels of performance for each measure listed in § 641.700, for each of the third and fourth program years of the grant. This paragraph stated that, in reaching the agreement, the grantee and the Department must take into account the expected levels proposed by the grantee and the factors described in paragraph (c) of this section. This paragraph also stated that the levels agreed to will be considered to be the expected levels of performance for the grantee for those program years. Lastly, like the requirement in paragraph (a), this paragraph stated that, at the conclusion of negotiations concerning the performance levels with all grantees, the Department would make available for public review the final negotiated expected levels of performance for each grantee, including any comments submitted by the grantee regarding the grantee's satisfaction with the negotiated levels.

The IFR added a new paragraph (c), ''Factors,'' to require that the negotiated levels of performance must be based on the three factors listed in paragraphs (c)(1) through (3), as required by OAA sec. 513(a)(2)(D) and to align with WIOA sec. 116(b)(3)(A)(v). Paragraph (c)(1) of the IFR stated that the negotiated levels must take into account how a grantee's levels of performance compare with the expected levels of performance established for other grantees. *See* OAA sec. 513(a)(2)(D)(i) and WIOA sec. 116(b)(3)(A)(v)(I). Paragraph (c)(2) stated that the negotiated levels must be adjusted using an objective statistical model based on the model established by the Department of Labor with the Department of Education in accordance with WIOA sec. 116(b)(3)(A)(viii) and implemented in § 677.170(c). *See* 29 U.S.C. 3141(b)(3)(A)(viii), OAA sec. 513(a)(2)(D)(ii), and WIOA sec. 116(b)(3)(A)(v)(II). The IFR explained that the objective statistical adjustment model is to account for actual economic conditions and characteristics of participants, including the factors required by WIOA sec. 116(b)(3)(A)(v)(II). Paragraph (c)(3) stated that the negotiated levels must take into account the extent to which the levels involved promote continuous improvement in performance accountability on the core measures and ensure optimal return on the investment of Federal funds. *See* OAA sec. 513(a)(2)(D)(iii) and WIOA sec. 116(b)(3)(A)(v)(III). The Department stated it would provide the model to grantees prior to the first negotiations under the new performance measures. The initial revision to the adjustment model was in fact presented to the grantees in a webinar held in May 2018, prior to the start of the negotiation period for PY 2018 and PY 2019.

In paragraph (d), the IFR revised the adjustment requirements contained in former paragraph (b). The IFR replaced the adjustment factors specified in former (b)(1) through (3) with the requirement that the Department will, in accordance with the objective statistical model developed pursuant to paragraph (c)(2), adjust the expected levels of performance for a program year for grantees to reflect the actual economic conditions and characteristics of participants in the corresponding projects during such program year. The Department made these revisions in the IFR to align the pertinent regulations with OAA sec. 513(a)(2)(E).

For consistency with the 2016 OAA, the IFR removed the language in paragraphs (a)(1) through (3) of § 641.720 that describes the negotiation process in detail. However, as explained in the IFR, the negotiation process that the Department intends to use under these new performance measures is similar to the process that was used prior to the IFR, and includes similar opportunities for input from the grantees:

- In the spring of 2018, the Department analyzed grantees' baseline performance and issued proposed targets and goals for the next 2 program years, PY 2018 and PY 2019, based on the new adjustment factors.
- If a grantee disagreed with those targets and goals, it was allowed to propose its own goals and request to negotiate. No grantee chose to negotiate revisions to the proposed targets and goals.
- Prior to the negotiation, the grantee was required to provide the Department with the data on which the grantee based its proposed goals.
- The grantee and the Department must reach agreement before funds for PY 2018 and PY 2019 can be approved; the agreed-upon goals will be the expected levels of performance upon which the annual evaluation of grantee performance will be based. If the grantee and the Department fail to reach agreement, no funds may be released.
- At the conclusion of the negotiation, the grantee may submit comments regarding the grantee's satisfaction with the negotiated levels of performance, which the Department will publish, along with the expected levels of performance.
- At the time of the annual evaluation of grantee performance, the expected levels of performance will be adjusted a second time using the latest available adjustment data. The Department will base this evaluation on the newly

adjusted levels of performance. See preamble discussion of § 641.740.

- The same process will be followed for subsequent 2-year periods.

In addition to the regulatory text changes discussed above, the IFR made various non-substantive changes for purposes of correcting typographical errors and improving clarity. Those changes have been retained in this final rule.

The new measures implemented by the IFR became effective on January 2, 2018, and the new measures were used during the second half of PY 2017, to negotiate the targets and goals for PYs 2018 and 2019. Performance under the PY 2018 targets and goals will begin to be reported starting July 1, 2018. The SCSEP QPR for PY 2017 will be based on the measures that were in place prior to the IFR, and the QPRs for PY 2018, will be based on the measures established in the IFR (and adopted without change in this final rule).

SCSEP participants who exit during PY 2017 when goals based on the prior measures were still in effect will have their performance reported under the old measures for PY 2017. For this same cohort of exiters, reporting for the core employment outcome measures would also take place throughout PY 2018, under the new measures set forth in the IFR and adopted without change in this final rule, and would be reflected in the grantees' PY 2018 QPRs. For example, a participant who exits in Quarter 3 of PY 2017 will be included in the previous entered employment measure for Quarter 4 of PY 2017; the grantee will also report this participant in the final rule's new measure of employment in the second quarter after exit in Quarter 1 of PY 2018. Since the underlying data required for the new measures that will be reported in PY 2018 are the same data required for the prior measures, grantees will have to follow different timing rules for the collection of data in PY 2018, but they will not be required to collect any new or additional data beyond the data they would have reported under the old measures. The Department will provide technical assistance and guidance on the new timing and reporting requirements. As with the core measures in use prior to the IFR, the grantees will collect data for the additional measures not carried forward in the IFR and now this final rule throughout PY 2017, and the final QPR for PY 2017 will be the last report of the additional measures.

Employment Outcome Measures

The Department received several comments relating to § 641.720, which are summarized below. The Department considered all of these comments as it finalized the IFR; our responses to each comment are set forth below. This final rule, however, adopts this provision as it was issued in the IFR for reasons discussed below.

A commenter asked for clarification of the calculation of two of the measures: Whether exclusions from exit will still be applied and whether the year-to-date measure for median earnings will be based on cumulative data or an average of the quarterly results.

As the Department stated in the IFR, as part of its adoption of the WIA common measures in PY 2007, SCSEP has been following the WIA exclusions. With the 2016 OAA's adoption of the measures consistent with the WIOA primary indicators of performance, SCSEP will examine the revised WIOA exclusions and will issue revised guidance as appropriate. The calculation of the year-to-date performance will continue to be based on cumulative data, as it has always been. The Department will issue guidance on the calculations and timing rules for all the new measures.

One commenter expressed concern that while achieving unsubsidized employment is a key goal of the SCSEP program, in many States and localities there remains a significant gap between the unsubsidized income needed to make ends meet and the possible reduction of public benefits due to achieving employment; that pursuit of improved performance under the new employment outcome measures could result in worsening the quality of life of SCSEP participants rather than improving it; and that the Department should work with States to identify mechanisms to ensure that every participant's life is improved by participation in the SCSEP program. The commenter recommended that the Department allow States to use additional economic factors such as housing availability and other issues related to affordability and cost of living as a part of their outcome measures. The commenter also recommended that the Department work with partners in the Federal Government to evaluate options for a gradual reduction in benefits for individuals as they leave SCSEP instead of the current benefits cliff.

The Department agrees that SCSEP is designed to improve participants' quality of life, including self-sufficiency. In fact, data from the participant customer satisfaction surveys consistently confirm that the program does effectively improve participants' physical, emotional, and financial quality of life, and that participants who exit from the program are satisfied with SCSEP, even if they do not achieve unsubsidized employment. Section 641.535(a)(3)(iii) of the SCSEP regulations (a section not affected by the IFR or this final rule) recognizes that unsubsidized employment may not be an appropriate goal for all participants and that if it becomes apparent that unsubsidized employment is not feasible, the grantee must modify the participant's IEP and assist the participant with other approaches to self-sufficiency, including transition to other services and programs.

The Department notes also that the goals for the employment outcomes have always been set at a level that recognizes that not all participants will obtain unsubsidized employment and that because seniors generally work part-time hours at lower pay levels, the goals for earnings have also been set at realistic levels. However, the Department disagrees that SCSEP participants in general cannot improve their financial condition through unsubsidized employment. If grantees do their best to help participants find jobs at their highest wage and skill level, many participants can and do achieve economic self-sufficiency.

Finally, the Department has no authority to revise the employment outcome measures required by the 2016 OAA and implemented by the IFR and this final rule. The Department will work with other Federal agencies to explore whether Federal benefits can be reduced gradually when SCSEP participants exit the program for unsubsidized employment. The Department will also consider adding additional economic factors to the statistical adjustment model as suggested by this commenter and other commenters. See discussion of the statistical adjustment model below.

Use of Unemployment Insurance Wage Records

Citing the additional burden the new measures place on grantees to conduct follow-ups and the incompleteness and inaccuracy of case management follow-up, all four commenters urged the Department to allow the use of unemployment insurance wage records to obtain employment outcome data. One commenter also urged the Department to phase out case management follow-up once access to wage records is available.

As the commenters recognized and as stated in the IFR, the Department is investigating access to wage records and hopes to implement aggregate wage record matching for all grantees. However, since wage matching does not provide data on all participants in

unsubsidized employment, some supplemental use of case management follow-up would still be required. In addition, the SCSEP program model requires that grantees remain in touch with participants and employers during the four quarters after exit in order to help resolve any problems that may arise and to provide supportive services needed to help participants obtain and retain unsubsidized employment.

The Department will inform the grantees as soon as it ascertains when wage matching will be available to SCSEP and will consult with the grantees about the extent to which follow-up will still be required for both performance reporting and case management. In the meantime, as stated in the IFR, until the access to wage records occurs, all grantees must continue using case management follow-up. Using different methods of data collection would compromise the consistency of the performance measures and would potentially provide an unfair advantage to those grantees with access to wage records. In the meantime, the Department will review the standards for case management follow-up as set forth in various guidance materials, will confer with grantees about the changes in procedures desired, and will issue revised guidance if appropriate.

Negotiation Process

One commenter provided several comments relating to the negotiation process, including several concerns about the current process. The commenter described challenges that States have reported facing in negotiations on performance levels, including lack of interest from Federal partners, inconsistency regarding negotiations on a regional basis, delay resulting from confusion about what data to provide, and time pressures. The commenter requested that the Department issue guidance to States regarding the types of data the Department would take into account when negotiating performance levels. This commenter also requested that the Department work with other Federal agencies, including the Department of Health and Human Services and the Department of Agriculture, to provide guidance regarding data-sharing between programs such as SNAP, TANF, Unemployment Insurance, and the SCSEP program. Lastly, this commenter recommended that the Department allow for adjustments in the timeline for negotiations and allow for a certain percentage of funds to be released prior to agreement on the goals and/or to provide funds on an interim contingency basis while negotiations are ongoing.

Although the OAA provides that grantees may comment on the negotiation process and that the Department will publish such comments, very few grantees have commented at all since PY 2007, and no grantees have expressed the concerns raised by the commenter. The Department notes that it has been providing annual teleconferences and webinars on the negotiation process each year since PY 2007, and that, during the negotiations themselves, the Department and its subject matter experts make every effort to identify and help grantees locate data that may be useful to them in their negotiations. The Department thus welcomes the commenter's suggestions for improving the negotiation process and will take them under consideration to the extent it has the authority to do so. The Department agrees that all Federal regions should be engaged in the process and that grantees should be given the support they require to participate meaningfully. The Department will work with the Federal Project Officers to ensure that all grantees are aware of their right to negotiate their goals and have a full opportunity to do so. The Department will also ensure that grantees have information about relevant data sources.

As the commenter recognized, however, the requirement to reach agreement on negotiated levels of performance before the Department may release grant funds is contained in the OAA. The Department has no authority to waive or modify that requirement. The Department recognizes that the time period for negotiation is condensed and that negotiations occur during the same time that grantees are preparing their annual grant applications. The need to obtain the most recent baseline data and economic information to use in the goal setting and adjustment process necessitates this timing. The Department shares the commenter's desire to allow for a more relaxed schedule and will explore the possibility of using a more flexible baseline once the new performance measures have been in place long enough for a new baseline to emerge.

Indicators of Effectiveness

One commenter who addressed the new measure of effectiveness in serving SCSEP's three customer groups pointed out that ''effectiveness'' is more difficult to measure than ''satisfaction'', which for this commenter is a more concrete measure. The commenter expressed uncertainty about how well the WIOA pilot project to explore measures of effectiveness will translate to SCSEP. This commenter expressed appreciation for the Department's continuing to utilize the current customer satisfaction measure until a more detailed and rigorous effectiveness measure can be tested and developed. The commenter recommended that the Department create a stakeholder workgroup to collaborate on evaluating the applicability of the WIOA pilot measures to SCSEP, as well as on the modification or development of new measures of effectiveness. A different commenter made a similar recommendation about involving grantees in the exploration and adoption of pilot measures of effectiveness in serving employers.

Another commenter asked whether there would be any changes in the administration, substance, or timeline for the customer satisfaction surveys during the interim period while the WIOA measure of effectiveness is not yet final.

The Department welcomes the suggestions for grantee involvement and reiterates that it will continue to use the current customer satisfaction surveys at least until the WIOA pilot is complete and the new WIOA effectiveness measure is finalized. During this interim period, the Department will explore with grantees, and with its three customer groups, options for best measuring the effectiveness of SCSEP's services, including the suggestions made by the commenters. The Department will also explore ways to improve the efficiency of the current customer surveys (including the use of online surveys and changes to the administration of the employer survey) and will examine what, if any, new or revised questions would support an index of effectiveness as an alternative to the current index of satisfaction. Until the Office of Management and Budget (OMB) approves any proposed changes to the content or methods of administration of the surveys, the currently approved surveys will continue to be administered as approved.

Statistical Adjustment Model

One commenter had several comments that relate to the statistical adjustment model, suggesting that the Department recognize differences between employment prospects for an individual residing in a metro or urban area versus one in a rural or frontier area, which would include allowing for different regional measures within the same State; the Department should consider other factors that influence

performance, such as access to affordable housing, transportation, and the interplay of various public benefits programs with one another; and whenever possible, the Department should use data on older workers in its calculations. This includes when determining local and regional employment and unemployment figures, among others.

As the Department stated it would do in the preamble to the IFR, the Department is re-examining its current adjustment model to determine if additional aspects of the WIOA model should be incorporated into the SCSEP model or if other changes are appropriate. This consideration includes accounting for the percentage of participants who reside in rural areas, as well as examining an adjustment for the percentage of participants who are ex-offenders (as suggested by a comment made by SSAI). The Department will also explore whether it can obtain current economic data on the senior population as opposed to the general population. The adjustment model applied to the PY 2018 and PY 2019 proposed targets and goals included five new participant characteristics (including residing in a rural area) and one new economic factor (average weekly wages).

The Department notes that to the greatest extent possible, it uses county-level data in its adjustment model, thereby permitting the adjustment factors to be tailored to the specific service area of each grantee. This approach accounts for regional differences within each grantee's service area, as requested by the commenter. In applying the revised adjustment model, the Department used economic data for the new service areas in which the grantees were located at the time of the goal setting for PY 2018 and PY 2019. *See also* discussion of baseline in § 641.730.

Section 641.730 How will the Department assist grantees in the transition to the new core performance measures?

Although the Department received a few public comments relating to this provision, which are discussed below, the final rule adopts this provision as it was issued in the IFR.

The IFR made several changes in this section to update the Department's transition assistance plans to correspond with the 2016 OAA. As a non-substantive change, the IFR deleted the designation of paragraph (a) and its title ''General transition provision,'' because the IFR deleted paragraph (b), as discussed below. This section was, thus, left with only two sentences.

The first sentence as revised by the IFR stated that, as soon as practicable after January 2, 2018, the Department would determine whether a SCSEP grantee's performance under the measures in effect prior to January 2, 2018, would have met the expected levels of performance for PY 2018. The second sentence as revised by the IFR stated that if the Department determines that a grantee would have failed to meet those expected levels of performance, then the Department would provide technical assistance to help the grantee to eventually meet the expected levels of performance under the measures in § 641.700, as those measures were revised by the IFR.

The IFR explained that the Department would only make the above determination for the three new employment outcome measures, defined in § 641.710(b) through (d) of the IFR, since no transition is required for the remaining four core measures (three are unchanged, and for the fourth, the ''indicators of effectiveness in serving employers, host agencies, and participants,'' the IFR stated that the Department would use the same customer satisfaction measure that was used prior to the IFR). In making the determination, the IFR indicated that the Department intended to examine all relevant data, as feasible, in order to provide a crosswalk between the existing measures and the measures implemented in the IFR and to develop a new baseline from which to begin the development of goals for PY 2018 and PY 2019. The IFR promised to provide the analysis to all grantees when it was completed. As set forth above, the Department completed the analysis and cross-walk and provided it to the grantees prior to the development of proposed targets and goals for PY 2018 and PY 2019.

As noted above, the IFR removed paragraph (b) from § 641.730, which provided that PY 2007 would be treated as a baseline year for the most-in-need indicator so that grantees and the Department may collect sufficient data to set a meaningful goal for the measure for PY 2008. The IFR explained that since this provision included dates that have already passed, and given that the Department has documented information on this measure, this provision is no longer required. Therefore, the IFR deleted it from this section.

Baseline Year for New Employment Outcome Measures

Some comments from some of the organizations that responded to the IFR, like comments received from the stakeholder webinar, expressed concern that the new employment outcome measures are substantially different from the current SCSEP outcome measures and that there is no baseline upon which goals for the new measures can be set. For this reason, some comments suggested that the Department establish a pilot period for the new employment measures during which there would not be any expected levels of performance.

One commenter noted that, as a result of the 2016 national grantee competition, many national grantees operate in service areas different from their prior service areas and that the economic conditions in the new area are different as well. This commenter urged the Department to use a valid baseline rather than old data in establishing goals for the new measures.

The Department recognizes that all three of the new outcome measures use different calculations from the measures that were in place prior to the IFR, and that it will take time to establish a reliable baseline to use in setting goals for these measures. As stated in the preamble to the IFR, to help determine how performance under the prior measures relates to performance under the new measures, the Department reanalyzed prior grantee performance data reported under the prior measures using the calculations required for the new measures and created a crosswalk between the two sets of measures. Because the recalculation proved to be an inadequate basis for setting the PY 2018 and PY 2019 grantee-expected levels of performance, the Department decided to treat PYs 2018 and 2019 as baseline years for which targets, rather than expected levels of performance, are assigned, and has reserved the right to renegotiate the PY 2019 targets based on actual performance in PY 2018. Moreover, in developing the proposed goals, the Department used the grantees' most recent, reliable baseline performance. Where the recent baseline data were not reliable, the Department used a longer, historical baseline.

Use of the Participant Individual Record Layout (PIRL) and New Case Management System

One commenter requested that the Department offer training on using the PIRL system and raised several questions related to the transition from SPARQ to PIRL, including whether

SPARQ data will migrate to PIRL and whether grantees should anticipate a period of dual entry into both systems. The comment further asked that the Department align its technical documentation with the PIRL data field specifications so that grantees may adjust their internal systems to support the new information codes and that the Department provide advanced notice of the new requirements and training on the new system.

The Department has announced that it is developing a new case management system that is designed to replace SPARQ in whole or in part. The Department anticipates that SPARQ data will be migrated to the new system and that grantees will continue to use SPARQ for exited case records until the conclusion of the reporting of the PY 2017 performance data on or around September 30, 2018. Since grantees will report the new performance measures beginning July 1, 2018, SPARQ is being reconfigured to support the new measures; grantees will continue using SPARQ for at least the first quarter of PY 2018. The Department anticipates that grantees will begin using the new system for active cases in the second or third quarter of PY 2018. The Department has aligned SPARQ data collection for the case management system with the PIRL. The Department will provide details of the new case management system and the transition requirements to the grantees as soon as possible and does anticipate providing training to grantees.

Section 641.740 How will the Department determine whether a grantee fails, meets, or exceeds the expected levels of performance and what will be the consequences of failing to meet expected levels of performance?

The Department did not receive any comments on this section. The final rule adopts the provision as it was issued in the IFR.

Section 641.750 Will there be performance-related incentives?

The Department did not receive any comments on this section. The final rule adopts the provision as it was issued in the IFR.

IV. Regulatory Flexibility Analysis, Executive Order 13272, Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires the Department to evaluate the economic impact of this rule with regard to small entities. The RFA defines small entities to include small businesses, small organizations including not-for-profit organizations, and small governmental jurisdictions. The Department must determine whether the rule imposes a significant economic impact on a substantial number of such small entities.

There are 75 SCSEP grantees; 50 of these are States and are not small entities as defined by the RFA. Six grantees are governmental jurisdictions other than States (four grantees are territories such as Guam; one grantee is Washington, DC; and another grantee is Puerto Rico). Governmental jurisdictions must have a population of less than 50,000 to qualify as a small entity for RFA purposes and the population of these 6 SCSEP grantees each exceeds 50,000. The remaining 19 grantees are non-profit organizations, which includes some large, national non-profit organizations.

The Department has determined that this final rule will impose no additional burden on small entities affected. Since the alignment with WIOA involved only definitions, the grantees are not required to collect any additional information that may cause a burden increase. In addition, the SCSEP program funds provided to grantees cover all such costs.

The Departments certifies that this final rule does not impose a significant economic impact on a substantial number of small entities.

V. Other Regulatory Considerations

Executive Order 12866

Under Executive Order (E.O.) 12866, OMB's Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and review by OMB. 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. *Id.* OMB has determined that this final rule is not a ''significant regulatory action'' under sec. 3(f) of E.O. 12866.

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; it is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

OMB declined review of this final rule because it is not a significant regulatory action.

Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves it under the PRA and it displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512). OMB has approved the information collections contained in this final rule. See ICR Reference Number 201802–1205–003. The information collection is summarized as follows.

DOL-Only Performance Accountability, Information, and Reporting System

Agency: DOL–ETA.

Title of Collection: DOL-Only Performance Accountability, Information, and Reporting System.

Type of Review: Revision.

OMB Control Number: 1205–0521.

Affected Public: State, Local, and Tribal Governments; Individuals or Households; and Private Sector—businesses or other for-profits and not-for-profit institutions.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 17,532,542.

Estimated Total Annual Responses: 35,064,970.

Estimated Total Annual Burden Hours: 8,938,029.

Estimated Total Annual Other Burden Costs: $6,791,395.

Regulations sections: § 684.420, § 684.610, § 684.700, § 684.800, § 685.210, § 685.400, § 688.420, § 688.610. § 641.700, § 641.710, § 641.720, § 641.730, § 641.740, § 641.750.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

Executive Order 13132

The Department has reviewed this rule in accordance with E.O. 13132 regarding federalism and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule defines and implements performance measures for the SCSEP and while States are SCSEP grantees, this rule merely makes changes to data collection processes that are ongoing. Requiring State grantees to implement these changes does not constitute a ''substantial direct effect'' on the States, nor will it alter the relationship or responsibilities between the Federal and State governments.

Executive Order 13045

E.O. 13045 concerns the protection of children from environmental health risks and safety risks. This rule defines and details the performance measures used by the SCSEP, a program for older Americans, and has no impact on safety or health risks to children.

Executive Order 13175

E.O. 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. The order requires Federal agencies to take certain actions when regulations have ''tribal implications.'' Required actions include consulting with Tribal Governments prior to promulgating a regulation with tribal implications and preparing a tribal impact statement. The order defines regulations as having ''tribal implications'' when they 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.

The Department has reviewed this final rule and concludes that it does not have tribal implications. While some tribes may be recipients of national SCSEP grantees, this rule will not have a substantial direct effect on those tribes because, as outlined in the RFA section of the preamble above, there are only small cost increases associated with implementing this regulation. This regulation does not affect the relationship between the Federal Government and the tribes, nor does it affect the distribution of power and responsibilities between the Federal Government and Tribal Governments. Accordingly, we conclude that this rule does not have tribal implications for the purposes of E.O. 13175.

Environmental Impact Assessment

The Department has reviewed this rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department's NEPA procedures (29 CFR part 11). The rule will not have a significant impact on the quality of the human environment and, thus, the Department has not prepared an environmental assessment or an environmental impact statement.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681), requires the Department to assess the impact of this rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

The Department has assessed this rule and determines that it will not have a negative effect on families. Indeed, the SCSEP strengthens families by providing job training and support services to low-income older Americans so that they can obtain fruitful employment and enjoy increased economic self-sufficiency.

Privacy Act

The Privacy Act of 1974, 5 U.S.C. 552a, provides safeguards to individuals concerning their personal information that the Government collects. The Act requires certain actions by an agency that collects information on individuals when that information contains personally identifiable information such as Social Security Numbers (SSNs) or names. Because SCSEP participant records are maintained by SSN, the Act applies here.

A key concern is for the protection of participant SSNs. Grantees must collect the SSN in order to pay participants properly for their community service work in host agencies. When grantees send participant files to the Department for aggregation, the transmittal is protected by secure encryption. When participant files are retrieved within the internet-based SCSEP data management system of SPARQ, only the last four digits of the SSN are displayed. Any information that is shared or made public is aggregated by grantee and does not reveal personal information on specific individuals.

The Department works diligently to ensure the highest level of security whenever personally identifiable information is stored or transmitted. All contractors that have access to individually identifying information are required to provide assurances that they will respect and protect the confidentiality of the data. ETA's Office of Performance and Technology has been an active participant in the development and approval of data security measures—especially as they apply to SPARQ.

In addition to the above, the Department provides a Privacy Act Statement to grantees for distribution to all participants. The Department advised grantees of the requirement in ETA's Older Worker Bulletin OWB–04–06. Participants receive this information when they meet with a caseworker or intake counselor. When the Department monitors the programs, implementation of this term is included in the review.

Executive Order 12630

This rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

Executive Order 12988

This regulation has been drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and will not unduly burden the Federal court

system. The Department has written the regulation so as to minimize litigation and provide a clear legal standard for affected conduct, and the Department has reviewed the regulation carefully to eliminate drafting errors and ambiguities.

Executive Order 13211

This rule is not subject to E.O. 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

Plain Language

The Department drafted this IFR in plain language.

List of Subjects in 20 CFR Part 641

Aged, Employment, Government contracts, Grant programs-labor, Privacy, Reporting and recordkeeping requirements.

■ Accordingly, the IFR amending 20 CFR part 641 which was published at 82 FR 56869 on December 1, 2017, is adopted as final without change.

Rosemary Lahasky,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2018–16216 Filed 7–27–18; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9836]

RIN 1545–BH62

Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These final regulations provide guidance concerning substantiation and reporting requirements for cash and noncash charitable contributions. The final regulations reflect the enactment of provisions of the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006. These regulations provide guidance to individuals, partnerships, and corporations that make charitable contributions.

DATES: *Effective date:* These regulations are effective on July 30, 2018.

Applicability dates: For dates of applicability, see §§ 1.170A–1(k), 1.170A–14(j), 1.170A–15(h), 1.170A–16(g), 1.170A–17(c), 1.170A–18(d), 1.664–1(f), and 1.6050L–1(h).

FOR FURTHER INFORMATION CONTACT: Charles Gorham at (202) 317–7003 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1953.

The collections of information in these final regulations are in §§ 1.170A–15(a) and (d)(1); 1.170A–16(a), (b), (c), (d), (e), and (f); and 1.170A–18(a)(2) and (b). These collections of information are required to obtain a benefit and will enable the IRS to determine if a taxpayer is entitled to a claimed deduction for a charitable contribution.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid 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 return information are confidential, as required by section 6103.

Background

This document contains amendments to the Income Tax Regulations, 26 CFR parts 1 and 602, relating to substantiating and reporting deductions for charitable contributions under section 170 of the Internal Revenue Code. These final regulations reflect amendments to section 170 made by section 883 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418, 1631) (Jobs Act), and sections 1216, 1217, and 1219 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780, 1079–83) (PPA), which added new rules for substantiating charitable contributions. The final regulations also update cross-references to the section 170 regulations in other regulations.

Section 170(f)(8), which has been in the Code since 1993, provides that no deduction shall be allowed for any contribution of $250 or more, cash or noncash, unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment of the contribution by the donee organization. The contemporaneous written acknowledgment must include: (1) The amount of cash and a description (but not value) of any property other than cash contributed; (2) a statement of whether the donee organization provided any goods or services in consideration, in whole or in part, for any such cash or property; and (3) a description and good faith estimate of the value of any such goods or services or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

Section 170(f)(11), as added by section 883 of the Jobs Act, restates, in part, section 155(a) of the Deficit Reduction Act of 1984 and contains reporting and substantiation requirements relating to the allowance of deductions for noncash charitable contributions. Under section 170(f)(11)(C), taxpayers are required to obtain a qualified appraisal for donated property for which a deduction of more than $5,000 is claimed.

Under section 170(f)(11)(D), a qualified appraisal must be attached to any tax return claiming a deduction of more than $500,000. Section 170(h)(4)(B), as added by section 1213 of the PPA, adds the requirement that a qualified appraisal must be included with the taxpayer's return for the taxable year of the contribution for any contribution of a qualified real property interest that is a restriction as to the exterior of a building described in section 170(h)(4)(C)(ii).

Section 170(f)(11)(E), as amended by section 1219 of the PPA, provides statutory definitions of *qualified appraisal* and *qualified appraiser* for appraisals prepared with respect to returns filed after August 17, 2006.

Section 170(f)(11)(E)(i) provides that the term *qualified appraisal* means an appraisal that is (1) treated as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and (2) conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.

Section 170(f)(11)(E)(ii) provides that the term *qualified appraiser* means an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary, (2) regularly performs appraisals for which the individual receives compensation, and (3) meets such other requirements as may be prescribed by the Secretary in regulations or other

guidance. Section 170(f)(11)(E)(iii) provides that an individual will not be treated as a qualified appraiser with respect to any specific appraisal unless that individual (1) demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and (2) has not been prohibited from practicing before the IRS by the Secretary under section 330(c) of Title 31 of the United States Code at any time during the 3-year period ending on the date of the appraisal.

On October 19, 2006, the Treasury Department and the IRS released Notice 2006–96, 2006–2 CB 902 (see § 601.601(d)(2)(ii)(*b*)), which provides transitional guidance on the definitions of *qualified appraisal* and *qualified appraiser* that apply on and after the effective date of the PPA definitions.

Section 170(f)(16) as added by section 1216 of the PPA generally provides that no deduction is allowed for a contribution of clothing or a household item unless the clothing or household item is in good used condition or better.

Section 170(f)(17) as added by section 1217 of the PPA imposes a recordkeeping requirement for all cash contributions, regardless of amount. Specifically, section 170(f)(17) requires a donor to maintain as a record of any cash, check, or other monetary gift (1) a bank record, or (2) a written communication from the donee. The record must show the name of the donee organization, the date of the contribution, and the amount of the contribution.

On December 2, 2006, the Treasury Department and the IRS released Notice 2006–110, 2006–2 CB 1127 (see § 601.601(d)(2)(ii)(*b*)), which provides rules under section 170(f)(17) for substantiating charitable contributions made by payroll deduction.

On January 8, 2008, the Treasury Department and the IRS released Notice 2008–16, 2008–1 CB 315 (see § 601.601(d)(2)(ii)(*b*)), which provides rules under section 170(f)(17) for substantiating a one-time, lump-sum charitable contribution of a cash, check, or other monetary gift made through the Combined Federal Campaign (CFC) or a similar program. Taxpayers may rely on Notice 2006–96, Notice 2006–110, and Notice 2008–16 prior to the effective date of these final regulations.

On August 7, 2008, the Treasury Department and the IRS provided guidance on complying with section 170 as amended by the Jobs Act and the PPA in a notice of proposed rulemaking (REG–140029–07) in the **Federal Register** (73 FR 45908). The Treasury Department and the IRS received comments responding to the notice of proposed rulemaking, and a public hearing was held on January 23, 2009. Copies of the comments received are available for public inspection at *www.regulations.gov* or upon request. After consideration of the comments received, the Treasury Department and the IRS adopt the proposed regulations as revised by this Treasury decision. The revisions are discussed in this preamble.

Explanation of Provisions and Summary of Comments

The final regulations implement changes made by the Jobs Act and PPA to the substantiation and reporting rules for charitable contributions under section 170. The final regulations set forth the substantiation requirements for contributions of more than $500 under section 170(f)(11)(B) through (D) (added by the Jobs Act); the new definitions of *qualified appraisal* and *qualified appraiser* applicable to noncash contributions under section 170(f)(11)(E) (added by the PPA); substantiation requirements for contributions of clothing and household items under section 170(f)(16) (added by the PPA); and recordkeeping requirements for all cash contributions under section 170(f)(17) (added by the PPA).

In addition, these final regulations amend the heading of § 1.170A–13 to alert readers to the updated regulations. The final regulations also update cross-references to the section 170 regulations in other regulations.

I. Cash, Check, or Other Monetary Gift Substantiation Requirements

Section 1.170A–15 implements the requirements of section 170(f)(17) for cash, check, or other monetary gift contributions, as added by the PPA, and clarifies that these rules supplement the substantiation rules in section 170(f)(8).

A. Contributions Made to a Distributing Organization

A donor may make a charitable contribution of cash, check, or other monetary gift to an organization that collects contributions and distributes them to ultimate recipient organizations (pursuant to the donor's instructions or otherwise). The final regulations adopt the general rule of the proposed regulations that treats as a donee for purposes of sections 170(f)(8) and 170(f)(17) an organization described in section 170(c) or a Principal Combined Fund Organization (PCFO) for purposes of the Combined Federal Campaign (CFC) and acting in that capacity. The CFC is a workplace giving campaign established by Executive Order 10728, as amended by Executive Orders 10927, 12353, and 12404, and administered by the United States Office of Personnel Management (OPM). A PCFO administers the local campaign and acts as a fiscal agent for the CFC.

1. Blank Pledge Card Is Not Substantiation

Some commenters asked whether a blank pledge card provided by a donee organization but filled out by the donor constitutes adequate substantiation for a contribution of cash to a distributing organization. Section 170(f)(17) requires a taxpayer to maintain as a record of a contribution of a cash, check, or other monetary gift either a bank record or a written communication from the donee that shows the name of the donee organization, the date of the contribution, and the amount of the contribution. The proposed and final regulations at § 1.170A–15(b)(2) provide that a bank record includes a statement from a financial institution, an electronic fund transfer receipt, a canceled check, a scanned image of both sides of a canceled check obtained from a bank website, or a credit card statement. In addition, the proposed and final regulations provide that a written communication includes an email. Because a blank pledge card provided by the donee organization to a donor does not show the information required under section 170(f)(17), it is not sufficient substantiation for a cash, check, or other monetary gift.

2. Name of Donee for Purposes of CFC

One commenter noted that because the CFC generally does not include the name of the donee organization on its pledge cards, and a PCFO for purposes of the CFC often is a potential ultimate recipient of a contribution to the CFC, including the name of the PCFO on the pledge card could unduly influence donors to contribute to the PCFO rather than to other eligible donees. The commenter asked that the name of the local CFC campaign be treated as the name of the donee organization. The Treasury Department and the IRS agree with this comment. Accordingly, § 1.170A–15(d)(2)(ii) provides that the name of the local CFC may be used instead of the name of the PCFO and may be treated as the donee organization for purposes of sections 170(f)(8) and 170(f)(17) and § 1.170A–15(d)(1)(ii).

B. Compliance With 170(f)(8) and 170(f)(17) in a Single Document

Some commenters asked if a single written acknowledgment can be used to

satisfy the substantiation rules under sections 170(f)(8) and 170(f)(17). Section 170(f)(8) does not require that a contemporaneous written acknowledgment by the donee organization include the date of the contribution. In addition, section 170(f)(17) does not require that a written communication from the donee include a statement of whether any goods or services were provided in exchange for the contribution. Although there are different requirements under sections 170(f)(8) and 170(f)(17), § 1.170A–15(a)(3) of the final regulations provides that a single written acknowledgment that satisfies all substantiation requirements under both sections 170(f)(8) and 170(f)(17) is adequate substantiation for contributions of a cash, check, or other monetary gift.

II. Noncash Substantiation Requirements

Section 1.170A–16 implements the requirements of section 170(f)(11) for noncash contributions, as added by the Jobs Act, and clarifies that these rules are in addition to the requirements in section 170(f)(8).

Proposed and final § 1.170A–16 provide that a donor who claims a deduction for a noncash contribution of less than $250 is required only to obtain a receipt from the donee or keep reliable records. A donor who claims a noncash contribution of at least $250 but not more than $500 is required only to obtain a contemporaneous written acknowledgment, as provided under section 170(f)(8) and § 1.170A–13(f). For claimed noncash contributions of more than $500 but not more than $5,000, the donor must obtain a contemporaneous written acknowledgment and must also file a completed Form 8283 (Section A), ''Noncash Charitable Contributions,'' with the return on which the deduction is claimed. For claimed noncash contributions of more than $5,000, in addition to a contemporaneous written acknowledgment, the donor generally must obtain a qualified appraisal and must also complete and file either Section A or Section B of Form 8283 (depending on the type of property contributed) with the return on which the deduction is claimed. For claimed noncash contributions of more than $500,000, the donor must also attach a copy of the qualified appraisal to the return for the taxable year in which the contribution is made.

Section 170(f)(11)(F) provides that for purposes of the $500, $5,000, and $500,000 thresholds in section 170(f)(11), similar items contributed during the taxable year are treated as one property. In determining whether a contribution meets the $250 threshold, § 1.170A–13(f)(1) provides that separate contributions made during the tax year, regardless of whether the sum of those contributions equal or exceed $250, are not combined. The proposed and final regulations also provide that the requirements for substantiation that must be submitted with a return also apply to the return for any carryover year under section 170(d).

A. Reasonable Cause Exception

In light of recent case law (see *Crimi* v. *Commissioner,* T.C. Memo. 2013–51), the paragraph relating to the reasonable cause exception set forth in proposed regulation § 1.170A–16(f)(6) has been deleted from the final regulations because it is inconsistent with the Tax Court's position. In *Crimi,* the IRS argued that there was no qualified appraisal. The Tax Court discussed the doctrine of substantial compliance with respect to the qualified appraisal regulation, but stated that it was unnecessary to decide whether it was applicable to the petitioners' case because they established that the failure was due to reasonable cause. Specifically, the court stated that a reasonable cause inquiry is ''inherently a fact-intensive one, and facts and circumstances must be judged on a case-by-case basis.'' *Id.* at *99. The court found that petitioners reasonably and in good faith relied on their long-time certified public accountant's advice that their appraisal met all the legal requirements to claim the deduction. Thus, the final regulations do not contain a standard for the reasonable cause exception.

B. Appraiser Privacy Concerns

A number of commenters expressed concern over appraisers' privacy if the appraiser's social security number is required on qualified appraisals and Forms 8283 (Section B). This concern was addressed by the proposed regulations. Both the proposed and final regulations require an appraiser to use a taxpayer identification number on an appraisal, but that number does not need to be the appraiser's social security number. An appraiser may use an employer identification number, which may be obtained by: (1) Applying on the IRS website (*www.regulationsgov*); or (2) filing a completed Form SS–4, *Application for Employer Identification Number,* by mail or by fax. The IRS has modified the instructions to Form 8283 to make clear that an appraiser may use either a social security number or an employer identification number.

C. Form 8283 Is Not a Contemporaneous Written Acknowledgment

One commenter asked whether a Form 8283 can satisfy the requirement for a contemporaneous written acknowledgment under section 170(f)(8). Although no format is prescribed for a contemporaneous written acknowledgment (for example, an email may qualify), a contemporaneous written acknowledgment of a contribution by the donee organization must contain all of the information required by section 170(f)(8)(B). Moreover, section 170(f)(8)(A) states that the acknowledgment is made ''by the donee organization.'' Only Section B, part IV of Form 8283, completed for property valued at over $5,000, is a donee acknowledgment, and this acknowledgment only contains some of the information required by section 170(f)(8)(B). Accordingly, even a fully-completed Form 8283 does not satisfy the requirements of section 170(f)(8).

D. Form 8283 (Section B) Provided to Donee

Another commenter suggested that the Form 8283 (Section B) should be required to be fully completed, including the appraiser information and the appraised or claimed value of the property, before the donor obtains the donee's signature. Section 1.170A–16(d)(5)(iii) of the proposed regulations provides that specific portions of the Form 8283 (Section B) must be completed before it is signed by the donee, but that the Form 8283 (Section B) does not need to contain certain other information, such as the appraiser information and the appraised or claimed value of the property, before the donee signs the form. Regardless of any benefits that may result from additional information sharing, the public should have the opportunity to comment on any proposed requirement to share additional information with the donee. Accordingly, the final regulations adopt the proposed regulation language without adoption of this suggestion.

E. Attaching Appraisal to Carryover Year Returns

One commenter suggested deleting the requirement in the regulations to attach an appraisal to the tax returns for carryover years. Because the need for the IRS to have the appraisal attached to each return reflecting a contribution in excess of $500,000 outweighs the burden on taxpayers to supply it, the final regulations retain this requirement. Accordingly, if the appraisal is required to be attached to the return for the

contribution year, it must also be attached to the returns for the carryover years.

III. New Requirements for Qualified Appraisals and Qualified Appraisers

As prescribed in section 170(f)(11)(E), as amended by the PPA, § 1.170A–17 of the proposed and final regulations provides definitions for *qualified appraisal* and *qualified appraiser.*

A. Transitional Rule

One commenter suggested that a transitional rule be included for § 1.170A–17 because additional time may be needed to meet the education and experience requirements in § 1.170A–17 for qualified appraisers. In order to provide appraisers with a reasonable amount of time to meet the new education and experience requirements, the final rules under § 1.170A–17 apply only to contributions made on or after January 1, 2019.

B. Definition of Generally Accepted Appraisal Standards

Section 170(f)(11)(E)(i)(II) provides that the term *qualified appraisal* means an appraisal that is conducted by a qualified appraiser in accordance with generally accepted appraisal standards. Generally accepted appraisal standards are defined in the proposed regulations at § 1.170A–17(a)(2) as the ''substance and principles of the Uniform Standards of Professional Appraisal Practice [USPAP], as developed by the Appraisal Standards Board of the Appraisal Foundation.'' Several commenters recommended that the final regulations require appraisal documents to be prepared ''in accordance with USPAP'' and not merely in accordance with the ''substance and principles of USPAP.'' Other commenters indicated that strict compliance with USPAP would eliminate use of all other appraisal standards, including some that are generally accepted in the appraisal industry. The Treasury Department and the IRS agree that it is beneficial to provide some flexibility by requiring conformity with appraisal standards that are consistent with the substance and principles of USPAP rather than requiring that all appraisals be prepared strictly in accordance with USPAP. Accordingly, the final regulations do not adopt the recommendation to require strict compliance with USPAP and retain the requirement of consistency with the substance and principles of USPAP.

C. Education and Experience Requirement for Qualified Appraisers

Section 170(f)(11)(E)(ii)(I) and (iii)(I) and § 1.170A–17(b) of the proposed regulations provide that a qualified appraiser is an individual with verifiable education and experience in valuing the type of property for which the appraisal is performed. Some commenters reiterated suggestions made in response to Notice 2006–96 that the final regulations interpret the requirement in section 170(f)(11)(E) that a qualified appraiser have verifiable ''education *and* experience'' as requiring verifiable ''education *or* experience.'' The Treasury Department and the IRS did not adopt this suggestion in the proposed regulations, and do not do so in the final regulations, because it would be contrary to the clear language of the statute.

Section 1.170A–17(b)(4) of the proposed regulations requires an appraiser to specify in the appraisal the appraiser's education and experience in valuing the type of property and to make a declaration in the appraisal that, because of the appraiser's education and experience, the appraiser is qualified to make appraisals of the type of property being valued. A commenter suggested that, to meet the ''verifiable'' requirement in § 1.170A–17(b), the appraiser should be required to specify in the appraisal only that the appraiser is a qualified appraiser under § 1.170A–17(b) and that the appraisal was prepared in accordance with the substance and principles of USPAP. The general statement of qualification suggested by the commenter does not demonstrate, as required under section 170(f)(11)(E)(iii)(I), that the appraiser has verifiable education and experience that qualifies the appraiser to prepare the appraisal for that type of property. Accordingly, the final regulations do not adopt this suggestion.

D. Parity Between ''Designation'' and ''Education and Experience''

Section 1.170A–17(b)(2)(i) of the proposed regulations provides that an individual is treated as having education and experience in valuing the type of property if, as of the date the individual signs the appraisal, the individual has satisfied the following requirements: (A) Successfully completed professional or college-level coursework in valuing the type of property and has two or more years of experience in valuing the type of property; or (B) earned a recognized appraiser designation for the type of property. One commenter suggested that it is much more difficult to earn a designation from a generally recognized professional appraiser organization under § 1.170A–17(b)(2)(i)(B) than to satisfy the education and experience requirements under § 1.170A–17(b)(2)(i)(A). The commenter suggested that the education and experience requirements be made more stringent. In enacting section 170(f)(11)(E), Congress intended to improve the accuracy of deductions claimed for noncash contributions by requiring qualified appraisers to meet more stringent qualification standards, including by requiring that both education and experience requirements be met. See H.R. Rep. No. 108–548, pt. 1, at 356 (2004). The requirements for education and experience in the proposed regulations are sufficiently stringent as intended by Congress. Accordingly, the final regulations do not adopt this suggestion and retain without modification the requirements for education and experience in the proposed regulations.

E. Satisfying Verifiable Education Requirement

Section 170(f)(11)(E)(iii)(I) requires verifiable education and experience in valuing the type of property subject to the appraisal. Section 1.170A–17(b)(2)(i)(A) of the proposed regulations provides that an individual is treated as having education and experience in valuing the type of property if, as of the date the individual signs the appraisal, the individual has successfully completed (for example, received a passing grade on a final examination) professional or college-level coursework in valuing the type of property, and has two or more years of experience in valuing the type of property. One commenter asked whether attendance at a training event that does not include a final examination meets the requirement of successful completion of coursework. The reference to a passing grade on a final examination in § 1.170A–17(b)(2)(i)(A) is merely an example of what is considered successful completion of professional or college-level coursework, and other evidence of successful completion may be sufficient. However, mere attendance at a training event is not sufficient, and evidence of successful completion of coursework is necessary under the final regulations.

F. Education Provided by Trade Organization

Two commenters pointed out that, in addition to generally recognized professional appraiser organizations, a generally recognized professional trade organization may provide coursework

that satisfies the requirement for verifiable education in valuing the type of property under § 1.170A–17(b)(2)(i)(A) and (ii)(B). The Treasury Department and the IRS agree with this comment, and the final regulations provide that an appraiser also can satisfy § 1.170A–17(b)(2)(i)(A) and (ii)(B) by successfully completing coursework in valuing the type of property from a generally recognized professional trade organization.

G. Examples of Generally Recognized Professional Appraiser Organizations

Some commenters objected to the references in the proposed regulations to designations conferred by one particular organization as examples of recognized appraiser designations. The Treasury Department and the IRS do not require or prefer the designation of any particular appraiser organization, and, therefore, the final regulations do not contain examples of any designations.

IV. Additional Comments

A number of commenters requested that the Treasury Department and the IRS provide that the final regulations apply to charitable contributions for all federal tax purposes, including estate and gift tax. These regulations are promulgated under Jobs Act and PPA provisions that apply only to income tax deductions for charitable contributions under section 170. No substantive changes were made to the proposed regulations in response to these comments because these comments were beyond the scope of the proposed regulations.

Some commenters suggested that appraisers be allowed to use certain IRS valuation tables, such as those for charitable remainder trusts, other remainder interests in property, and life insurance policies, instead of a qualified appraisal. These tables may be used to value property in certain other contexts, but they do not necessarily provide a fair market value of the property contributed. Therefore, these tables are not acceptable substitutes for a qualified appraisal to substantiate deductions for charitable contributions under section 170.

Another commenter suggested that taxpayers should not be required to substantiate their charitable contribution deduction with a qualified appraisal when they purchase medical equipment, such as a Magnetic Resonance Imaging (MRI) machine, and donate the equipment to a qualified organization. The purchase price of the medical equipment may differ from its fair market value. A qualified appraisal prepared by a qualified appraiser is required to determine the fair market value at the time of contribution. Therefore, no changes were made to the proposed regulations in response to this comment.

Effect on Other Documents

Notice 2006–96 provides transitional guidance on the definitions of *qualified appraisal* and *qualified appraiser* under section 170(f)(11). Notice 2006–110 provides transitional guidance under section 170(f)(17) for substantiating charitable contributions made by payroll deduction. Notice 2008–16 provides transitional guidance under section 170(f)(17) for substantiating a one-time, lump-sum charitable contribution of a cash, check, or other monetary gift made through the CFC or a similar program. All three notices provide that taxpayers may rely on the notices until final regulations are effective. Accordingly, Notice 2006–110 and Notice 2008–16 are obsolete as of July 30, 2018 and Notice 2006–96 is obsolete as of January 1, 2019.

V. Applicability Dates

In general, §§ 1.170A–15, 1.170A–16, and 1.170A–18 apply to contributions made after July 30, 2018. Section 1.170A–17 applies to contributions made on or after January 1, 2019. Taxpayers are reminded that the effective dates of the Jobs Act and the PPA relating to substantiating and reporting charitable contributions precede the effective date of these final regulations, and the Jobs Act and the PPA apply in accordance with their applicability dates. *See* Notice 2006–96.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations. Further it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Although this rule could affect a substantial number of small entities, any economic impact is expected to be minimal. The final rule provides clarifications and simplifications to the existing substantiation and reporting requirements for charitable contributions and are designed to reduce the burden on taxpayers. Further, any substantiation and reporting rules contained in these final regulations that are in addition to the rules in current regulations reflect statutory substantiation and reporting requirements. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Charles Gorham of the Office of Associate Chief Counsel (Income Tax and Accounting). Other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 amended by adding sectional authorities for §§ 1.170A–15 through 1.170A–18 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

§ 1.170A–15 also issued under 26 U.S.C. 170(a)(1).

§ 1.170A–16 also issued under 26 U.S.C. 170(a)(1) and 170(f)(11).

§ 1.170A–17 also issued under 26 U.S.C. 170(a)(1) and 170(f)(11).

§ 1.170A–18 also issued under 26 U.S.C. 170(a)(1).

* * * * *

§§ 1.170–0, 1.170–1, and 1.170–2 [Removed]

■ **Par. 2.** Sections 1.170–0, 1.170–1, and 1.170–2 are removed.

■ **Par. 3.** Section 1.170A–1 is amended by revising the third sentence of paragraph (a) and adding two sentences to the end of paragraph (k) to read as follows:

§ 1.170A–1 Charitable, etc., contributions and gifts; allowance of deduction.

(a) * * * For rules relating to record keeping and return requirements in

support of deductions for charitable contributions (whether by an itemizing or nonitemizing taxpayer), see §§ 1.170A–13, 1.170A–14, 1.170A–15, 1.170A–16, 1.170A–17, and 1.170A–18. * * *

* * * * *

(k) * * * The third sentence of paragraph (a) applies as provided in the sections referenced in that sentence.

■ **Par. 4.** Section 1.170A–13 is amended by revising the heading to read as follows:

§ 1.170A–13 Recordkeeping and return requirements for deductions for charitable contributions.

* * * * *

■ **Par. 5.** Section 1.170A–14 is amended by revising paragraphs (i) and (j) to read as follows:

§ 1.170A–14. Qualified conservation contributions.

* * * * *

(i) *Substantiation requirement.* If a taxpayer makes a qualified conservation contribution and claims a deduction, the taxpayer must maintain written records of the fair market value of the underlying property before and after the donation and the conservation purpose furthered by the donation, and such information shall be stated in the taxpayer's income tax return if required by the return or its instructions. See also § 1.170A–13(c) (relating to substantiation requirements for deductions in excess of $5,000 for charitable contributions made on or before July 30, 2018); § 1.170A–16(d) (relating to substantiation of charitable contributions of more than $5,000 made after July 30, 2018); § 1.170A–17 (relating to the definitions of qualified appraisal and qualified appraiser for substantiation of contributions made on or after January 1, 2019); and section 6662 (relating to the imposition of an accuracy-related penalty on underpayments). Taxpayers may rely on the rules in § 1.170A–16(d) for contributions made after June 3, 2004, or appraisals prepared for returns or submissions filed after August 17, 2006. Taxpayers may rely on the rules in § 1.170A–17 for appraisals prepared for returns or submissions filed after August 17, 2006.

(j) *Effective/applicability dates.* Except as otherwise provided in § 1.170A–14(g)(4)(ii) and § 1.170A–14(i), this section applies only to contributions made on or after December 18, 1980.

■ **Par. 6.** Section 1.170A–15 is added to read as follows:

§ 1.170A–15 Substantiation requirements for charitable contribution of a cash, check, or other monetary gift.

(a) *In general*—(1) *Bank record or written communication required.* No deduction is allowed under sections 170(a) and 170(f)(17) for a charitable contribution in the form of a cash, check, or other monetary gift, as described in paragraph (b)(1) of this section, unless the donor substantiates the deduction with a bank record, as described in paragraph (b)(2) of this section, or a written communication, as described in paragraph (b)(3) of this section, from the donee showing the name of the donee, the date of the contribution, and the amount of the contribution.

(2) *Additional substantiation required for contributions of $250 or more.* No deduction is allowed under section 170(a) for any contribution of $250 or more unless the donor substantiates the contribution with a contemporaneous written acknowledgment, as described in section 170(f)(8) and § 1.170A–13(f), from the donee.

(3) *Single document may be used.* The requirements of paragraphs (a)(1) and (2) of this section may be met by a single document that contains all the information required by paragraphs (a)(1) and (2) of this section, if the document is obtained by the donor no later than the date prescribed by paragraph (c) of this section.

(b) *Terms*—(1) *Monetary gift* includes a transfer of a gift card redeemable for cash, and a payment made by credit card, electronic fund transfer (as described in section 5061(e)(2)), an online payment service, or payroll deduction.

(2) *Bank record* includes a statement from a financial institution, an electronic fund transfer receipt, a canceled check, a scanned image of both sides of a canceled check obtained from a bank website, or a credit card statement.

(3) *Written communication* includes email.

(c) *Deadline for receipt of substantiation.* The substantiation described in paragraph (a) of this section must be received by the donor on or before the earlier of—

(1) The date the donor files the original return for the taxable year in which the contribution was made; or

(2) The due date, including any extension, for filing the donor's original return for that year.

(d) *Special rules*—(1) *Contributions made by payroll deduction.* In the case of a charitable contribution made by payroll deduction, a donor is treated as meeting the requirements of section 170(f)(17) and paragraph (a) of this section if, no later than the date described in paragraph (c) of this section, the donor obtains—

(i) A pay stub, Form W–2, ''Wage and Tax Statement,'' or other employer-furnished document that sets forth the amount withheld during the taxable year for payment to a donee; and

(ii) A pledge card or other document prepared by or at the direction of the donee that shows the name of the donee.

(2) *Distributing organizations as donees.* The following organizations are treated as donees for purposes of section 170(f)(17) and paragraph (a) of this section, even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in section 170(c):

(i) An organization described in section 170(c).

(ii) An organization described in 5 CFR 950.105 (a Principal Combined Fund Organization (PCFO) for purposes of the Combined Federal Campaign (CFC)) and acting in that capacity. For purposes of the requirement for a written communication under section 170(f)(17), if the donee is a PCFO, the name of the local CFC campaign may be treated as the name of the donee organization.

(e) *Substantiation of out-of-pocket expenses.* Paragraph (a)(1) of this section does not apply to a donor who incurs unreimbursed expenses of less than $250 incident to the rendition of services, within the meaning of § 1.170A–1(g). For substantiation of unreimbursed out-of-pocket expenses of $250 or more, see § 1.170A–13(f)(10).

(f) *Charitable contributions made by partnership or S corporation.* If a partnership or an S corporation makes a charitable contribution, the partnership or S corporation is treated as the donor for purposes of section 170(f)(17) and paragraph (a) of this section.

(g) *Transfers to certain trusts.* The requirements of section 170(f)(17) and paragraphs (a)(1) and (3) of this section do not apply to a transfer of a cash, check, or other monetary gift to a trust described in section 170(f)(2)(B); a charitable remainder annuity trust, as described in section 664(d)(1) and the corresponding regulations; or a charitable remainder unitrust, as described in section 664(d)(2) or (d)(3) and the corresponding regulations. The requirements of section 170(f)(17) and paragraphs (a)(1) and (2) of this section do apply, however, to a transfer to a pooled income fund, as defined in section 642(c)(5).

(h) *Effective/applicability date.* This section applies to contributions made after July 30, 2018. Taxpayers may rely on the rules of this section for contributions made in taxable years beginning after August 17, 2006.

■ **Par. 7.** Section 1.170A–16 is added to read as follows:

§ 1.170A–16 Substantiation and reporting requirements for noncash charitable contributions.

(a) *Substantiation of charitable contributions of less than $250*—(1) *Individuals, partnerships, and certain corporations required to obtain receipt.* Except as provided in paragraph (a)(2) of this section, no deduction is allowed under section 170(a) for a noncash charitable contribution of less than $250 by an individual, partnership, S corporation, or C corporation that is a personal service corporation or closely held corporation unless the donor maintains for each contribution a receipt from the donee showing the following information:

(i) The name and address of the donee;

(ii) The date of the contribution;

(iii) A description of the property in sufficient detail under the circumstances (taking into account the value of the property) for a person who is not generally familiar with the type of property to ascertain that the described property is the contributed property; and

(iv) In the case of securities, the name of the issuer, the type of security, and whether the securities are publicly traded securities within the meaning of § 1.170A–13(c)(7)(xi).

(2) *Substitution of reliable written records*—(i) *In general.* If it is impracticable to obtain a receipt (for example, where a donor deposits property at a donee's unattended drop site), the donor may satisfy the recordkeeping rules of this paragraph (a) by maintaining reliable written records, as described in paragraphs (a)(2)(ii) and (iii) of this section, for the contributed property.

(ii) *Reliable written records.* The reliability of written records is to be determined on the basis of all of the facts and circumstances of a particular case, including the proximity in time of the written record to the contribution.

(iii) *Contents of reliable written records.* Reliable written records must include—

(A) The information required by paragraph (a)(1) of this section;

(B) The fair market value of the property on the date the contribution was made;

(C) The method used in determining the fair market value; and

(D) In the case of a contribution of clothing or a household item as defined in § 1.170A–18(c), the condition of the item.

(3) *Additional substantiation rules may apply.* For additional substantiation rules, see paragraph (f) of this section.

(b) *Substantiation of charitable contributions of $250 or more but not more than $500.* No deduction is allowed under section 170(a) for a noncash charitable contribution of $250 or more but not more than $500 unless the donor substantiates the contribution with a contemporaneous written acknowledgment, as described in section 170(f)(8) and § 1.170A–13(f).

(c) *Substantiation of charitable contributions of more than $500 but not more than $5,000*—(1) *In general.* No deduction is allowed under section 170(a) for a noncash charitable contribution of more than $500 but not more than $5,000 unless the donor substantiates the contribution with a contemporaneous written acknowledgment, as described in section 170(f)(8) and § 1.170A–13(f), and meets the applicable requirements of this section.

(2) *Individuals, partnerships, and certain corporations also required to file Form 8283 (Section A).* No deduction is allowed under section 170(a) for a noncash charitable contribution of more than $500 but not more than $5,000 by an individual, partnership, S corporation, or C corporation that is a personal service corporation or closely held corporation unless the donor completes Form 8283 (Section A), ''Noncash Charitable Contributions,'' as provided in paragraph (c)(3) of this section, or a successor form, and files it with the return on which the deduction is claimed.

(3) *Completion of Form 8283 (Section A).* A completed Form 8283 (Section A) includes—

(i) The donor's name and taxpayer identification number (for example, a social security number or employer identification number);

(ii) The name and address of the donee;

(iii) The date of the contribution;

(iv) The following information about the contributed property:

(A) A description of the property in sufficient detail under the circumstances, taking into account the value of the property, for a person who is not generally familiar with the type of property to ascertain that the described property is the contributed property;

(B) In the case of real or tangible personal property, the condition of the property;

(C) In the case of securities, the name of the issuer, the type of security, and whether the securities are publicly traded securities within the meaning of § 1.170A–13(c)(7)(xi);

(D) The fair market value of the property on the date the contribution was made and the method used in determining the fair market value;

(E) The manner of acquisition (for example, by purchase, gift, bequest, inheritance, or exchange), and the approximate date of acquisition of the property by the donor (except that in the case of a contribution of publicly traded securities as defined in § 1.170A–13(c)(7)(xi), a representation that the donor held the securities for more than one year is sufficient) or, if the property was created, produced, or manufactured by or for the donor, the approximate date the property was substantially completed;

(F) The cost or other basis, adjusted as provided by section 1016, of the property (except that the cost or basis is not required for contributions of publicly traded securities (as defined in § 1.170A–13(c)(7)(xi)) that would have resulted in long-term capital gain if sold on the contribution date, unless the donor has elected to limit the deduction to basis under section 170(b)(1)(C)(iii));

(G) In the case of tangible personal property, whether the donee has certified it for a use related to the purpose or function constituting the donee's basis for exemption under section 501, or in the case of a governmental unit, an exclusively public purpose; and

(v) Any other information required by Form 8283 (Section A) or the instructions to Form 8283 (Section A).

(4) *Additional requirement for certain vehicle contributions.* In the case of a contribution of a qualified vehicle described in section 170(f)(12)(E) for which an acknowledgment by the donee organization is required under section 170(f)(12)(D), the donor must attach a copy of the acknowledgment to the Form 8283 (Section A) for the return on which the deduction is claimed.

(5) *Additional substantiation rules may apply.* For additional substantiation rules, see paragraph (f) of this section.

(d) *Substantiation of charitable contributions of more than $5,000*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, no deduction is allowed under section 170(a) for a noncash charitable contribution of more than $5,000 unless the donor—

(i) Substantiates the contribution with a contemporaneous written acknowledgment, as described in section 170(f)(8) and § 1.170A–13(f);

(ii) Obtains a qualified appraisal, as defined in § 1.170A–17(a)(1), prepared by a qualified appraiser, as defined in § 1.170A–17(b)(1); and

(iii) Completes Form 8283 (Section B), as provided in paragraph (d)(3) of this section, or a successor form, and files it with the return on which the deduction is claimed.

(2) *Exception for certain noncash contributions.* A qualified appraisal is not required, and a completed Form 8283 (Section A) containing the information required in paragraph (c)(3) of this section meets the requirements of paragraph (d)(1)(iii) of this section for contributions of—

(i) Publicly traded securities as defined in § 1.170A–13(c)(7)(xi);

(ii) Property described in section 170(e)(1)(B)(iii) (certain intellectual property);

(iii) A qualified vehicle described in section 170(f)(12)(A)(ii) for which an acknowledgment under section 170(f)(12)(B)(iii) is provided; and

(iv) Property described in section 1221(a)(1) (inventory and property held by the donor primarily for sale to customers in the ordinary course of the donor's trade or business).

(3) *Completed Form 8283 (Section B).* A completed Form 8283 (Section B) includes—

(i) The donor's name and taxpayer identification number (for example, a social security number or employer identification number);

(ii) The donee's name, address, taxpayer identification number, signature, the date signed by the donee, and the date the donee received the property;

(iii) The appraiser's name, address, taxpayer identification number, appraiser declaration, as described in paragraph (d)(4) of this section, signature, and the date signed by the appraiser;

(iv) The following information about the contributed property:

(A) The fair market value on the valuation effective date, as defined in § 1.170A–17(a)(5)(i).

(B) A description in sufficient detail under the circumstances, taking into account the value of the property, for a person who is not generally familiar with the type of property to ascertain that the described property is the contributed property.

(C) In the case of real property or tangible personal property, the condition of the property;

(v) The manner of acquisition (for example, by purchase, gift, bequest, inheritance, or exchange), and the approximate date of acquisition of the property by the donor, or, if the property was created, produced, or manufactured by or for the donor, the approximate date the property was substantially completed;

(vi) The cost or other basis of the property, adjusted as provided by section 1016;

(vii) A statement explaining whether the charitable contribution was made by means of a bargain sale and, if so, the amount of any consideration received for the contribution; and

(viii) Any other information required by Form 8283 (Section B) or the instructions to Form 8283 (Section B).

(4) *Appraiser declaration.* The appraiser declaration referred to in paragraph (d)(3)(iii) of this section must include the following statement: ''I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).''

(5) *Donee signature*—(i) *Person authorized to sign.* The person who signs Form 8283 (Section B) for the donee must be either an official authorized to sign the tax or information returns of the donee, or a person specifically authorized to sign Forms 8283 (Section B) by that official. In the case of a donee that is a governmental unit, the person who signs Form 8283 (Section B) for the donee must be an official of the governmental unit.

(ii) *Effect of donee signature.* The signature of the donee on Form 8283 (Section B) does not represent concurrence in the appraised value of the contributed property. Rather, it represents acknowledgment of receipt of the property described in Form 8283 (Section B) on the date specified in Form 8283 (Section B) and that the donee understands the information reporting requirements imposed by section 6050L and § 1.6050L–1.

(iii) *Certain information not required on Form 8283 (Section B) before donee signs.* Before Form 8283 (Section B) is signed by the donee, Form 8283 (Section B) must be completed (as described in paragraph (d)(3) of this section), except that it is not required to contain the following:

(A) The appraiser declaration or information about the qualified appraiser.

(B) The manner or date of acquisition.

(C) The cost or other basis of the property.

(D) The appraised fair market value of the contributed property.

(E) The amount claimed as a charitable contribution.

(6) *Additional substantiation rules may apply.* For additional substantiation rules, see paragraph (f) of this section.

(7) *More than one appraiser.* More than one appraiser may appraise the donated property. If more than one appraiser appraises the property, the donor does not have to use each appraiser's appraisal for purposes of substantiating the charitable contribution deduction under this paragraph (d). If the donor uses the appraisal of more than one appraiser, or if two or more appraisers contribute to a single appraisal, each appraiser shall comply with the requirements of this paragraph (d) and the requirements in § 1.170A–17, including signing the qualified appraisal and appraisal summary.

(e) *Substantiation of noncash charitable contributions of more than $500,000*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, no deduction is allowed under section 170(a) for a noncash charitable contribution of more than $500,000 unless the donor—

(i) Substantiates the contribution with a contemporaneous written acknowledgment, as described in section 170(f)(8) and § 1.170A–13(f);

(ii) Obtains a qualified appraisal, as defined in § 1.170A–17(a)(1), prepared by a qualified appraiser, as defined in § 1.170A–17(b)(1);

(iii) Completes, as described in paragraph (d)(3) of this section, Form 8283 (Section B) and files it with the return on which the deduction is claimed; and

(iv) Attaches the qualified appraisal of the property to the return on which the deduction is claimed.

(2) *Exception for certain noncash contributions.* For contributions of property described in paragraph (d)(2) of this section, a qualified appraisal is not required, and a completed Form 8283 (Section A), containing the information required in paragraph (c)(3) of this section, meets the requirements of paragraph (e)(1)(iii) of this section.

(3) *Additional substantiation rules may apply.* For additional

substantiation rules, see paragraph (f) of this section.

(f) *Additional substantiation rules*—(1) *Form 8283 (Section B) furnished by donor to donee.* A donor who presents a Form 8283 (Section B) to a donee for signature must furnish to the donee a copy of the Form 8283 (Section B).

(2) *Number of Forms 8283 (Section A or Section B)*—(i) *In general.* For each item of contributed property for which a Form 8283 (Section A or Section B) is required under paragraphs (c), (d), or (e) of this section, a donor must attach a separate Form 8283 (Section A or Section B) to the return on which the deduction for the item is claimed.

(ii) *Exception for similar items.* The donor may attach a single Form 8283 (Section A or Section B) for all similar items of property, as defined in § 1.170A–13(c)(7)(iii), contributed to the same donee during the donor's taxable year, if the donor includes on Form 8283 (Section A or Section B) the information required by paragraph (c)(3) or (d)(3) of this section for each item of property.

(3) *Substantiation requirements for carryovers of noncash contribution deductions.* The rules in paragraphs (c), (d), and (e) of this section (regarding substantiation that must be submitted with a return) also apply to the return for any carryover year under section 170(d).

(4) *Partners and S corporation shareholders*—(i) *Form 8283 (Section A or Section B) must be provided to partners and S corporation shareholders.* If the donor is a partnership or S corporation, the donor must provide a copy of the completed Form 8283 (Section A or Section B) to every partner or shareholder who receives an allocation of a charitable contribution deduction under section 170 for the property described in Form 8283 (Section A or Section B). Similarly, a recipient partner or shareholder that is a partnership or S corporation must provide a copy of the completed Form 8283 (Section A or Section B) to each of its partners or shareholders who receives an allocation of a charitable contribution deduction under section 170 for the property described in Form 8283 (Section A or Section B).

(ii) *Partners and S corporation shareholders must attach Form 8283 (Section A or Section B) to return.* A partner of a partnership or shareholder of an S corporation who receives an allocation of a charitable contribution deduction under section 170 for property to which paragraph (c), (d), or (e) of this section applies must attach a copy of the partnership's or S corporation's completed Form 8283 (Section A or Section B) to the return on which the deduction is claimed.

(5) *Determination of deduction amount for purposes of substantiation rules*—(i) *In general.* In determining whether the amount of a donor's deduction exceeds the amounts set forth in section 170(f)(11)(B) (noncash contributions exceeding $500), 170(f)(11)(C) (noncash contributions exceeding $5,000), or 170(f)(11)(D) (noncash contributions exceeding $500,000), the rules of paragraphs (f)(5)(ii) and (iii) of this section apply.

(ii) *Similar items of property must be aggregated.* Under section 170(f)(11)(F), the donor must aggregate the amount claimed as a deduction for all similar items of property, as defined in § 1.170A–13(c)(7)(iii), contributed during the taxable year. For rules regarding the number of qualified appraisals and Forms 8283 (Section A or Section B) required if similar items of property are contributed, see § 1.170A–13(c)(3)(iv)(A) and (4)(iv)(B).

(iii) *For contributions of certain inventory and scientific property, excess of amount claimed over cost of goods sold taken into account*—(A) *In general.* In determining the amount of a donor's contribution of property to which section 170(e)(3) (relating to contributions of inventory and other property) or (e)(4) (relating to contributions of scientific property used for research) applies, the donor must take into account only the excess of the amount claimed as a deduction over the amount that would have been treated as the cost of goods sold if the donor had sold the contributed property to the donee.

(B) *Example.* The following example illustrates the rule of this paragraph (f)(5)(iii):

Example. X Corporation makes a contribution of inventory described in section 1221(a)(2). The contribution, described in section 170(e)(3), is for the care of the needy. The cost of the property to *X* Corporation is $5,000 and the fair market value of the property at the time of the contribution is $11,000. Pursuant to section 170(e)(3)(B), *X* Corporation claims a charitable contribution deduction of $8,000 ($5,000 + ½ × ($11,000 − 5,000) = $8,000). The amount taken into account for purposes of determining the $5,000 threshold of paragraph (d) of this section is $3,000 ($8,000 − $5,000).

(g) *Effective/applicability date.* This section applies to contributions made after July 30, 2018. Taxpayers may rely on the rules of this section for contributions made after June 3, 2004, or appraisals prepared for returns or submissions filed after August 17, 2006.

■ **Par. 8.** Section 1.170A–17 is added to read as follows:

§ 1.170A–17 Qualified appraisal and qualified appraiser.

(a) *Qualified appraisal*—(1) *Definition.* For purposes of section 170(f)(11) and § 1.170A–16(d)(1)(ii) and (e)(1)(ii), the term *qualified appraisal* means an appraisal document that is prepared by a qualified appraiser (as defined in paragraph (b)(1) of this section) in accordance with generally accepted appraisal standards (as defined in paragraph (a)(2) of this section) and otherwise complies with the requirements of this paragraph (a).

(2) *Generally accepted appraisal standards defined.* For purposes of paragraph (a)(1) of this section, *generally accepted appraisal standards* means the substance and principles of the Uniform Standards of Professional Appraisal Practice, as developed by the Appraisal Standards Board of the Appraisal Foundation.

(3) *Contents of qualified appraisal.* A qualified appraisal must include—

(i) The following information about the contributed property:

(A) A description in sufficient detail under the circumstances, taking into account the value of the property, for a person who is not generally familiar with the type of property to ascertain that the appraised property is the contributed property.

(B) In the case of real property or tangible personal property, the condition of the property.

(C) The valuation effective date, as defined in paragraph (a)(5)(i) of this section.

(D) The fair market value, within the meaning of § 1.170A–1(c)(2), of the contributed property on the valuation effective date;

(ii) The terms of any agreement or understanding by or on behalf of the donor and donee that relates to the use, sale, or other disposition of the contributed property, including, for example, the terms of any agreement or understanding that—

(A) Restricts temporarily or permanently a donee's right to use or dispose of the contributed property;

(B) Reserves to, or confers upon, anyone, other than a donee or an organization participating with a donee in cooperative fundraising, any right to the income from the contributed property or to the possession of the property, including the right to vote contributed securities, to acquire the property by purchase or otherwise, or to designate the person having income, possession, or right to acquire; or

(C) Earmarks contributed property for a particular use;

(iii) The date, or expected date, of the contribution to the donee;

(iv) The following information about the appraiser:

(A) Name, address, and taxpayer identification number.

(B) Qualifications to value the type of property being valued, including the appraiser's education and experience.

(C) If the appraiser is acting in his or her capacity as a partner in a partnership, an employee of any person, whether an individual, corporation, or partnership, or an independent contractor engaged by a person other than the donor, the name, address, and taxpayer identification number of the partnership or the person who employs or engages the qualified appraiser;

(v) The signature of the appraiser and the date signed by the appraiser (appraisal report date);

(vi) The following declaration by the appraiser: ''I understand that my appraisal will be used in connection with a return or claim for refund. I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties. I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c)'';

(vii) A statement that the appraisal was prepared for income tax purposes;

(viii) The method of valuation used to determine the fair market value, such as the income approach, the market-data approach, or the replacement-cost-less-depreciation approach; and

(ix) The specific basis for the valuation, such as specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed.

(4) *Timely appraisal report.* A qualified appraisal must be signed and dated by the qualified appraiser no earlier than 60 days before the date of the contribution and no later than—

(i) The due date, including extensions, of the return on which the deduction for the contribution is first claimed;

(ii) In the case of a donor that is a partnership or S corporation, the due date, including extensions, of the return on which the deduction for the contribution is first reported; or

(iii) In the case of a deduction first claimed on an amended return, the date on which the amended return is filed.

(5) *Valuation effective date*—(i) *Definition.* The *valuation effective date* is the date to which the value opinion applies.

(ii) *Timely valuation effective date.* For an appraisal report dated before the date of the contribution, as described in § 1.170A–1(b), the valuation effective date must be no earlier than 60 days before the date of the contribution and no later than the date of the contribution. For an appraisal report dated on or after the date of the contribution, the valuation effective date must be the date of the contribution.

(6) *Exclusion for donor knowledge of falsity.* An appraisal is not a qualified appraisal for a particular contribution, even if the requirements of this paragraph (a) are met, if the donor either failed to disclose or misrepresented facts, and a reasonable person would expect that this failure or misrepresentation would cause the appraiser to misstate the value of the contributed property.

(7) *Number of appraisals required.* A donor must obtain a separate qualified appraisal for each item of property for which an appraisal is required under section 170(f)(11)(C) and (D) and paragraph (d) or (e) of § 1.170A–16 and that is not included in a group of similar items of property, as defined in § 1.170A–13(c)(7)(iii). For rules regarding the number of appraisals required if similar items of property are contributed, see section 170(f)(11)(F) and § 1.170A–13(c)(3)(iv)(A).

(8) *Time of receipt of qualified appraisal.* The qualified appraisal must be received by the donor before the due date, including extensions, of the return on which a deduction is first claimed, or reported in the case of a donor that is a partnership or S corporation, under section 170 with respect to the donated property, or, in the case of a deduction first claimed, or reported, on an amended return, the date on which the return is filed.

(9) *Prohibited appraisal fees.* The fee for a qualified appraisal cannot be based to any extent on the appraised value of the property. For example, a fee for an appraisal will be treated as based on the appraised value of the property if any part of the fee depends on the amount of the appraised value that is allowed by the Internal Revenue Service after an examination.

(10) *Retention of qualified appraisal.* The donor must retain the qualified appraisal for so long as it may be relevant in the administration of any internal revenue law.

(11) *Effect of appraisal disregarded pursuant to 31 U.S.C. 330(c).* If an appraiser has been prohibited from practicing before the Internal Revenue Service by the Secretary under 31 U.S.C. 330(c) at any time during the three-year period ending on the date the appraisal is signed by the appraiser, any appraisal prepared by the appraiser will be disregarded as to value, but could constitute a qualified appraisal if the requirements of this section are otherwise satisfied, and the donor had no knowledge that the signature, date, or declaration was false when the appraisal and Form 8283 (Section B) were signed by the appraiser.

(12) *Partial interest.* If the contributed property is a partial interest, the appraisal must be of the partial interest.

(b) *Qualified appraiser*—(1) *Definition.* For purposes of section 170(f)(11) and § 1.170A–16(d)(1)(ii) and (e)(1)(ii), the term *qualified appraiser* means an individual with verifiable education and experience in valuing the type of property for which the appraisal is performed, as described in paragraphs (b)(2) through (4) of this section.

(2) *Education and experience in valuing the type of property*—(i) *In general.* An individual is treated as having education and experience in valuing the type of property within the meaning of paragraph (b)(1) of this section if, as of the date the individual signs the appraisal, the individual has—

(A) Successfully completed (for example, received a passing grade on a final examination) professional or college-level coursework, as described in paragraph (b)(2)(ii) of this section, in valuing the type of property, as described in paragraph (b)(3) of this section, and has two or more years of experience in valuing the type of property, as described in paragraph (b)(3) of this section; or

(B) Earned a recognized appraiser designation, as described in paragraph (b)(2)(iii) of this section, for the type of property, as described in paragraph (b)(3) of this section.

(ii) *Coursework must be obtained from an educational organization, generally recognized professional trade or appraiser organization, or employer educational program.* For purposes of paragraph (b)(2)(i)(A) of this section, the coursework must be obtained from—

(A) A professional or college-level educational organization described in section 170(b)(1)(A)(ii);

(B) A generally recognized professional trade or appraiser organization that regularly offers

educational programs in valuing the type of property; or

(C) An employer as part of an employee apprenticeship or educational program substantially similar to the educational programs described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Recognized appraiser designation defined.* A *recognized appraiser designation* means a designation awarded by a generally recognized professional appraiser organization on the basis of demonstrated competency.

(3) *Type of property defined*—(i) *In general.* The type of property means the category of property customary in the appraisal field for an appraiser to value.

(ii) *Examples.* The following examples illustrate the rule of paragraphs (b)(2)(i) and (b)(3)(i) of this section:

Example (1). Coursework in valuing type of property. There are very few professional-level courses offered in widget appraising, and it is customary in the appraisal field for personal property appraisers to appraise widgets. Appraiser *A* has successfully completed professional-level coursework in valuing personal property generally but has completed no coursework in valuing widgets. The coursework completed by Appraiser *A* is for the type of property under paragraphs (b)(2)(i) and (b)(3)(i) of this section.

Example (2). Experience in valuing type of property. It is customary for professional antique appraisers to appraise antique widgets. Appraiser *B* has 2 years of experience in valuing antiques generally and is asked to appraise an antique widget. Appraiser *B* has obtained experience in valuing the type of property under paragraphs (b)(2)(i) and (b)(3)(i) of this section.

Example (3). No experience in valuing type of property. It is not customary for professional antique appraisers to appraise new widgets. Appraiser *C* has experience in appraising antiques generally but no experience in appraising new widgets. Appraiser *C* is asked to appraise a new widget. Appraiser *C* does not have experience in valuing the type of property under paragraphs (b)(2)(i) and (b)(3)(i) of this section.

(4) *Verifiable.* For purposes of paragraph (b)(1) of this section, education and experience in valuing the type of property are verifiable if the appraiser specifies in the appraisal the appraiser's education and experience in valuing the type of property, as described in paragraphs (b)(2) and (3) of this section, and the appraiser makes a declaration in the appraisal that, because of the appraiser's education and experience, the appraiser is qualified to make appraisals of the type of property being valued.

(5) *Individuals who are not qualified appraisers.* The following individuals are not qualified appraisers for the appraised property:

(i) An individual who receives a fee prohibited by paragraph (a)(9) of this section for the appraisal of the appraised property.

(ii) The donor of the property.

(iii) A party to the transaction in which the donor acquired the property (for example, the individual who sold, exchanged, or gave the property to the donor, or any individual who acted as an agent for the transferor or for the donor for the sale, exchange, or gift), unless the property is contributed within 2 months of the date of acquisition and its appraised value does not exceed its acquisition price.

(iv) The donee of the property.

(v) Any individual who is either—

(A) Related, within the meaning of section 267(b), to, or an employee of, an individual described in paragraph (b)(5)(ii), (iii), or (iv) of this section;

(B) Married to an individual described in paragraph (b)(5)(v)(A) of this section; or

(C) An independent contractor who is regularly used as an appraiser by any of the individuals described in paragraph (b)(5)(ii), (iii), or (iv) of this section, and who does not perform a majority of his or her appraisals for others during the taxable year.

(vi) An individual who is prohibited from practicing before the Internal Revenue Service by the Secretary under 31 U.S.C. 330(c) at any time during the three-year period ending on the date the appraisal is signed by the individual.

(c) *Effective/applicability date.* This section applies to contributions made on or after January 1, 2019. Taxpayers may rely on the rules of this section for appraisals prepared for returns or submissions filed after August 17, 2006.

■ **Par. 9.** Section 1.170A–18 is added to read as follows:

§ 1.170A–18 Contributions of clothing and household items.

(a) *In general.* Except as provided in paragraph (b) of this section, no deduction is allowed under section 170(a) for a contribution of clothing or a household item (as described in paragraph (c) of this section) unless—

(1) The item is in good used condition or better at the time of the contribution; and

(2) The donor meets the substantiation requirements of § 1.170A–16.

(b) *Certain contributions of clothing or household items with claimed value of more than $500.* The rule described in paragraph (a)(1) of this section does not apply to a contribution of a single item of clothing or a household item for which a deduction of more than $500 is claimed, if the donor submits with the return on which the deduction is claimed a qualified appraisal, as defined in § 1.170A–17(a)(1), of the property prepared by a qualified appraiser, as defined in § 1.170A–17(b)(1), and a completed Form 8283 (Section B), ''Noncash Charitable Contributions,'' as described in § 1.170A–16(d)(3).

(c) *Definition of household items.* For purposes of section 170(f)(16) and this section, the term *household items* includes furniture, furnishings, electronics, appliances, linens, and other similar items. Food, paintings, antiques, and other objects of art, jewelry, gems, and collections are not household items.

(d) *Effective/applicability date.* This section applies to contributions made after July 30, 2018. Taxpayers may rely on the rules of this section for contributions made after August 17, 2006.

■ **Par. 10.** § 1.664–1 is amended by revising paragraph (a)(7)(i)(*b*) and adding a sentence to the end of paragraph (f)(1) to read as follows:

§ 1.664–1. Charitable remainder trusts.

(a) * * *

(7) * * *

(i) * * *

(*b*) Determined by a current qualified appraisal from a qualified appraiser, as those terms are defined in—

(*1*) Section 1.170A–13(c)(3) and 1.170A–13(c)(5), respectively, for appraisals prepared for returns or submissions filed on or before August 17, 2006;

(*2*) Section 3 of Notice 2006–96, 2006–2 CB 902, for appraisals prepared for returns or submissions filed after August 17, 2006, if the donations are made before January 1, 2019; or

(*3*) Section 1.170A–17(a) and 1.170A–17(b), respectively, for appraisals prepared for returns or submissions for donations made on or after January 1, 2019.

* * * * *

(f) * * *

(1) * * * The provisions of paragraph § 1.664–1(a)(7)(i)(b) apply as provided in that paragraph.

* * * * *

■ **Par. 10.** § 1.6050L–1 is amended by:

■ 1. Revising the first two sentences of paragraph (a)(2)(i).

■ 2. Revising paragraphs (c)(4)(i) introductory text and (d)(2).

■ 3. Revising the first sentences of paragraphs (e) and (f)(2)(ii).

■ 4. Adding paragraph (h).

The revisions and addition read as follows:

§ 1.6050L–1. Information return by donees relating to certain dispositions of donated property.

(a) * * *

(2) * * *

(i) *In general.* Paragraph (a)(1) of this section shall not apply with respect to an item of charitable deduction property disposed of by sale if the Form 8283 appraisal summary (as described in § 1.170A–13(c)(4) for contributions made on or before July 30, 2018 and § 1.170A–16(d)(3) for contributions made after July 30, 2018), or a successor form, signed by the donee with respect to the item contains, at the time of the donee's signature, a statement signed by the donor that the appraised value of the item does not exceed $500. In the case of a Form 8283 appraisal summary that describes more than one item, this exception shall apply only with respect to an item clearly identified as having an appraised value of $500 or less. * * *

* * * * *

(c) * * *

(4) * * *

(i) Shall provide its name, address, and employer identification number and a copy of the Form 8283 appraisal summary (as described in § 1.170A–13(c)(4) for contributions made on or before July 30, 2018 and § 1.170A–16(d)(3) for contributions made after July 30, 2018) relating to the transferred property to the successor donee on or before the 15th day after the latest of—

* * * * *

(d) * * *

(2) *Retention of Form 8283 appraisal summary.* Every donee shall retain the Form 8283 appraisal summary (as described in § 1.170A–13(c)(4) for contributions made on or before July 30, 2018 and § 1.170A–16(d)(3) for contributions made after July 30, 2018) in the donee's records for so long as it may be relevant in the administration of any internal revenue law.

* * * * *

(e) *Charitable deduction property.* For purposes of this section, the term charitable deduction property means any property (other than money and publicly traded securities to which § 1.170A–13(c)(7)(xi)(B) does not apply) contributed after December 31, 1984, with respect to which the donee signs (or is presented with for signature in cases described in § 1.170A–13(c)(4)(iv)(C)(*2*)) a Form 8283 appraisal summary (as described in § 1.170A–13(c)(4) for contributions made on or before July 30, 2018 and § 1.170A–16(d)(3) for contributions made after July 30, 2018). * * *

* * * * *

(f) * * *

(2) * * *

(ii) *Exception.* Notwithstanding paragraph (f)(2)(i) of this section, in the case of a donee who, on the date of receipt of the transferred property, had no reason to believe that the substantiation requirements of § 1.170A–13(c) or § 1.170A–16(d) apply with respect to the property, the donee information return is not required to be filed until the 60th day after the date on which such donee has reason to believe that the substantiation requirements of § 1.170A–13(c) or § 1.170A–16(d) apply with respect to the property. * * *

* * * * *

(h) *Effective/applicability dates.* The first two sentences of paragraph (a)(2)(i), paragraphs (c)(4)(i) and (d)(2), and the first sentences of paragraphs (e) and (f)(2)(ii) apply to contributions made after July 30, 2018.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 11.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 12.** In § 602.101, paragraph (b) is amended by adding in numerical order entries for 1.170A–15 through 1.170A–18 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
1.170A–15	1545–1953
1.170A–16	1545–1953
1.170A–17	1545–1953
1.170A–18	1545–1953

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: April 23, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2018–15734 Filed 7–27–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0730]

Drawbridge Operation Regulation; Gulf Intracoastal Waterway, South Pasadena, FL

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 Corey Causeway (SR693) Bridge across the Gulf Intracoastal Waterway (GICW), mile 117.7, South Pasadena, FL. The deviation is necessary to accommodate repairs to the Bridge. This deviation allows the bridge open at requested times a single leaf and with a 6 hour notice for double leaf openings.

DATES: This deviation is effective from 7 a.m. on August 1, 2018 to 7 a.m. on February 28, 2019.

ADDRESSES: The docket for this deviation, USCG–2018–0730 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 MST1 Deborah A. Schneller, U.S. Coast Guard Sector Saint Petersburg, Waterways Management Division, telephone (813) 228–2194 x 8133, email *Deborah.A.Schneller@uscg.mil.*

SUPPLEMENTARY INFORMATION: Florida Department of Transportation (FDOT) via Quinn Construction Inc, has requested a temporary deviation from the operation that govern the Corey Causeway Bridge across the Gulf Intracoastal Waterway, mile 117.7. This deviation is necessary to facilitate mechanical and electrical repairs, painting, roadway and sidewalk grating replacement which includes concrete removal, spall repair and tender house replacement. The bridge is a double-leaf bascule bridge and has a vertical clearance in the closed to navigation position of 23 feet at mean high water.

The current operating schedule is set out in 33 CFR 117.287(f). Under this temporary deviation, the bridge will operate per the listed schedule but single leaf only and with a 6 hour notice for double leaf openings. This section of the Gulf Intracoastal Waterway is

predominantly used by a variety of vessels including U.S. government vessels, small commercial vessels and recreational vessels. The Coast Guard has carefully considered the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. 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 drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 24, 2018.

Barry L. Dragon,

Director, Bridge Branch, Seventh Coast Guard District.

[FR Doc. 2018–16149 Filed 7–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0722]

RIN 1625–AA00

Safety Zone; Waterview Loft Fireworks II, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 350-foot radius of a portion of the Detroit River, Detroit, MI. This zone is necessary to protect spectators and vessels from potential hazards associated with the Waterview Loft Fireworks II.

DATES: This temporary final rule is effective from 9:30 p.m. through 10 p.m. on August 17, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0722 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9564, or email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this fireworks display in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Detroit (COTP) has determined that potential hazard associated with fireworks from 9:30 p.m. through 10 p.m. on August 17, 2018 will be a safety concern to anyone within a 350-foot radius of the launch site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks are being displayed.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 p.m. through 10 p.m. on August 17, 2018. The safety zone will encompass all U.S. navigable waters of the Detroit River, Detroit, MI, within a 350-foot radius of position 42°19.529′ N 083°02.436′ W (NAD 83). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Detroit River from 9:30 p.m. through 10 p.m. on August 17, 2018. Moreover, the Coast Guard will issue Broadcast Notice to Mariners (BNM) via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a 30 minute safety zone that will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0722 to read as follows:

§ 165.T09–0722 Safety Zone; Waterview Loft Fireworks II, Detroit River, Detroit, MI.

(a) *Location.* A safety zone is established to include all U.S. navigable waters of the Detroit River, Detroit, MI, within a 350-foot radius of position 42°19.529′ N 083°02.436′ W (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) will be enforced from 9:30 p.m. through 10 p.m. on August 17, 2018.

(c) *Regulations.* (1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit (COTP), or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or his on-scene representative.

(3) The ''on-scene representative'' of COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the COTP or his on-scene representative to obtain permission to enter or operate within the safety zone. The COTP or his on-scene representative may be contacted via VHF Channel 16 or at (313) 568–9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

Dated: July 25, 2018.

Jeffrey W. Novak,

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

[FR Doc. 2018–16209 Filed 7–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0717]

RIN 1625–AA00

Safety Zone; Waterview Loft Fireworks I, Detroit River, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 350-foot radius of a portion of the Detroit River, Detroit, MI. This zone is necessary to protect spectators and vessels from potential hazards associated with the Waterview Loft Fireworks I.

DATES: This temporary final rule is effective from 9:30 p.m. through 10 p.m. on August 14, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0717 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9564, or email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this fireworks display in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard's ability to protect participants, mariners and vessels from the hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Detroit (COTP) has determined that potential hazard associated with fireworks from 9:30 p.m. through 10 p.m. on August 14, 2018 will be a safety concern to anyone within a 350-foot radius of the launch site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks are being displayed.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 p.m. through 10 p.m. on August 14, 2018. The safety zone will encompass all U.S. navigable waters of the Detroit River, Detroit, MI, within a 350-foot radius of position 42°19.529′ N 083°02.436′ W (NAD 83). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Detroit River from 9:30 p.m. through 10 p.m. on August 14, 2018. Moreover, the Coast Guard will issue Broadcast Notice to Mariners (BNM) via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a 30 minute safety zone that will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0717 to read as follows:

§ 165.T09–0717 Safety Zone; Waterview Loft Fireworks I, Detroit River, Detroit, MI.

(a) *Location.* A safety zone is established to include all U.S. navigable waters of the Detroit River, Detroit, MI, within a 350-foot radius of position 42°19.529′ N 083°02.436′ W (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) will be enforced from 9:30 p.m. through 10 p.m. on August 14, 2018.

(c) *Regulations.*

(1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit (COTP), or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or his on-scene representative.

(3) The ''on-scene representative'' of COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the COTP or his on-scene representative to obtain permission to enter or operate within the safety zone. The COTP or his on-scene representative may be contacted via VHF Channel 16 or at (313) 568–9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

Dated: July 24, 2018.

Jeffrey W. Novak,

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

[FR Doc. 2018–16208 Filed 7–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0661]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone—August and September Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce certain safety zones located in Federal regulations for recurring marine events. This action is necessary and intended for the safety of life and property on navigable waters during these events. During each enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulations in 33 CFR 165.939 will be enforced during the month of August and September as noted in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LTJG Sean Dolan, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zones; Annual Events in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939 for the following events:

(1) *Thunder on the Niagara Hydroplane Boat Races, North Tonawanda, NY;* The safety zone listed in 33 CFR 165.939(c)(4) will be enforced from 9 a.m. to 6 p.m. on August 4, 2018, until August 5, 2018.

(2) *D-Day Conneaut, Conneaut, OH;* The safety zone listed in 33 CFR 165.939(c)(2) will be enforced from 9 a.m. to 5 p.m. on August 17, 2018, until August 18, 2018.

(3) *Madison Township Light up the Park, Madison, OH;* The safety zone listed in 33 CFR 165.939(d)(1) will be enforced from 9:15 p.m. to 10:15 p.m. on September 2, 2018.

(4) *Cleveland National Air Show, Cleveland, OH;* The safety zone listed in 33 CFR 165.939(d)(2) will be enforced daily from 9 a.m. to 6 p.m. August 30—September 3, 2018.

(5) *Head of the Cuyahoga, Cleveland, OH;* The safety zone listed in 33 CFR 165.939(d)(3) will be enforced from 6:45 a.m. to 4:15 p.m. on September 15, 2018.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within the safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that the safety zone need not be enforced for the full duration stated in this notice he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: July 25, 2018.

Joseph S. Dufresne,

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

[FR Doc. 2018–16191 Filed 7–27–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–HQ–OW–2017–0584; FRL–9981–56–OW]

State of Idaho Voluntary Transfer of Primacy of the Class II Underground Injection Control Program to the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a final rule to amend its Underground Injection Control (UIC) regulations to reflect the transfer of the state of Idaho's UIC program for Class II injection wells from Idaho to the EPA. Idaho submitted a formal request that the EPA transfer and directly implement the Class II UIC Program. Idaho will maintain primacy for Class I, III, IV, and V injection wells pursuant to their program approved by the EPA in 1985.

DATES: This rule is effective July 30, 2018. For judicial purposes, this final rule is promulgated as of July 30, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2017–0584. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Colin Dyroff, Drinking Water Protection Division, Office of Ground Water and Drinking Water (4606M), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–3149; fax number: (202) 564–3754; email address: *dyroff.colin@epa.gov;* or Evan Osborne, U.S. Environmental Protection Agency, Region 10, 1200 6th Ave., OCE–101, Seattle, Washington 98101; telephone number: (206) 553–1747; fax number: (206) 553–1762; email address: *osborne.evan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is the EPA taking this action?

On August 25, 2017, the EPA received a letter from the Idaho Department of Water Resources (IDWR), formally requesting that the EPA transfer and directly implement the Class II UIC program in Idaho, pursuant to the *Code of Federal Regulations* (CFR) at 40 CFR 145.34(a). Class II injection wells inject fluids (1) that are brought to the surface in connection with natural gas storage, or oil or natural gas production; or (2) for the purpose of enhanced oil or natural gas recovery; or (3) for the storage of hydrocarbons, which are liquid at standard temperature and pressure. Idaho received primary implementation and enforcement authority (primacy) for Class I, II, III, IV, and V injection wells under the Safe Drinking Water Act, section 1422, on July 22, 1985. Idaho has since maintained primacy for these injection well classes.

The voluntary transfer of authority for the UIC Class II program to the EPA will allow the EPA to issue Class II permits in Idaho. The EPA will be responsible for the direct implementation of the Class II underground injection control program in Idaho, including permitting, compliance, and enforcement responsibilities, pursuant to the SDWA and federal UIC regulations.

On November 27, 2017, the EPA published a **Federal Register** proposed rule (82 FR 55968), providing notice of the transfer of Idaho's UIC program for Class II injection wells from Idaho to the EPA and concurrently issuing a proposed rule to amend EPA's UIC regulations to reflect such transfer. The EPA stated that if requested, a public hearing would be held. After receiving multiple hearing requests, the EPA held the public hearing on January 8, 2018, in the city of Boise, Idaho, as detailed in the proposed rule. At the public hearing, and during the 45-day comment period, which ended on January 11, 2018, the EPA received 414 comments from 387 individual commenters. The EPA has reviewed all public testimony and comments on the proposed rule and has determined that the revisions to 40 CFR part 147 will be finalized in this rule as originally proposed.

II. Legal Authorities

A state with an approved primacy program may voluntarily transfer UIC program responsibilities to the EPA, pursuant to 40 CFR 145.34(a). The regulations require that the EPA provide notice of such transfer in the **Federal Register** at least 30 days before the transfer is to occur. 40 CFR 145.34(a)(3). The EPA published a **Federal Register** proposed rule (82 FR 55968) on November 27, 2017, containing that notice. The regulations do not provide

for opportunity to comment on whether to transfer, and accordingly, the EPA did not take comment on such transfer.

EPA's regulations at 40 CFR part 147 set forth the applicable UIC programs for each of the states. This rule makes ministerial revisions to these regulations to reflect the transfer. Specifically, the rule revises 40 CFR part 147, subpart N, to indicate that the Class II UIC program for Idaho is to be directly implemented by the EPA and consists of the UIC program requirements of 40 CFR parts 124, 144, 146, and 148. The EPA took comment only on these revisions.

Section 553(d) of the Administrative Procedure Act, 5. U.S.C. 553(d), provides that the effective date of a substantive rule must be at least 30 days after publication of the rule in the **Federal Register**, except ''as otherwise provided by the agency for good cause.'' The EPA has determined that there is good cause for making this final rule effective immediately upon publication because the transfer of primacy back to the EPA simply returns direct implementation and enforcement authority of the UIC Program for Class II wells in Idaho to the EPA. There are currently no Class II permits in effect in Idaho and, therefore, there is no need to transfer or reissue any existing state-issued Class II UIC permits as federal Class II UIC permits. The EPA finds that this constitutes good cause under 5 U.S.C. 553(d).

III. Public Comments Received on the Proposed Rule and EPA's Response to Comments

On November 27, 2017, the EPA issued a proposed rule (82 FR 55968) and requested public comment. The public comment period was open for 45 days and ended on January 11, 2018. The EPA received 414 comments from 387 individual commenters, including comments given at the January 8, 2018, public hearing as well as one comment submitted after the close of the public comment period. Of these comments, only a minority were identified as containing material that was determined to be within the scope of the proposed rule revision. The comments the EPA received and EPA's responses are available in EPA's Docket No. EPA–HQ–OW–2017–0584.

IV. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2040–0042.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any requirements on small entities; this action withdraws a state program and therein transfers direct implementation of the Class II UIC program to the EPA. We have therefore concluded that this action will have no net regulatory burden for any directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This rule does not impose any mandates on small entities; this action withdraws a state program and therein transfers direct implementation of the Class II UIC program to the EPA.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action contains no federal mandates for state and local governments and does not impose any enforceable duties on state and local governments. This action merely withdraws a state program (at the voluntary request from Idaho) and therein transfers implementation of the Class II UIC program to the EPA.

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

This action does not have tribal implications as specified in Executive Order 13175. This action contains no federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it transfers a state program.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This rule does not impose any health or safety standards; this action transfers a state program and therein transfers direct implementation of the Class II UIC program to the EPA.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if

the agency makes a good cause finding. The EPA has made a good cause finding for making this final rule effective immediately upon publication, per section 553(d)(3) of the Administrative Procedure Act, 5. U.S.C. 553(d)(3), as discussed in section II, including the basis for that finding.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: July 24, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency amends 40 CFR part 147 as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

■ 1. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h *et seq.;* and 42 U.S.C. 6901 *et seq.*

Subpart N—Idaho

■ 2. In § 147.650 revise the section heading and the introductory text to read as follows:

§ 147.650 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the state of Idaho, other than those on Indian lands, is the program administered by the Idaho Department of Water Resources, approved by the EPA pursuant to section 1422 of the Safe Drinking Water Act. Notice of this approval was published in the **Federal Register** on June 7, 1985; the effective date of this program is July 22, 1985. This program consists of the following elements, as submitted to the EPA in Idaho's program application. *Note:* Because the EPA subsequently transferred the Class II UIC program from the Idaho Department of Water Resources to the EPA, references to Class II in the following elements are no longer relevant or applicable for federal UIC purposes.

* * * * *

■ 3. Revise § 147.651 to read as follows:

§ 147.651 EPA-administered program—Class II wells and all wells on Indian lands.

(a) *Contents.* The EPA administers the UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the state of Idaho. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and the EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Idaho is June 11, 1984. The effective date of the UIC program for Class II wells on non-Indian lands in Idaho is July 30, 2018.

[FR Doc. 2018–16245 Filed 7–27–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2017–0286; FRL–9981–18–OLEM]

RIN 2050–AG88

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Amendments to the National Minimum Criteria (Phase One, Part One)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On April 17, 2015, the Environmental Protection Agency (EPA or the Agency) promulgated national minimum criteria for existing and new coal combustion residuals (CCR) landfills and existing and new CCR surface impoundments. In March 2018, EPA proposed a number of revisions to the 2015 CCR rule and requested comment on additional issues. In this rulemaking EPA is acting to finalize certain revisions to those criteria. First, EPA is adopting two alternative performance standards that either Participating State Directors in states with approved CCR permit programs (participating states) or EPA where EPA is the permitting authority may apply to owners and operators of CCR units. Second, EPA is revising groundwater protection standards (GWPS) for four constituents which do not have an established Maximum Contaminant Level (MCL). Finally, the Agency is extending the deadline by which facilities must cease the placement of waste in CCR units closing for cause in two situations: Where the facility has detected a statistically significant increase above a GWPS from an unlined surface impoundment; and where the unit is unable to comply with the aquifer location restriction. Provisions from the proposed rule that are not addressed in this rule will be addressed in a subsequent action.

DATES: This final rule is effective on August 29, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2017–0286. The EPA has previously established a docket for the April 17, 2015, CCR final rule under Docket ID No. EPA–HQ–RCRA–2009–0640. All documents in the docket are listed in the *https://www.regulations.gov* index. 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, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *https://www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information concerning this final rule, contact Kirsten Hillyer, Office of Resource Conservation and Recovery, Environmental Protection Agency, 5304P, Washington, DC 20460; telephone number: (703) 347–0369; email address: *hillyer.kirsten@epa.gov.* For more information on this rulemaking please visit *https://www.epa.gov/coalash.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

EPA is finalizing certain revisions to the 2015 regulations for the disposal of CCR in landfills and surface impoundments to: (1) Provide States with approved CCR permit programs under the Water Infrastructure Improvements for the Nation (WIIN) Act or EPA where EPA is the permitting authority the ability to use alternate performance standards; (2) revise the GWPS for four constituents in Appendix IV to part 257 [1] for which maximum

[1] Unless other specified, all references to part 257 in this preamble are to title 40 of the Code of Federal Regulations (CFR).

contaminant levels (MCLs) under the Safe Drinking Water Act have not been established; and (3) provide facilities which are triggered into closure by the regulations additional time to cease receiving waste and initiate closure. This additional time will, among other things, better align the CCR rule compliance dates with the upcoming Effluent Limitations Guidelines and Standards Rule for the Steam Electric Power Generating Point Source Category (ELG rule). The ELG rule is currently scheduled to be proposed in December 2018 and finalized in December 2019.

B. Summary of the Provisions of the Regulatory Action

EPA is finalizing certain revisions to the regulations at 40 CFR part 257, subpart D. In the March 2018 proposal, the Agency proposed six alternative performance standards which participating states (*i.e.,* those which have an EPA-approved CCR permit program under the WIIN Act) may adopt and sought comment on additional alternatives. This action finalizes two of the proposed alternative performance standards. These final revisions will allow a Participating State Director or EPA where EPA is the permitting authority to: (1) Suspend groundwater monitoring requirements if there is evidence that there is no potential for migration of hazardous constituents to the uppermost aquifer during the active life of the unit and post-closure care; and (2) issue technical certifications in lieu of the current requirement to have professional engineers issue certifications. The Agency is also finalizing a revision of the GWPSs for the four constituents in Appendix IV to part 257 without MCLs, in place of background levels under § 257.95(h)(2).

In the March 2018 proposal, the Agency also took comment on revisions to several provisions of the 2015 CCR rule. Of those proposed changes, the Agency is now revising the deadline by which two categories of CCR units closing for cause must initiate closure: (1) Where the facility has detected a statistically significant increase from an unlined surface impoundment above a GWPS; and (2) where the unit is unable to comply with the aquifer location restriction.

Of particular note, in the March 2018 action, the Agency proposed four changes from the 2015 CCR rule associated with the settlement agreement entered on April 18, 2016, which resolved four claims brought by two sets of plaintiffs against the final CCR rule. See USWAG et al v EPA, No. 15–1219 (DC Cir. 2015). In this action, Agency will not be taking final action on any of the proposed amendments. As explained previously, provisions from the proposed rule that are not addressed in this action will be addressed in a subsequent rule-making action.

1. Severability

EPA intends that the provisions of this rule be severable. In the event any individual provision or part of this rule is invalidated, EPA intends that this would not render the entire rule invalid, and that any provision that can continue to operate will be left in place.

II. General Information

A. Does this action apply to me?

This rule applies to all CCR generated by electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112 and may affect the following entities: Electric utility facilities and independent power producers that fall under the NAICS code 221112. This discussion is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This discussion lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not described here could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria found in § 257.50 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

EPA is finalizing the following: (1) A provision that authorizes the Participating State Director to issue certifications in lieu of a professional engineer (PE); (2) a provision that authorizes the Participating State Director to approve the suspension of groundwater monitoring if a ''no migration'' demonstration can be made; and (3) a revision of the GWPSs for the four constituents in Appendix IV to part 257 without MCLs, in place of background levels under § 257.95(h)(2). In addition, the Agency is finalizing an extension to the deadline by which facilities must cease the placement of waste in CCR units closing for cause in two situations: (1) Where the facility has detected a statistically significant increase over the groundwater protection standard from an unlined surface impoundment; and (2) where the unit is unable to comply with the aquifer location restriction. Provisions from the proposed rule that are not addressed in this rule will be addressed in a subsequent rulemaking action.

C. What is the Agency's authority for taking this action?

These regulations are established under the authority of sections 1006(b)(1), 1008(a), 2002(a), 4004, and 4005(a) and (d) of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, 42 U.S.C. 6905(b)(1), 6907(a), 6912(a), 6944, and 6945(a) and (d). These authorities are discussed in more detail in Section III.C of this preamble.

D. What are the incremental costs and benefits of this action?

This action is expected to result in net cost savings amounting to between $27.8 million and $31.4 million per year when discounting at 7 percent and annualized over 100 years. It is expected to result in net cost savings of between $15.5 million and $19.1 million per year when discounting at 3 percent and annualized over 100 years. Further information on the economic effects of this action can be found in Section V of this preamble.

III. Background

A. The ''2015 CCR Rule'' and the March 2018 Proposal

On April 17, 2015, EPA finalized national minimum criteria for the disposal of CCR as solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA) titled, ''Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities,'' (80 FR 21302) (CCR rule). The CCR rule regulated existing and new CCR landfills and existing and new CCR surface impoundments and all lateral expansions of CCR units. It is codified in subpart D of part 257 of Title 40 of the Code of Federal Regulations. The criteria consist of location restrictions, design and operating criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and record keeping, notification and internet posting requirements. These criteria were designed to be self-implementing. The rule also required any existing unlined CCR surface impoundment that is contaminating groundwater above a

regulated constituent's groundwater protection standard to stop receiving wastes and either retrofit or close, except in certain circumstances.

The rule was challenged by several parties, including a coalition of regulated entities and a coalition of environmental organizations. See, *USWAG et al.* v. *EPA,* No. 15–1219 (D.C. Cir. 2015). Four of the claims, a subset of the provisions challenged by the industry and environmental Petitioners, were settled. The rest were briefed and are currently pending before the U.S. Court of Appeals for the D.C. Circuit, awaiting resolution. On November 7, 2017, EPA sought remand without vacatur of five additional subsections of the rule on the grounds that EPA intended to reconsider those provisions. That request is also pending before the court.

The WIIN Act, which amends Section 4005 of the Resource Conservation and Recovery Act (RCRA), was enacted in 2016 to provide EPA additional authorities including the authority to review and approve state CCR permit programs. It also requires EPA to establish and carry out a permit program for CCR units in Indian Country, and for units in nonparticipating States, to achieve compliance with the current CCR rule or successor regulations. The WIIN Act provided that EPA may use its information gathering and enforcement authorities under RCRA sections 3007 and 3008 to enforce the CCR rule or permit provisions.

On September 13, 2017, EPA granted petitions from the Utility Solid Waste Activities Group (USWAG) and AES Puerto Rico LLP, requesting the Agency initiate rulemaking to reconsider provisions of the 2015 final rule.[2] EPA determined that it was appropriate and in the public interest to reconsider provisions of the final rule addressed in the petitions, in light of the issues raised in the petitions as well as the new authorities in the WIIN Act.

In October 2017, the D.C. Circuit Court of Appeals directed EPA to file a status report with the court indicating its schedule for addressing issues contained in the petitions for reconsideration. In the status report filed in November 2017, EPA stated that it anticipated it would complete its reconsideration of all provisions in two phases. The first phase would be proposed in March 2018 and finalized no later than June 2019 and the second phase would be proposed no later than September 30, 2018 and finalized no later than December 2019. EPA indicated that in the first phase, the March 2018 proposal, EPA would continue its process with respect to those provisions which were remanded back to EPA in June 2016. These are: (1) Requirements for use of vegetation as slope protection; (2) provisions to clarify the type and magnitude of non-groundwater releases that would require a facility to comply with some or all of the corrective action procedures set out in §§ 257.96 through 257.98; and (3) the addition of Boron to the list of constituents in Appendix IV of part 257, the detection of which triggers assessment monitoring and corrective action requirements. EPA's March 2018 action contained proposals covering these remanded provisions.

In March 2018, EPA also proposed certain provisions that would allow the approval of alternative performance standards by Participating State Directors. These proposed alternative performance standards would allow a state with an approved permit program or EPA to: (1) Use an alternative risk-based GWPS for Appendix IV constituents where no MCL exists; (2) modify the corrective action remedy in certain cases; (3) suspend groundwater monitoring requirements if a ''no migration'' demonstration can be made; (4) establish an alternate period of time to demonstrate compliance with the corrective action remedy; (5) modify the post-closure care period; and (6) allow Participating State Directors to issue technical certifications in lieu of the current requirement to have professional engineers issue certifications. For Tribal lands and in non-participating states where Congress has specifically provided appropriations for EPA, the proposal defined ''State Director'' to mean the ''EPA Administrator or their designee''. EPA also requested comment on potential revisions to several other provisions of the CCR rule and on other issues.

One topic EPA took comment on in the March 2018 proposed rule was on the groundwater monitoring compliance dates and if 90-days was a sufficient amount of time. While the Agency is not taking any final action on this topic in this action, EPA wishes to ensure that all parties understand the current rule and the relevant implementation deadlines. The Agency responded to a letter from the Utility Solid Waste Activities Group clarifying the deadlines and timeframes related to detection monitoring and the necessary statistical analysis for the groundwater monitoring.[3] EPA clarified that the alternate source demonstration in detection monitoring (§ 257.94(e)(2)) does not run concurrently with the 90-day time frame in § 257.94(e)(1) or § 257.95(b). EPA also clarified that, assuming a facility elected to take advantage of the 90-day option in § 257.94(e)(2) [to demonstrate that a source other than the CCR unit is the source of contamination], January 14, 2019 as the deadline for facilities to make their initial determination of whether there has been the detection of a statistically significant increase of an Appendix IV constituent above the relevant groundwater protection standard in the downgradient wells. EPA noted that conducting the statistical analysis on two sets of sampling occurs only in this first round of assessment monitoring. All other statistical analyses on subsequent rounds of on-going semi-annual or annual sampling under assessment monitoring must be conducted following the single set of samples obtained during that sampling event.

EPA is taking final action on certain provisions in this rulemaking: (1) Allowing a Participating State Director to issue certifications in lieu of a professional engineer (PE); (2) allowing a Participating State Director to approve the suspension of groundwater monitoring if a demonstration of ''no migration'' can be made; and (3) establishing alternative GWPSs for four Appendix IV constituents without MCLs in place of the background levels required under § 257.95(h)(2). In addition, the Agency is extending the deadline by which facilities must cease the placement of waste in CCR units closing for cause in two situations: (1) Where the facility has detected a statistically significant increase over the GWPS from an unlined surface impoundment; and (2) where the unit is unable to comply with the aquifer location restriction. Provisions in the proposed rule that are not addressed in this rulemaking will be addressed in a subsequent rulemaking.

B. Comments Received on the Proposed Rule

The agency received over 160,000 comments on the proposed rule. The majority of commenters focused on the four provisions remanded back to the Agency in 2016, as well as the six provisions proposed in response to passage of the WIIN Act. A number of commenters argued that no revisions were necessary to the April 2015 final CCR rule.

The areas on which EPA received the most substantial industry and state comments were: Support for the

[2] A copy of both rulemaking petitions are included in the docket to this final rule.

[3] EPA responded to USWAG in letters dated January 26, 2018 and April 30, 2018.

establishment of risk-based alternative GWPSs for constituents that do not have an MCL, support for the extension of compliance deadlines, support for modification of the alternative closure provisions, and allowing certifications by a Participating State Director in lieu of a PE. Most of the environmental organizations and individual citizens commented that the proposals would decrease protection of human health and the environment, especially if the facilities allow CCR units to leak contaminants into groundwater. Other comments related to topics that will be discussed in future rulemaking actions. Discussions of the specific comments germane to this rulemaking are provided in the relevant sections of this rule.

1. Public Hearing

EPA conducted a public hearing on April 24, 2018, in Arlington, VA. There were 79 speakers and a total of 120 registered attendees. Testimony at the public hearing focused generally on the proposed amendments of allowing the use of alternative performance standards. Several speakers commented on: Allowing alternate performance standards for the groundwater protection standards where no MCL is established, allowing Participating State Directors to issue certifications in lieu of a PE, and the overall risks, especially health risks, related to CCR. In addition to the testimonies that were entered into the rulemaking record, over 25 additional documents were submitted in hard copy and entered into the docket (see EPA–HQ–OLEM–2017–0286).

C. Statutory Authority

RCRA section 1006(b)(1) directs EPA to integrate the provisions of RCRA for purposes of administration and enforcement and to avoid duplication, to the maximum extent practicable, with the appropriate provisions of other EPA statutes. Section 1006(b) conditions EPA's authority to reduce or eliminate RCRA requirements on the Agency's ability to demonstrate that the integration can be done in a manner consistent with the goals and policies expressed in the chapter and in the other acts referred to in this subsection. 42 U.S.C. 6005(b)(1). See *Chemical Waste Management* v. *EPA,* 976 F.2d 2, 23, 25 (D.C. Cir. 1992).

RCRA section 1008(a) authorizes EPA to publish ''suggested guidelines for solid waste management.'' 42 U.S.C. 6907(a). RCRA defines solid waste management as ''the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.'' 42 U.S.C. 6903(28).

Pursuant to section 1008(a)(3), the guidelines are to include the minimum criteria to be used by the states to define the solid waste management practices that constitute the open dumping of solid waste or hazardous waste and are prohibited as ''open dumping'' under section 4005. Only those requirements promulgated under the authority of section 1008(a)(3) are enforceable under section 7002 of RCRA.

RCRA section 4004(a) generally requires EPA to promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills (and therefore not ''open dumps''). The statute directs that, ''at a minimum, the criteria are to ensure that units are classified as sanitary landfills only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid wastes at such facility.'' 42 U.S.C. 6944(a).

RCRA section 4005(a), entitled ''Closing or upgrading of existing open dumps'' generally establishes the key implementation and enforcement provisions applicable to EPA regulations issued under sections 1008(a) and 4004(a). Specifically, this section prohibits any solid waste management practices or disposal of solid waste that does not comply with EPA regulations issued under RCRA section 1008(a) and 4004(a). 42 U.S.C. 6944(a). See also 42 U.S.C. 6903(14) (definition of ''open dump''). As a general matter, this means that facilities must be in compliance with any EPA rules issued under section 4004(a) or be subject to suit for ''open dumping'' 42 U.S.C. 6945. RCRA section 4005 also directs that open dumps, *i.e.,* facilities out of compliance with EPA's criteria, must be ''closed or upgraded''.

RCRA section 4005(d) provides that States may submit a program to EPA for approval, and permits issued pursuant to the approved state permit program operate in lieu of the Federal requirements 42 U.S.C. 6945(d)(1)(A). To be approved, a State program must require each CCR unit to achieve compliance with the part 257 regulations (or successor regulations) or alternative State criteria that EPA has determined are ''at least as protective as'' the part 257 regulations (or successor regulations). State permitting programs may be approved in whole or in part [42 U.S.C. 6945(d)(1)(B)]. States with approved CCR permitting programs are considered ''participating states''.

In states without an approved program, EPA is to issue permits, subject to the availability of appropriations specifically provided to carry out this requirement 42 U.S.C. 6945(d)(2)(B). The FY 2018 Omnibus Appropriations Act provided $6 million to EPA for the purpose of developing and implementing a Federal permit program for the regulation of CCR in nonparticipating states. Public Law 115–141. In addition, EPA is the permitting authority for CCR units in Indian Country. The statute expressly provides that facilities are to continue to comply with the CCR rule or successor regulations until a permit (issued either by an approved state or by EPA) is in effect for that unit 42 U.S.C. 6945(d)(3), (6).

IV. What amendments is EPA finalizing?

During the rulemaking process for the 2015 CCR rule, EPA received numerous comments requesting that EPA authorize state permit programs and adopt alternative performance standards that would allow state regulators or facilities to ''tailor'' the requirements to particular site-specific conditions. Many requested EPA adopt particular alternative performance standards found in EPA's municipal solid waste landfill (MSWLF) regulations in 40 CFR part 258.[4] Although the CCR rule was largely modeled on the MSWLF regulations, as explained in both the 2010 proposed and 2015 final rules, under the statutory provisions relevant to the CCR rule, EPA lacked the authority to establish a program analogous to part 258, which relies on approved states to implement the federal criteria through a permitting program. See, *e.g.,* 80 FR 21332–21334. In the absence of a state oversight mechanism to ensure that alternative standards would be appropriate, EPA concluded at that time it could not adopt many of the ''more flexible'' performance standards in part 258 that commenters requested. Id at 21333.

However, in 2016, Congress, with the passage of the WIIN Act, amended RCRA to establish a permitting scheme, analogous to that established for MSWLFs. Under these new provisions, States may now apply to EPA for approval to operate a permit program to implement the CCR rule. As part of that process, a State program may also include alternative State standards, provided EPA has determined they are ''at least as protective as'' the CCR regulations in 40 CFR part 257. 42 U.S.C. 6945(d)(1)(B), 6945(d)(1)(C).

[4] Unless other specified, all references to part 258 of this preamble are to title 40 of the Code of Federal Regulations (CFR).

In light of the WIIN Act, EPA examined the existing 40 CFR part 258 regulations to evaluate the performance standards that rely on a state permitting authority, to determine whether any of them could now be incorporated into the part 257 CCR regulations. To develop the proposed rule, EPA evaluated whether there was sufficient evidence in the record for those regulations to support incorporating either the part 258 MSWLF provision or an analogue into the part 257 CCR regulations.

Based on the results of this evaluation, EPA proposed to adopt six alternative performance standards modeled after part 258, which would allow a Participating State Director to: (1) Establish alternative risk-based GWPS for constituents where no MCL exists; (2) Modify the corrective action remedy in certain cases; (3) Suspend groundwater monitoring requirements if a ''no migration'' demonstration can be made; (4) Establish an alternate period of time to demonstrate compliance with the corrective action remedy; (5) Modify the post-closure care period; and (6) Issue technical certifications in lieu of a professional engineers. Under the proposal, EPA would have the same authority to establish alternative performance standards in non-participating states, subject to appropriations, and in Tribal Country, as a Participating State Director would. EPA explained that these alternative performance standards were modeled after part 258 provisions in the MSWLF regulations that appeared to have been adopted based solely on a finding that they would protect human health and the environment; EPA believed that the facts supporting those original determinations would also support a finding that the provisions met the standard under RCRA section 4004(a).

EPA received a number of comments on this overall approach. Several commenters agreed that the record supporting any of the current provisions under the part 258 regulations would support revisions to the part 257 regulations. EPA also received comments stating that the proposed alternative protection standards failed to satisfy the requirements of RCRA section 4004(a). These commenters claimed that the record on which the proposals had relied was inadequate. Specifically, the commenters argued that EPA had in fact considered facilities' ''practicable capability in developing every provision of the rule, and so none were based exclusively on addressing the risks to health and the environment. These commenters also criticized the risk assessment conducted to support the part 258 regulations, claiming that it failed to consider the risks to sensitive subpopulations, that the only impact it evaluated was the risk to human health from drinking MSWLF-contaminated groundwater, and only if drinking water wells were within one mile of the MSWLF, and that in any event the characteristics of (and therefore the risks posed by) MSWLF and CCR units are very different. These commenters also argued that EPA could not rely on the 2014 risk assessment conducted for the CCR rule to support the proposals without first evaluating whether the assumptions in that assessment are consistent with the results of the recently conducted groundwater monitoring, which they claim shows that the groundwater at almost all facilities is contaminated by at least one of the constituents in Appendix IV.

EPA is continuing to evaluate a number of technical issues raised in the comments. At the same time, the Agency recognizes the need to begin to implement the WIIN Act and to facilitate the transition to regulation of CCR through permit programs in a timely manner in order to address the urgent concerns presented by facilities that are faced with criteria that may be subject to change through this and other rulemaking actions and quickly approaching compliance deadlines that may require substantial investments and impact operational decision-making. EPA is also mindful that States are in the process of considering whether to seek approval or their regulatory programs, and in some cases, are in the process of developing those programs; greater certainty regarding the kinds of provisions that EPA currently has the record to approve would consequently be highly desirable in order to effectuate the purpose behind the WIIN Act. Accordingly, while EPA continues to evaluate the concerns raised regarding the 1991 and 2014 risk assessments, the Agency is finalizing at this time a select number of provisions that either do not rely on those materials for support to meet the standard in RCRA section 4004(a) or rely on portions that are not implicated by the technical issues under consideration.

EPA is adopting two of the proposals modeled after the existing provisions in 40 CFR part 258: (1) The Participating State Director may suspend groundwater monitoring requirements if there is evidence that there is no potential for migration of hazardous constituents to the uppermost aquifer during the active life of the unit and the post-closure care period; and (2) The Participating State Director may decide to certify that certain regulatory criteria have been met in lieu of the exclusive reliance on a qualified PE. EPA is also adopting revised GWPS for constituents without a MCL under § 257.95(h)(2). After consideration of comments received, EPA has set risk-based values using the methodology discussed in the proposal. In addition, the Agency is finalizing an extension to the deadline by which facilities must cease the placement of waste in CCR units closing for cause in two situations: (1) Where the facility has detected a statistically significant increase over the groundwater protection standard from an unlined surface impoundment; and (2) where the unit is unable to comply with the aquifer location restriction. Further discussion of these comments received on these provisions and the bases on which EPA is adopting them is in their respective sections of this preamble.

For any of the proposed performance standards, EPA requested comment on whether the facility or owner operator should be required to post the specific details of the modification of the performance standard to the facility's publicly accessible website or require any other recordkeeping options. Based on comments received, and to maintain transparency facilities with a site-specific performance standard, such as suspending groundwater monitoring in the event a no migration demonstration can be made, EPA is requiring posting of specific details of the modification to a publicly accessible website. This is discussed further below.

A. Extension to Certain Deadlines for the Closure or Retrofit of Existing CCR Surface Impoundments

The CCR rule requires existing CCR surface impoundments and landfills to cease receiving waste and initiate closure under certain circumstances. For existing CCR surface impoundments, these situations include unlined CCR surface impoundments whose groundwater monitoring shows an exceedance of a GWPS (§ 257.101(a)(1)); CCR surface impoundments that do not comply with the location criteria (§ 257.101(b)(1)); and CCR surface impoundments that are not designed and operated to achieve minimum safety factors (§ 257.101(b)(2)). The current CCR regulations also require existing CCR landfills that do not comply with the location criteria for unstable areas to close (§ 257.101(d)(1)). In all of these situations, also referred to as ''closure for cause'' in the preamble to 2015 CCR final rule, the current CCR regulations specify that the owner or operator of the

unit must cease placing any waste into the CCR unit and initiate closure activities within six months of making the relevant determination that the CCR unit must close.

After considering comments received in response to the March 15, 2018 proposed rule, as well as information in the rulemaking petitions submitted by USWAG and AES Puerto Rico,[5] the agency finds it appropriate to finalize an extension to the deadline by when owners or operators must cease the placement of waste in existing CCR surface impoundments closing for cause in two situations. The two situations include the deadlines applicable to: (1) Existing CCR surface impoundments that are unable to comply with the location restriction regarding placement above the uppermost aquifer; and (2) Existing unlined CCR surface impoundments whose groundwater monitoring shows an exceedance of a groundwater protection standard. The agency is not at this time making any revisions to the other deadlines that apply to existing CCR surface impoundments or to any of the deadline requirements that apply to new and existing CCR landfills and new CCR surface impoundments. The two subunits below explain the approach and rationale for the amendments to certain deadlines for these two situations.

1. Revision of § 257.101(b)(1) Regarding the Deadline for Waste Placement and Closure of Existing Surface Impoundments That Fail To Demonstrate Compliance With a Location Standard

In the March 15, 2018 proposed rule, EPA solicited public comment on whether the deadlines to comply with the location restrictions at §§ 257.60 through 257.64 are appropriate in light of the WIIN Act (83 FR 11598). The Agency sought comment on whether an alternative deadline, either through a permit program established under the WIIN Act or one that applies directly to the facility itself during an interim period, would be more appropriate to facilitate implementation of the WIIN Act. Owners and operators of existing CCR surface impoundments must complete the required demonstrations for five location restrictions[6] no later than October 17, 2018.[7] An owner or operator that fails to complete any one of the demonstrations by the deadline would trigger the closure requirements of § 257.101(b)(1), which requires the owner or operator of the unit to cease placing CCR and non-CCR wastestreams into the impoundment and close the impoundment in accordance with the closure provisions of the regulations.

EPA received numerous comments regarding the current deadlines associated with the location restrictions. Many commenters stated their support for extending the current deadlines to complete the required demonstrations for the location restrictions and, in particular, the location restriction for placement above the uppermost aquifer. These commenters stated that deadline extensions would allow time for both the proper implementation of the WIIN Act and the finalization of other substantive CCR rule revisions contemplated in the March 15, 2018 proposal, and would be consistent with the standard in RCRA section 4004(a), while limiting facilities' expenditure of significant resources and avoiding the initiation of irreversible operational changes, including the forced closure of impoundments (and potentially the power plants themselves) under the current compliance deadlines. Commenters also stated that extensions of the location restriction deadlines is necessary to ensure alignment of key implementation and operational decisions under the CCR rule with EPA's schedule for issuing revisions to the effluent limitations guidelines (ELGs) and pretreatment standards for the Steam Electric Power Generating Point Source Category.[8] Some commenters recommended that the deadline for determining whether existing impoundments meet the aquifer separation location restriction should be keyed to a specific time following EPA's issuance of a final rule allowing for an alternative risk-based option for meeting this location restriction. Other commenters supported extending deadlines until after EPA finalizes the amendments contemplated in the March 15, 2018 proposal and states have time to adopt the rule revisions into their state regulations. Some commenters suggested that deadlines be extended a specific amount of time following the effective date of a final rule or to specific dates. These commenters recommended extensions ranging from 120 days to 12 months from the final rule's effective date and, while other commenters suggested deadlines be extended until November 2020. At a minimum, these commenters stated that EPA should extend the timeline related to the obligation to enter into forced closure under § 257.101. Finally, commenters stated that it is common practice for an agency to extend regulatory deadlines in circumstances where a regulation is under reconsideration.

Other commenters opposed any extension of the compliance deadlines associated with the location restrictions. These commenters stated that an extension is unwarranted due to the long history of delays in setting federal standards and the adverse impacts to human health and the environment from improperly sited CCR units. Commenters stated that facilities have had several years to prepare for meeting the location restrictions and that an extension of the deadline is unnecessary because the facilities should already have sufficient information to determine whether their CCR units comply with the location restrictions. Finally, these commenters point out that several utilities have already sought approval from state regulators to close CCR units that are not in compliance with the location restrictions. A compliance extension would thus penalize companies that have made good-faith efforts to comply with the current rule, while rewarding companies that have not prepared properly to comply.

EPA first considered whether to extend the deadlines by which owners or operators of CCR surface impoundments must complete the location restrictions demonstrations in §§ 257.60 through 257.64. Such a rule revision would have the effect of delaying the date that facilities would need to determine whether its CCR units are in compliance with the location restrictions. Most of the commenters raised concern about the current deadlines based on the assumption that the technical performance standards would subsequently be revised, either

[5] "Utility Solid Waste Activities Group Petition for Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule, 80 FR 21302 (April 17, 2015), and Request to Hold in Abeyance Challenge to Coal Combustion Residual Rule, No. 15–1219, et al. (D.C. Cir.)" dated May 12, 2017; and "AES Puerto Rico LP's Petition for Rulemaking to Reconsider Provisions of the Coal Combustion Residuals Rule, 80 FR 21302 (April 17, 2015), and Request to Hold in Abeyance Challenge to the Coal Combustion Residuals Rule, No. 15–1219, et al. (D.C. Cir.)" dated May 31, 2017.

[6] The five location restrictions are placement above the uppermost aquifer, wetlands, fault areas, seismic impact zones, and unstable areas.

[7] Inactive CCR surface impoundments are subject to a different deadline as specified in § 257.100(e)(2).

[8] On May 2, 2018, EPA issued the Final 2016 Effluent Guidelines Program Plan (83 FR 19281), which identifies new or existing industrial categories selected for effluent guidelines rulemakings and provides a schedule for such rulemakings. This 2016 Program Plan discusses that, in August 2017, EPA announced a rulemaking to potentially revise certain standards for existing sources in the Steam Electric Power Generating Point Source Category. The 2016 Program Plan also projects a schedule for such rulemaking, including a proposed rule in December 2018 and a final rule in December 2019. See page 6–1 of 2016 Program Plan.

because EPA was reconsidering those criteria or because States would revise them as part of their permit programs. The commenters provided no data or other information to suggest that compliance with the existing location restriction demonstration deadlines presents technical difficulties or is otherwise infeasible. Rather the primary technical concern raised by the comments was the need for more time to develop or find alternative capacity to replace any units that cannot comply with the location criteria. As one commenter explained. in a typical state, the process to modify a major wastewater discharge permit as required to reroute non-CCR waste water streams can take more than a year to complete. This commenter also provided concrete examples to support their contention that it may take 18–36 months to find alternate capacity for their non-CCR wastes streams.

For a simple project—which the commenter described as a site that (1) does not provide base load generation, and thus there would be minimal impact to project timing due to planned unit outages to install the piping re-routes and associated mechanical and electrical connections; (2) has fewer streams to re-route, operates intermittently, and (3) has straightforward low volume waste steams (*i.e.,* technically definable in terms of quantity and quality)—the overall duration (18 months) is three times the 6-month duration provided for by the existing regulations.

By contrast, a more complex site the overall duration is approximately 36 months—nearly six times longer in duration than currently provided for in the existing CCR rule. For a more complex site, the current water balance may indicate there are over 50 non-CCR individual waste streams which go to the CCR impoundment. Additionally, each unit utilizes an FGD that produces a waste stream, which also goes to the CCR impoundment. The FGD waste water stream has the most complex water chemistry and variability of any water stream in the plant. Complex project in terms of the number of streams to re-route, its more consistent operation (and scheduled outages), and its complex water chemistry associated with several of the non-CCR wastestreams. Additionally, the large number of streams to deal with, some of which only flow intermittently, further complicates the process design of what treatment system is needed. The water treatment process equipment alone requires a schedule of 13 months to procure, fabricate, and deliver to the plant site (excluding construction). When these efforts are properly stacked and staggered consistent with accepted engineering and project management practice, the overall duration is approximately 36 months.

In both examples discussed previously, the commenter explained that the current regulation also provides inadequate time for proper start-up and commissioning. Reports from industry indicate that it can take several months to properly tune and commission a large water treatment plant. The commenter stated that the six months in the existing rule is, at best, barely adequate to properly tune a complex wastewater treatment plant to steady state operation accounting for quantity and quality variations in the non-CCR water streams.

After considering all of the comments, EPA considers that the potential for revisions to the technical criteria themselves is too speculative at this stage to form the basis for a regulatory revision. EPA received no concrete proposals or suggestions for possible modifications to the technical criteria themselves. Nor does EPA currently have any potential options under consideration. And none of the States that have submitted applications (or with whom EPA has had discussions) for program authorization included any alternative location criteria. Accordingly, EPA has determined not to revise the deadlines to complete the requisite demonstrations.[9]

However, EPA acknowledges that legitimate concerns have been raised about the feasibility of complying with the current closure timeframes. EPA considers that the issues discussed above are not unique to the commenter, but are shared by facilities across the industry. And these concerns are equally relevant in this context, as units that do not comply with the location requirements must close pursuant to § 257.101(b)(1).

EPA also takes very seriously the concern that facilities not be prematurely compelled to make potentially irreversible operational changes or otherwise be forced to invest in compliance measures that may subsequently need to be modified. This was part of the reason that EPA originally chose to align key implementation and operational decisions under the CCR rule with EPA's schedule for issuing the effluent limitations guidelines and pretreatment standards (ELGs) for the Steam Electric Power Generating Point Source Category to be appropriate. The ELG requirements will be highly relevant to facility's decisions regarding the development of alternative capacity to manage non-CCR wastestreams. EPA is currently in the process of rulemaking to consider revising certain standards for existing ELGs sources; that rulemaking is projected to be completed by December 2019. EPA recently changed the earliest ELG compliance date for FGD and bottom ash wastewater to October 2020 to account for these potential revisions. See 82 FR 43494. EPA's original concern thus continues to be highly relevant.

To address these concerns, EPA therefore considered whether an extension of the deadline in the closure for cause provisions in § 257.101(b)(1) that would better coordinate the compliance and implementation deadlines between the CCR and ELGs rules, as suggested by many of the commenters, was warranted. Such a rule revision would still require facilities to make the requisite location restriction demonstrations by the deadlines specified earlier (*i.e.,* October 17, 2018), but would extend the timeframe during which the facility could continue to use the unit, and thereby provide the facility with more time to adjust its operations. This approach would allow facilities to better coordinate their engineering, financial and permitting activities under the two rules, and would account for EPA's on-going ELG rulemaking. Therefore, EPA is extending the closure for cause trigger from the six-month period currently specified in the rule until October 31, 2020, which increases that time period by approximately 18 months. The agency selected the date to coordinate with the revised compliance date for the ELG requirements. The agency anticipates completing the ELGs rulemaking by December 2019 and providing nine months from the rule's likely publication in January 2020 would be sufficient for facilities to make informed decisions to meet the requirements of both rules. That 18-month period also corresponds with the lower end amount of time estimated to be needed to find alternative capacity for non-CCR watestreams.

Finally, EPA considered whether to apply a time extension to all location restrictions, or a subset of them. Commenters consistently identified the placement above the uppermost aquifer location restriction as the critical standard, and so EPA has limited its revision to address this specific concern. This time extension does not affect other deadlines in the regulations, and facilities therefore are required to comply with all requirements of an

[9] These deadlines are codified in §§ 257.60(c)(1), 257.61(c)(1), 257.62(c)(1), 257.63(c)(1), and 257.64(d)(1).

operating facility (*e.g.,* inspections), which are designed to ensure that the facility operations will meet the statutory standard during this extension period.

2. Revision of § 257.101(a)(1) Regarding the Deadline for Waste Placement and Closure or Retrofit of Existing Unlined CCR Surface Impoundments

The agency solicited comment in the March 15, 2018, proposed rule on appropriate time frames for the assessment monitoring requirements (83 FR 11599). The 2015 regulation establishes a groundwater monitoring program consisting of detection monitoring, assessment monitoring and corrective action. Because the current assessment monitoring program includes a series of 90-day time periods in which an owner or operator is to perform the required analysis and demonstrations, EPA sought comment on whether 90 days is an appropriate time period for the assessment monitoring requirements in light of the WIIN Act. The agency specifically requested comment on whether alternative time periods are necessary to perform the required analysis and demonstrations and whether such alternative time periods would be more appropriate to facilitate implementation of the WIIN Act and any amendments to the CCR regulations as a result of the March 15, 2018 proposed rule.

The groundwater monitoring program requires an owner or operator of a CCR unit to install a system of monitoring wells and specify procedures for sampling these wells, in addition to methods for analyzing the groundwater data collected, to detect the presence of specified constituents and other monitoring parameters released from the units. Among other requirements, the 2015 regulations required facilities to have installed the groundwater monitoring system and initiated detection monitoring no later than October 17, 2017.[10] Some CCR units are currently operating under the assessment monitoring provisions of the regulations. Facilities monitoring groundwater under the assessment monitoring program are required to close or retrofit an unlined CCR surface impoundment if the monitoring results show that the concentrations of one or more of the constituents listed in Appendix IV to part 257 are detected at statistically significant levels above any GWPS. § 257.101(b)(1).

EPA received numerous comments on this issue. The general theme of those comments supportive of an extension was similar to that summarized in the previous subsection addressing location restrictions. Many commenters emphasized that an extension is needed to properly implement the objectives of the WIIN Act. Commenters stated that without an extension of the assessment monitoring deadlines, there would be little to no practical effect from the proposed revisions because facilities will have to make irreversible decisions and investments based on the 2015 rule. Many of these commenters identified two proposals of greatest concern: (1) The ability of facilities to establish risk-based GWPSs for Appendix IV constituents without MCLs; and (2) the incorporation of risk-based flexibility into the corrective action program. These commenters stated that the current schedule of the assessment monitoring program does not provide time for these provisions to take effect before some facilities will be compelled to initiate corrective action and/or forced to close could qualify for the new alternative closure provision. Some commenters also argued that the existing deadline associated with implementing the GWPS, in particular those associated with assessment monitoring are too short to adequately identify the source and extent of an exceedance. Commenters urged the Agency to extend these deadlines or, at a minimum, to defer the obligation to establish groundwater protection standards until after EPA adopts these two proposals.

Commenters also stated that an extension is necessary to align key implementation and operational decisions under the CCR rule with EPA's schedule for revising the ELGs for the Steam Electric Power Generating Point Source Category. Other commenters suggested that deadlines be extended a specific amount of time following the effective date of a final rule. These commenters recommended extensions ranging from 120 days to 12 months from the final rule's effective date.

Other commenters opposed any extension of the deadlines associated with the assessment monitoring program. These commenters stated that an extension is unwarranted due to the long history of delays in setting federal standards and the adverse impacts to human health and the environment from improperly sited CCR units. Commenters stated their opposition to revising the regulations that would allow facilities to continue to CCR units that are unlined and already contaminating groundwater.

EPA first considered the request to extend the assessment monitoring deadlines to allow States the opportunity to establish alternate risk-based GWPS under § 257.95(h). Most of the commenters raised concern about the current deadlines based on the assumption that the GWPS would subsequently be revised as part of a State-approved permit program. But the requested extension would have delayed the initiation of closure under § 257.101(a)(1) and corrective action provisions of §§ 257.96 through 257.98 for all constituents, not merely for the four without MCLs that commenters believed were likely to be revised.

As discussed Unit IV.B of this preamble, EPA is establishing health-based GWPSs for all four of the constituents in Appendix IV without established MCLs. These revised standards, because they are health-based standards, are not expected to be affected by State programs, which alleviate the concern that facilities will be forced to take action in response to standards that are likely to be revised. EPA therefore has no basis to revise the assessment monitoring deadlines.

Nevertheless, as noted previously, numerous commenters raised concern that compliance with the current closure requirements is not technically feasible. These concerns, and the considerations motivating EPA to revise the deadlines for the aquifer location criterion, are equally relevant in this context, as unlined surface impoundments units that are leaking must close, in accordance with § 257.101(a)(1). EPA therefore considered whether an extension of the deadline in § 257.101(a)(1) to initiate the closure of unlined surface impoundments, similar to the extension of the deadlines for the location restrictions, would address the commenters' concerns. Such a provision would require facilities to follow the assessment monitoring procedures and determine whether any contaminants have been detected at statistically significant levels above the GWPS established under § 257.95(h). A facility that makes such a determination would still be required to initiate corrective action to clean up the contamination in the aquifer, but could continue to use the unit for an extended period, which would provide the facility with more time to adjust their operations. This approach would allow facilities to better coordinate their engineering, financial and permitting activities under the two rules, and would align with EPA's recent and on-going ELG rulemakings.

[10] Inactive CCR surface impoundments are subject to a different deadline as specified in § 257.100(e)(5).

Therefore, EPA has extended the closure for cause trigger by the same 18-month period granted for the location restrictions. The agency selected the date October 31, 2020, to coordinate with the revised earliest compliance date for the ELG requirements. The Agency anticipates completing the ELG rulemaking by December 2019 and providing nine months from the rule's likely publication in January 2020, for facilities to make appropriate decisions knowing the requirements of both rules.

This time extension does not affect other deadlines or any other requirement in the regulations, and facilities therefore remain obligated to comply with all requirements of an operating facility (*e.g.,* inspections), which are designed to ensure that the facility operations will meet the statutory standard during this extension period.

B. Alternative Risk-Based Groundwater Protection Standards

The 2015 CCR rule required the CCR unit owner or operator to set the GWPS at the MCL or to background for all constituents in Appendix IV to part 257 that are detected at a statistically significant level above background. MCLs are levels of constituent concentrations promulgated under section 1412 of the Safe Drinking Water Act. If no MCL exists for a detected constituent, then the GWPS needed to be set at background. In cases where the background level is higher than the promulgated MCL for a constituent, the GWPS was to be set at the background level.

In March 2018, EPA proposed to amend the 2015 CCR rule to incorporate certain requirements from 40 CFR part 258 that would allow Participating State Directors, and EPA where it is the permitting authority, flexibility to approve an alternative GWPS, which was required to be derived in a manner consistent with Agency guidelines. Some of the risk guidelines used to support establishment of the part 258 regulations had since been replaced or supplemented, so the proposal referenced the updated versions. Specifically, EPA cited to the *Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures,*[11] which supplements 51 FR 34014 (September 24, 1986); the *Guidelines for Developmental Toxicity Risk Assessment,*[12] which amends 51 FR 34028 (September 24, 1986); and the *Guidelines for Carcinogen Risk Assessment,*[13] which amends 51 FR 33992 (September 24, 1986). Also, EPA proposed to add guidance on deriving a reference dose, *Reference Dose (RfD): Description and Use in Health Risk Assessments.*[14]

EPA also proposed to incorporate the part 258 requirement that the alternative GWPS be based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR part 792) or the equivalent. For non-carcinogens, EPA proposed to require that States use a reference dose with a hazard quotient (HQ) of 1 as the upper bound on risk, to establish the alternative GWPS. This methodology was the same as that used to establish the technical criteria in the 2015 CCR regulation. EPA's proposal explained that reliance on this methodology was reasonable as it would ensure that this provision (and any alternative GWPS eventually established under this provision) would meet the requisite statutory standard. Examples of groundwater values consistent with the proposed requirements were provided, including Action Levels promulgated under the Safe Drinking Water Act and the Regional Screening Levels for Chemical Contaminants at Superfund Sites.[15] EPA solicited comment on the revised approach to establishing an alternative GWPS.

Significant comments were received in support of the proposal to allow States to approve an alternative GWPS. Commenters stated that States have robust regulatory frameworks to regulate groundwater protection, that allowing this flexibility is consistent with how requirements for MSWLFs are implemented under Subtitle D, and that the oversight and enforcement authorities provided in the WIIN Act allow EPA to ensure States will set protective standards. Commenters also stated that risk-based alternative GWPS would be more appropriate than the current requirement to use background levels where no MCL has been established for an Appendix IV constituent.

Comments were also received opposing the proposal to allow Participating State Directors to approve an alternative GWPS. Concerns raised included lack of resources or technical expertise at state agencies, and the failure to require any alternative GWPS to be protective of sensitive subgroups, which is included in the MSWLF regulations at 40 CFR 258.55(i). Commenters opposed to this proposal raised concerns that it would: Establish vague, unenforceable guidelines; fail to address ecological risk or cancer risk; ignore health-based exposure concentrations that are already developed; and would ultimately allow states to increase risks to human health and the environment above the statutory standard. Commenters also called attention to that allowing Participating State Directors to set alternative standards could result in variability in regulatory standards for chemicals that present the same health risks, regardless of geography. Commenters also raised concerns about protectiveness of the proposed approach and EPA's ability to use the part 258 record to support providing discretion to Participating State Directors. One group of commenters maintained that it is arbitrary and insufficiently protective to let states establish GWPS where EPA has already established risk-based levels for Appendix IV constituents with no established MCL, also citing the Superfund program's ''Regional Screening Levels'' (RSLs).

Some comments requesting that EPA consider established, available health-protective benchmarks for Appendix IV constituents, such as RSLs, and well-established assessment methodology for developing more site-specific GWPS. One industry commenter maintained that ''Of particular relevance to the CCR Rule are the risk-based policies and resources for the protection and remediation of impacted groundwater that U.S. EPA has developed. Specifically, U.S. EPA has established Regional Screening Levels (RSLs) to assess potential human health risks from chemicals in soil, water, and air. . . . These values assist risk assessors in determining whether levels of constituents at a site may warrant further investigation or cleanup, or whether no further investigation is required.'' The commenter goes on to explain that RSLs, while protective, are significantly higher than background concentrations of cobalt, lithium, and molybdenum collected by USGS. Using the RSLs instead of background would

[11] USEPA, ''Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures'', EPA/630/R–00/002, August 2000. This document can be accessed in the docket.

[12] USEPA, ''Guidelines for Developmental Toxicity Risk Assessment'', EPA/600/FR–91/001, December 1991. This document can be accessed at *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=23162.*

[13] USEPA, ''Guidelines for Carcinogen Risk Assessment'', EPA/630/P–03/001F, March 2005. This document can be accessed at *https://www.epa.gov/risk/guidelines-carcinogen-risk-assessment.*

[14] This document can be accessed at *https://www.epa.gov/iris/reference-dose-rfd-description-and-use-health-risk-assessments.*

[15] This document can be accessed at *https://www.epa.gov/risk/regional-screening-levels-rsls.*

avoid corrective action costs of cleaning up to background levels without providing any health benefit. See EPA–HQ–OLEM–2017–0286–1314, Attachment 2, pp. 2. An environmental commenter, concerned about the potential for states to set their own standards, said, ''In the case of EPA's coal ash regulations, not only is EPA in a better position to establish health-protective levels for each non-MCL constituent, but the Agency has already done so.'' The commenter goes on to say that ''If EPA chooses to allow groundwater protection standards other than background, those standards must be no less stringent than the EPA RSLs or health advisories.'' See EPA–HQ–OLEM–2017–0286–2136 pp. 134–139.

In the proposal, EPA also solicited comment on whether an alternative risk-based GWPS could be established by an independent technical expert or experts where there is no approved permitting authority. Numerous commenters opposed this suggestion, for reasons including: (1) EPA previously rejected that approach in the 40 CFR part 258 regulations, which restricted this provision to Participating State Directors; (2) EPA does not provide an adequate record to support such a proposal; (3) Such a regulation, if finalized, would fail to satisfy the protectiveness standard in RCRA section 4004(a). Commenters in support of this primarily cited the pending compliance dates in the CCR rule as a reason to allow an alternative GWPS to be established under the self-implementing program. Commenters expressed concern that by the time States receive approval of permitting programs and EPA establishes its own permitting program, groundwater monitoring deadlines would have passed and it would be too late to establish alternative GWPSs. To illustrate this point, one industry commenter stated that half of its CCR units could be forced to initiate alternate source demonstrations or corrective action assessment based solely on having detected Appendix IV constituents with no MCLs above background levels. Commenters stated that the oversight and enforcement authorities provided to EPA by the WIIN Act would ensure that site-specific alternative GWPS established by independent experts are protective.

EPA agrees with commenters that State programs are unlikely to be developed and approved prior to the critical deadlines in the CCR rule. EPA continues to evaluate technical issues, and the various concerns raised by the commenters, but the Agency has developed the alternative adopted today that does not rely on the part 258 record for support, and also balances commenters' concerns. EPA has developed a specific GWPS for each of the four constituents in Appendix IV without an MCL, to be used in place of the default background concentrations currently required under § 257.95(h)(2). Adopting national criteria will provide health-based standards available to facilities now to use to compare against monitored groundwater concentrations and develop cleanup goals. Note that a State Director may always seek approval for alternative State criteria as part of the process under the WIIN Act; this could, for example, include the establishment of alternative GWPS for the constituents listed in Appendix IV. See 42 U.S.C. 6945(d)(1)(B)(ii), (C), requiring the Administrator to approve a State permit program that allows a State to include technical standards for individual permits or conditions of approval that differ from the criteria under part 257 of title 40, Code of Federal Regulations if, based on site-specific conditions, the Administrator determines that the technical standards established pursuant to a State permit program are at least as protective as the criteria under that part.

Specifically, the Agency is adopting the following health-based levels as the GWPSs for the four Appendix IV constituents without a designated MCL: 6 micrograms per liter (µg/L) for cobalt; 40 µg/L for lithium, and 100 µg/L for molybdenum. EPA is adopting the alternative GWPS for lead at 15 µg/L. These levels were derived using the same methodology that EPA proposed to require States to use to establish alternative GWPS (See, 83 FR 11598–11599, 11613). The methodology follows Agency guidelines for assessment of human health risks of an environmental pollutant. This means that these GWPSs are expected to be concentrations to which the human population could be exposed to on a daily basis without an appreciable risk of deleterious effects during a lifetime.

Specifically, EPA used the equations in the Risk Assessment Guidance for Superfund (RAGS) Part B to calculate these revised GWPS.[16] RAGS Part B provides guidance on using drinking water ingestion rates and toxicity values to derive risk-based remediation goals. The use of these methods, consistent with EPA risk assessment guidelines addresses commenters' concerns about protecting sensitive populations. EPA relied upon relevant exposure information from the 2008 *Child-Specific Exposure Factors Handbook,*[17] the *Exposure Factors Handbook: 2011 Edition* [18] and the 2014 *Human Health Evaluation Manual, Supplemental Guidance: Update of Standard.*[19] Values based on residential receptors were used to capture the range of current and future potential receptors. EPA identified toxicity values according to the hierarchy established in the 2003 Office of Solid Waste and Emergency Response Directive 9285.7–53,[20] which encourages prioritization of values from sources that are current, transparent and publicly available, and that have been peer reviewed. Finally, EPA used the same toxicity values (reference doses) that were used in the risk assessment supporting the 2015 CCR Rule. Cancer slope factors (CSF) were not identified for any of the relevant constituents. The finalized GWPS for cobalt, lithium, and molybdenum were set using a target based on a HQ = 1 for Participating State Directors to follow.

Commenters noted that a reference dose (RfD) has not been established for lead because of the difficulty in identifying a ''threshold'' level, below which adverse effects are not known or anticipated to occur. EPA acknowledges the commenters' concern and has set the GWPS for lead at the Action Level established under section 1412 of the Safe Drinking Water Act, which addresses comments received supporting the use of existing EPA risk-based standards. Because transport through ground water is the primary risk pathway identified in the 2014 Risk Assessment, this revised GWPS is

[16] Risk Assessment Guidance for Superfund (RAGS) Part B can be accessed at *https://www.epa.gov/risk/risk-assessment-guidance-superfund-rags-part-b.*

[17] USEPA ''Child-Specific Exposure Factors Handbook'' can be accessed in the docket or at *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=199243.*

[18] USEPA ''Exposure Facots Handbook: 2011 Edition'' can be accessed in the docket or at *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252.*

[19] 2014 Human Health Evaluation Manual, Supplemental Guidance: Update of Standard can be accessed in the docket or at *https://www.epa.gov/risk/update-standard-default-exposure-factors.*

[20] Office of Solid Waste and Emergency Response Directive 9285.7–53 can be accessed in the docket or at *https://nepis.epa.gov/Exe/ZyNET.exe/91015CKS.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2000+Thru+2005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C00thru05%5CTxt%5C00000030%5C91015CKS.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL.*

anticipated to be protective of human health at these sites.

C. Modification of Groundwater Monitoring Requirements

The current regulations at § 257.90 require all CCR units, without exception, to comply with the groundwater monitoring and corrective action requirements of §§ 257.90 through 257.98. The final CCR rule at § 257.91(a)(2) requires the installation of groundwater monitoring wells at the waste boundary of the CCR unit.

EPA is adopting a final provision that incorporates only minimal revisions from the proposal. The Agency recognizes that certain hydrogeologic settings may preclude the migration of hazardous constituents from CCR disposal units to groundwater resources. Requiring groundwater monitoring in these settings would provide little or no additional protection to human health and the environment. EPA considers that the final criteria are sufficiently precise and determinate that they will ensure that waivers are granted only in those rare situations, and therefore, EPA is incorporating the revised provision into the part 257 regulations.

As proposed, the Participating State Director would be allowed to suspend the groundwater monitoring requirements under §§ 257.90 through 257.95 if the owner or operator can demonstrate that there is no potential for migration of any CCR constituents from that CCR unit to the uppermost aquifer during the active life of the unit, closure, and the post-closure care period. The demonstration must be certified by a PE or approved by a Participating State Director or approved EPA where EPA is the permitting authority, and must be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

This would allow the Participating State Director or EPA where EPA is the permitting authority to suspend the groundwater monitoring requirements in §§ 257.91 through 257.95 for a CCR unit upon demonstration by the owner or operator that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life, closure, or post-closure periods. However, the requirements of §§ 257.96 through 257.98 would not be suspended. As discussed below, the provision being finalized for the part 257 regulations would be identical to that in the part 258 regulations with the exception for the requirement to periodically demonstrate that conditions have not changed, that is, there is still no migration of Appendix III or IV constituents from the CCR unit to the uppermost aquifer.

The proposal acknowledged the difficulties of meeting the ''no potential for migration'' standard (83 FR 11602). The suspension of monitoring requirements is intended only for those CCR units located in hydrogeologic settings in which the Appendix III and IV constituents will not migrate to groundwater during the active life of the unit, as well as closure and post-closure periods. The proposal also stressed that a ''no migration'' waiver from certain RCRA requirements has been a component of both the part 258 and the RCRA subtitle C groundwater monitoring programs for many years, and, based on its experience under these programs, the Agency expects that cases where the ''no migration'' criteria are met will be rare.

There were many general comments supporting the suspension of groundwater monitoring requirements if it can be demonstrated that there is no potential for migration of hazardous constituents from the CCR unit to the uppermost aquifer. These commenters supported this provision because it allows for more site-specific flexibility and prevents burdensome monitoring requirements that are unnecessary for protection of human health and the environment. A commenter also stated that it is unnecessary to incur ongoing monitoring costs if a unit has no impact to groundwater.

Supporters of the ''no migration'' waiver also stated that it should not be limited to facilities operating under a state or EPA CCR permit program, and should be broadened so that a qualified technical expert can make the no migration determination under the self-implementing CCR program. Commenters stated that the potential for abuse no longer exists due to the public notification requirements and EPA's inspection and enforcement authority provided by the WIIN Act.

Groundwater monitoring is one of the key provisions under the regulations that protect health and the environment, as it ensures that contamination is detected and remediated. If the unit does leak and contaminants migrate into the aquifer, without monitoring there is no guarantee that those contaminants will be detected quickly, or necessarily at all. The potential consequences of this provision are therefore significant. Moreover, the determinations required to support the waiver are highly technical, and thus not readily evaluated during an inspection, by an inspector who may be able to document that the supporting analyses exist but is unlikely to have the time or expertise necessary to evaluate their scientific adequacy. Consequently, this provision requires the additional layer of protection associated with having review by a regulatory authority, which would have the necessary technical expertise on staff, evaluate the request prior to its adoption.

Some commenters did not support the ''no migration'' proposal. One commenter explained that groundwater monitoring for CCR units had just barely taken effect and the first round of groundwater monitoring data was first published on March 2, 2018. This commenter also stated that all CCR facilities should be required to do groundwater monitoring to establish a baseline. Another commenter stated that due to the nature of sedimentary geological formations, fractures and fissures may exist throughout a coal-mined site, mined areas may settle and surface impoundments may leak. Therefore, suspension of groundwater monitoring should not be allowed.

EPA has determined that if a facility meets the criteria to demonstrate that there is no potential for migration at the unit, then the groundwater monitoring requirements of §§ 257.90 through 257.96 would not be necessary. However, the regulation requires that demonstrations of no potential for migration must be supported by both predictions that maximize contaminant migration and actual field data collected at the site. Field sampling is necessary to establish the site's hydrogeological characteristics and must include an evaluation of unsaturated and saturated zone characteristics to ascertain the flow rate and pathways by which contaminants may migrate to groundwater. Thus, facilities would be expected to collect site-specific data relating to conditions, geology, water levels, etc. as well as contaminant concentrations in the aquifer.

The proposal included four conditions that would be required for a facility to receive a waiver from groundwater monitoring. The first condition is that the suspension of groundwater monitoring requirements in §§ 257.91 through 257.95 is available only for owners and operators of CCR units located in participating states. As discussed previously the Agency has limited the availability of the waiver because of the need to review a no-migration demonstration prior to

granting a waiver from groundwater monitoring. However, in this final action, the Agency is expanding this provision to allow EPA the ability to review a no-migration demonstration to grant a waiver from groundwater monitoring where EPA is the permitting authority.

The second condition is that the rule requires demonstrations of no potential for migration to be supported by both predictions that maximize contaminant migration and actual field data collected at the site. The proposal explained in great detail how the different properties should be measured, building on guidance developed for part 258 (83 FR 11602). EPA explained in the proposal that the site-specific information called for under the proposed regulation to make the demonstration must include, at a minimum, the following information to evaluate or interpret the effects of the following properties or processes on contaminant fate and transport:

(1) Aquifer Characteristics, including hydraulic conductivity, hydraulic gradient, effective porosity, aquifer thickness, degree of saturation, stratigraphy, degree of fracturing and secondary porosity of soils and bedrock, aquifer heterogeneity, groundwater discharge, and groundwater recharge areas;

(2) Waste Characteristics, including quantity, type, and origin;

(3) Climatic Conditions, including annual precipitation, leachate generation estimates, and effects on leachate quality;

(4) Leachate Characteristics, including leachate composition, solubility, density, the presence of immiscible constituents, Eh, and pH;

(5) Engineered Controls, including liners, cover systems, and aquifer controls (*e.g.,* lowering the water table). These should be evaluated under design and failure conditions to estimate their long-term residual performance;

(6) Attenuation of contaminants in the subsurface, including adsorption/desorption reactions, ion exchange organic content of soil, soil water pH, and consideration of possible reactions causing chemical transformation or chelation; and

(7) Microbiological Degradation, which may attenuate target compounds or cause transformations of compounds, potentially forming more toxic chemical species.

No migration petitions will vary considerably. The petition content will be strongly influenced by the type of unit for which a variance is sought and the methods chosen to demonstrate that there is no potential for migration. EPA believes the categories listed above and other site-specific information as required by the Participating State Director or EPA where EPA is the permitting authority will provide the necessary information, data, and analyses to determine the physical, chemical, and biological processes affecting the migration of CCR constituents. As discussed below, these criteria have largely been included in the final rule, with modifications to account for the differences between the Part 258 constituents, which include organics, and Appendix IV CCR constituents, which are metals.

The third condition is that demonstrations be certified by a qualified PE and approved by the Participating State Director or EPA where EPA is the permitting authority to ensure that there is a high degree of confidence that no contamination will reach the uppermost aquifer.

The fourth condition requires the owner or operator of the CCR unit to remake the demonstration every 10 years or sooner, if there is evidence migration has occurred, as determined by the Participating State Director or EPA where EPA is the permitting authority. This new demonstration is required to be submitted to the Participating State Director or EPA where EPA is the permitting authority one year before the existing groundwater monitoring suspension is due to expire. If the suspension expires for any reason, the unit must begin groundwater monitoring according to § 257.90(a) within 90 days.

EPA received several public comments both supporting and opposing this 10-year demonstration clause. A commenter stated that the provisions for the suspension of groundwater monitoring depart from the part 258 provisions on which they were modeled, by limiting any such suspension to a maximum 10-year term and requiring a re-demonstration for subsequent suspension approvals.

One commenter stated that if any breakthrough occurs in the CCR unit, 10 years is too long and would allow contamination to move toward adjacent discharge points, including pumping wells at nearby homes, farms and businesses, as well as streams, potentially endangering human health and the environment.

As discussed in more detail below, any site-specific demonstration to satisfy the ''no migration'' threshold involves several distinct criteria relating to site conditions. Because, as the commenter notes, engineered controls do fail facilities will be required to demonstrate that site conditions will collectively work to ensure there is no potential for migration. For example, the regulation also requires the evaluation of Climatic Conditions such as annual precipitation and leachate generation estimates. All of the regulatory factors together work to ensure that, when considering a ''no migration'' determination, in the event of a leak from a CCR unit, the constituents will not migrate to the uppermost aquifer during the lifetime of the unit and post-closure care.

Another comment received on the 10-year interval is that if the existing monitoring wells remain in place during the 10-year interval, those wells may be neglected and not usable for sampling at the end of the 10-year interval. If the existing monitoring wells are filled and sealed and new monitoring wells are installed, the ability to effectively compare data at the same location over time may be lost. The commenter stated that EPA should consider either removing the 10-year recurring demonstration requirement or add some minimum monitoring requirements at shorter intervals (*e.g.,* groundwater elevations) to ensure maintenance of the monitoring wells.

EPA does not agree that monitoring wells will necessarily be unused during the 10-year interval. The proposal discussed how the ''no migration'' demonstration involves complying with rigorous requirements. Modeling may be useful for assessing and verifying the potential for migration of hazardous constituents. Models used should be based on actual field collected data to adequately predict potential groundwater contamination. When owners or operators prepare to re-certify a no migration demonstration, they must verify that the unit continues to meet the standard—*i.e.,* that there is still no potential for migration of contaminants from the unit to the uppermost aquifer. To support this demonstration some type of field data, such as groundwater elevation measurements, would normally be collected during the 10-year period. The 10-year requirement to renew a waiver ensures that no dramatic changes have occurred that may cause contamination.

One commenter stated that EPA should adopt separate standards for the suspension of groundwater monitoring for CCR landfills and CCR surface impoundments. The commenter stated that CCR landfills should not be required to conduct a new demonstration once every 10 years to show that suspension of groundwater monitoring continues to be appropriate. EPA disagrees with this comment as the ''no migration'' waiver is dependent

upon site-specific hydrogeology, which can potentially change overtime, and the criteria for the waiver are not specific to either landfills or surface impoundments.

EPA considered the comments and is adopting the proposal with minor revisions to ensure that the regulatory language accurately reflects the principles reflected in the proposal. EPA discussed in the proposal why periodic renewals of ''no migration'' demonstrations were not required for MSW landfills. In part this is because the part 258 regulations apply only to landfills, while the CCR regulations apply to both landfills and surface impoundments. Surface impoundments by their very nature pose a potential for releases to groundwater that is different than landfills (*e.g.,* presence of a hydraulic head). The risk assessment for the CCR rule found that, even when key variables are controlled (*e.g.,* liner type, waste type) for the long-term risks from surface impoundments are greater than from landfills. Based on these factors, EPA is requiring an owner or operator to conduct a new demonstration once every 10 years to show that the suspension of groundwater monitoring continues to be appropriate. See § 257.90(g). This new demonstration must be submitted to the Participating State Director or EPA where EPA is the permitting authority one year before the existing groundwater monitoring suspension is due to expire. If the suspension expires for any reason, the unit must begin groundwater monitoring in accordance with § 257.90(a) within 90 days.

To address concerns that the proposed language was insufficiently prescriptive EPA has added the phrase, ''based on the characteristics of the site in which the CCR unit is located,'' to the regulatory text. This is intended to clarify that the site characteristics are the key component of any determination that a waiver can be granted, rather than unit characteristics, such as the type of liner, which can (and do) fail. This is consistent with both the proposal and the original part 258 regulation. See 83 FR 11602; 56 FR 51061. EPA provided examples of locations that might be able to demonstrate no potential for migration in the preamble to the final MSWLF rule, such as extremely dry areas with little rainfall and great depths to groundwater, but acknowledged that these would be extremely rare. 56 FR 51061. EPA expects this to be the case with respect to CCR units as well.

For the same reason, EPA included in the regulation four of the seven categories of properties or processes on contaminant fate and transport that were discussed in the preamble to the proposed rule at 83 FR 11602. EPA omitted two categories from this original list to account for the differences between the Part 258 constituents and the Appendix IV CCR constituents. The part 258 constituents include organic compounds, and so factors, such as natural attenuation, are relevant to evaluating the potential for migration at the site. But the CCR constituents are metals or metalloid compounds, which will remain in the environment if released. The remaining factors have been a component of the MSWLF program since the regulations were first adopted in 1991. 56 FR 51061. See OSWER Solid Waste Disposal Facility Criteria Technical Manual for MSWLFs (EPA530–R–93–017, 1993).[21]

The regulation does not include any consideration relating to current groundwater quality or potential future use of the aquifer EPA notes that, as with MSWLFs, this is not an appropriate factor for consideration under this provision. Further guidance for conducting these evaluations can be found in the OSWER Solid Waste Disposal Facility Criteria Technical Manual for MSWLFs (EPA530–R–93–017, 1993), the Ground-Water Monitoring Guidance Document for Owners and Operators of Interim Status Facilities (1983),[22] and OSWER Preparing No-Migration Demonstration for Municipal Solid Waste Disposal Facilities: A Screening Tool (EPA530–R–99–008 1999).[23]

D. Allow Participating State Directors or EPA Where EPA Is the Permitting Authority To Issue Certifications in Lieu of Requiring a PE Certification

To ensure that the RCRA subtitle D requirements would achieve the statutory standard of ''no reasonable probability of adverse effects on health and the environment'' in the absence of regulatory oversight, the current CCR regulations require facilities to obtain third party certifications and to provide enhanced state and public notifications of actions taken to comply with the regulatory requirements. Specifically, in the final CCR rule EPA required numerous technical demonstrations made by the owner or operator be certified by a qualified professional engineer (PE) in order to provide verification of the facility's technical judgments and to otherwise ensure that the provisions of the rule were properly applied. While EPA acknowledged that relying upon a third-party certification was not the same as relying upon a state or federal regulatory authority and was not expected to provide the same level of independence as a state permit program, the availability of meaningful third-party verification provided critical support that the rule would achieve the statutory standard, as it would provide a degree of control over a facility's discretion in implementing the rule.

However, the situation has changed with the passage of the WIIN Act, which offers the opportunity for State oversight under an approved permit program. To reflect that, EPA proposed that the regulations allow a ''State Director,'' the Director of a state with an approved CCR permit program (*i.e.,* a ''participating state''), to certify that the regulatory criteria have been met in lieu of the exclusive reliance on a qualified PE. EPA expects that states will generally rely on the expertise of their own engineers to evaluate whether the technical criteria have been met. Alternatively, States might choose to retain the required certification by a qualified PE and use its own expertise to evaluate that certification. Finally, EPA noted that under the existing regulations, a facility may already rely on a certification provided by a qualified PE in a State agency, who reviews the facility actions as part of a purely State-law mandated process. Thus, EPA is confident that revising the regulation to authorize an approval from a Participating State Director will be at least as protective as the status quo under the existing regulations. To be clear an approved state may choose to provide certifications in lieu of a PE or may review and approve in addition to a PE. A participating state could also decide to solely rely on a certification by a facility's PE which would be the status quo based on the current regulations.

As a component of this proposal, EPA also proposed definitions of ''State Director'' and of a ''participating state'' in § 257.53. The definition made clear that these provisions were restricted to State Directors (or their delegates) with an approved CCR permit program. The definition also included EPA where EPA is the permitting authority (tribal lands and non-participating states). There are several changes to the proposed term of ''State Director.'' First, we are finalizing the term as ''Participating State Director.'' Currently

[21] USEPA OWSER ''Solid Waste Disposal Facility Criteria Technical Manual for MSWLFs'' (EPA530–R–93–017, 1993) can be found in the docket for this final rule.

[22] USEPA ''Ground-Water Monitoring Guidance for Owners and Operators of Interim Status Facilities'' (1983) can be found in the docket for this final rule.

[23] USEPA OWER ''Preparing No-Migration Demonstrations for Municipal Solid Waste Disposal facilities: A Screening Tool'' (EPA530–R–99–008, 1999 can be found in the docket for this rule.

there is a definition for *State Director* in 40 CFR 257.53 and EPA did not intend for our proposed definition to replace or amend the current definition. Therefore, we are finalizing the term ''Participating State Director.'' This language is used throughout the preamble and regulatory text accordingly.

Furthermore, EPA received numerous comments on state directors issuing certifications. The majority of comments supported granting a State Director this authority. One comment received from ASTSWMO suggested removing EPA from the definition of State Director. ASTSWMO felt it was not appropriate to include EPA in the definition because intermingling the State and EPA would lead to confusion on their implementation roles in CCR permit programs, and EPA agrees. EPA has therefore removed the sentence about EPA from the definition of Participating State Director and generally added ''or approval from EPA where EPA is the permitting authority'' after Participating State Director throughout the regulations.

The definition of Participating State Director has also been modified to reflect the statutory term of a ''participating state'' rather than the proposed term of ''an approved state.'' EPA has also adopted the proposed definition of a participating state, without modification. The final rule also incorporates the statutory definition of a non-participating state.

Finally, the regulatory text has been amended in 39 places to incorporate this change. These changes can be seen in the amended regulation text. Except for the regulations relating to structural stability, which continue to require the certification of a PE in all circumstances, the regulations have been modified to add the approval of Participating State Director or the approval from EPA where EPA is the permitting authority as an acceptable alternative. The structural stability evaluations, such as the periodic factors of safety assessment, require the specific expertise of a PE. As previously noted, EPA expects that a state will generally rely on the expertise of its own engineers to evaluate whether the technical criteria have been met, but to avoid any confusion, these regulations will continue to require certification by a PE. A state may, of course, require the facility to also obtain its approval as part of its own permit program.

E. Rationale for 30-Day Effective Date

The effective date of this rule is 30 days after publication in the **Federal Register**. The Administrative Procedure Act (APA) provides that publication of a substantive rule shall be made not less than 30 days before its effective date and that this provision applies in the absence of a specific statutory provision establishing an effective date. See 5 U.S.C. 553(d) and 559. EPA has determined there is no specific provision of RCRA addressing the effective date of regulations that would apply here, and thus the APA's 30-day effective date applies.

EPA has previously interpreted section 4004(c) of RCRA to generally establish a six-month effective date for rules issued under subtitle D. See 80 FR 37988, 37990. After further consideration, EPA interprets section 4004(c) to establish an effective date solely for the regulations that were required to be promulgated under subsection (a). Section 4004(c) is silent as to subsequent revisions to those regulations; EPA therefore believes section 4004(c) is ambiguous.

Section 4004(c) states that the prohibition in subsection (b) shall take effect six months after promulgation of regulations under subsection (a). Subsection (a), in turn provides that ''[n]ot later than one year after October 21, 1976 . . . [EPA] shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter.'' As noted, section 4004(c) is silent as to revisions to those regulations.

In response to Congress's mandate in section 4004(a), EPA promulgated regulations on September 13, 1979. 44 FR 53438. EPA interprets section 4004(c) to establish an effective date applicable only to that action, and not to future regulations the Agency might issue under this section. In the absence of a specific statutory provision establishing an effective date for this rule, APA section 553(d) applies.

EPA considers that its interpretation is reasonable because there is no indication in RCRA or its legislative history that Congress intended for the agency to have less discretion under RCRA subtitle D than it would have under the APA to establish a suitable effective date for subsequent rules issued under section 4004(c). Consistent with EPA's interpretation of the express language of section 4004, EPA interprets statements in the legislative history explaining that section 4004(c) provides that the effective date is to be 6 months after the date of promulgate of regulations, as referring to the initial set of regulations required by Congress to be promulgated not later than 1 year after October 21, 1976, and does not mandate a 6 month effective date for every regulatory action that EPA takes under this section. This rule contains specific, targeted revisions to the 2015 rule and the legislative history regarding section 4004 speaks only to these initial 1976 mandated regulations.

This reading allows the agency to establish an effective date appropriate for the nature of the regulation promulgated, which is what EPA believes Congress intended. EPA further considers that the minimum 30-day effective date under the APA is reasonable in this circumstance where none of the provisions being finalized require an extended period of time for regulated entities to comply.

V. The Projected Economic Impacts of This Action

A. Introduction

EPA estimated the costs and benefits of this action in a Regulatory Impact Analysis (RIA) which is available in the docket for this action. The RIA estimates costs and cost savings attributable to the provisions of this action against the baseline costs and cost savings of the 2015 CCR final rule. The RIA estimates that the net annualized impact of these five provisions over a 100-year period of analysis will be cost savings of between $27.8 million and $31.4 million when discounting at 7 percent and cost savings between $15.5 million and $19.1 million when discounting at 3 percent. This action is not considered an economically significant action under Executive Order 12866.

B. Affected Universe

The universe of affected entities for this rule consists of the same entities affected by EPA's 2015 CCR final rule. These entities are coal-fired electricity generating plants operated by the electric utility industry. They can be identified by their North American Industry Classification System (NAICS) designation 221112 ''Fossil Fuel Electric Power Generation''. The RIA estimates that there are 414 coal-fired electricity generating plants operating 922 CCR management units (landfills, disposal impoundments, and storage impoundments) that will be affected by this rule.

C. Baseline Cost

The baseline costs for this rule are the costs of compliance with EPA's 2015 CCR final rule, as the provisions of this rule modify the provisions of the 2015 CCR final rule or modify the implementation of the 2015 CCR rule by WIIN Act participating states. The RIA for the 2015 CCR final rule estimated these costs at an annualized $509

million when discounting at 7 percent and an annualized $735 million when discounting at 3 percent.

D. Cost Savings, Other Benefits, and Adjustments to the Baseline

The RIA estimates costs and costs savings for two proposals concerning the compliance deadlines for certain aspects of the 2015 CCR rule, as well as the two alternative performance standards that will apply in participating states under the WIIN Act, and the revision of the GWPSs for the four constituents in Appendix IV to part 257 without MCLs. The RIA estimates that the net annualized impact of these five provisions over a 100-year period of analysis will be an annualized cost savings of between $27.8 million and $31.4 million when discounting at 7 percent, and an annualized cost savings of between $15.5 million and $19.1 million when discounting at 3 percent. The majority of cost savings attributable to the rule come from the provisions extending the date by which facilities must cease placing waste in CCR units. These provisions delay the large capital costs associated with ceasing to place waste in a unit. These capital costs include the cost of closure capping, post-closure monitoring, and converting to dry handling of CCR from wet handling.

The RIA also presents the adjustments to the baseline costs of the CCR final rule due to plant closures that occurred after the rule was published but before the effective date of the rule. The RIA accompanying the 2015 CCR final rule assigned compliance costs to these plants, which they are exempt from because they closed before the final rule's effective date. In all, 23 plants closed before the effective date of the final rule that were not accounted for in 2015 final rule RIA. The annualized compliance costs avoided for these plants equals between $21.4 million and $27.6 million per year when discounting at 7 percent and between $21.7 million and $32.4 million when discounting at 3 percent. This cost adjustment is detailed in the RIA that accompanies this rulemaking, however it is not factored into the baseline or the benefit estimates for this rule to keep comparisons with the 2015 CCR final rule straight forward. Also, the compliance costs not incurred by these plants would not be cost savings attributable to this rulemaking.

VI. Statutory and Executive Order (E.O.) Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA prepared an analysis of the potential costs and benefits associated with this action. This Regulatory Impact Analysis (RIA), entitled *Regulatory Impact Analysis; EPA's 2018 RCRA Final Rule; Disposal of Coal Combustion Residuals from Electric Utilities; Amendments to the National Minimum Criteria (Phase One),* is summarized in Unit V of this preamble and the RIA is available in the docket for this final rule.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in EPA's analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 1189.28, OMB control number 2050–0053. This is an amendment to the ICR approved by OMB for the Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities published April 17, 2015 in the **Federal Register** at 80 FR 21302. You can find a copy of the ICR in the docket for this action, and it is briefly summarized here.

Respondents/affected entities: Coal-fired electric utility plants that will be affected by the rule.

Respondent's obligation to respond: The recordkeeping, notification, and posting are mandatory as part of the minimum national criteria being promulgated under sections 1008, 4004, and 4005(a) of RCRA.

Estimated number of respondents: 414.

Frequency of response: The frequency of response varies.

Total estimated burden: EPA estimates the total annual burden to respondents to be *a reduction in burden of* approximately 16,690 hours from the currently approved burden. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The total estimated annual cost of this rule is a *cost savings* of approximately $4,752,588. This cost savings is composed of approximately $1,045,091 in annualized avoided labor costs and $3,707,497 in avoided capital or operation and maintenance costs.

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 OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action is expected to result in net cost savings amounting to approximately $27.8 million per year to $31.4 million per year when discounting at 7 percent and annualized over 100 years. It is expected to result in net cost savings of between $15.5 million and $19.1 million when discounting at 3 percent and annualized over 100 years. Savings will accrue to all regulated entities, including small entities. Further information on the economic effects of this action can be found in Unit V of this preamble and in the Regulatory Impact Analysis, which is available in the docket for this action. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. The costs involved in this action are imposed only by participation in a voluntary federal program. UMRA generally excludes from the definition of ''federal intergovernmental mandate'' duties that

arise from participation in a voluntary federal program.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. For the ''Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities'' published April 17, 2015 in the **Federal Register** at 80 FR 21302, EPA identified three of the 414 coal-fired electric utility plants (in operation as of 2012) which are located on tribal lands; however, they are not owned by tribal governments. These are: (1) Navajo Generating Station in Coconino County, Arizona, owned by the Arizona Salt River Project; (2) Bonanza Power Plant in Uintah County, Utah, owned by the Deseret Generation and Transmission Cooperative; and (3) Four Corners Power Plant in San Juan County, New Mexico owned by the Arizona Public Service Company. The Navajo Generating Station and the Four Corners Power Plant are on lands belonging to the Navajo Nation, while the Bonanza Power Plant is located on the Uintah and Ouray Reservation of the Ute Indian Tribe. Under the WIIN Act, EPA is the permitting authority for CCR unites located in Indian Country. Moreover, since this action is expected to result in net cost savings to affected entities amounting to approximately $27.8 million per year to $31.4 million per year when discounting at 7 percent and annualized over 100 years, or in net cost savings of between $15.5 million per year and $19.1 million per year when discounting at 3 percent and annualized over 100 years, it will not have substantial direct effects on one or more Indian tribes. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risk and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the document titled ''Human and Ecological Risk Assessment of Coal Combustion Residuals'' which is available in the docket for the final rule as docket item EPA–HQ–RCRA–2009–0640–11993.

As ordered by E.O. 13045 Section 1–101(a), for the ''Final Rule: Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities'' published April 17, 2015 in the **Federal Register** at 80 FR 21302, EPA identified and assessed environmental health risks and safety risks that may disproportionately affect children in the revised risk assessment. The results of the screening assessment found that risks fell below the criteria when wetting and run-on/runoff controls required by the rule are considered. Under the full probabilistic analysis, composite liners required by the rule for new waste management units showed the ability to reduce the 90th percentile child cancer and non-cancer risks for the groundwater to drinking water pathway to well below EPA's criteria. Additionally, the groundwater monitoring and corrective action required by the rule reduced risks from current waste management units.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. For the 2015 CCR rule, EPA analyzed the potential impact on electricity prices relative to the ''in excess of one percent'' threshold. Using the Integrated Planning Model (IPM), EPA concluded that the 2015 CCR Rule may increase the weighted average nationwide wholesale price of electricity between 0.18 percent and 0.19 percent in the years 2020 and 2030, respectively. As the final rule represents a cost savings rule relative to the 2015 CCR rule, this analysis concludes that any potential impact on wholesale electricity prices will be lower than the potential impact estimated of the 2015 CCR rule; therefore, this final rule is not expected to meet the criteria of a ''significant adverse effect'' on the electricity markets as defined by Executive Order 13211.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in EPA's Regulatory Impact Analysis (RIA) for the CCR rule which is available in the docket for the 2015 CCR final rule as docket item EPA–HQ–RCRA–2009–0640–12034.

EPA's risk assessment did not separately evaluate either minority or low-income populations. However, to evaluate the demographic characteristics of communities that may be affected by the CCR rule, the RIA compares the demographic characteristics of populations surrounding coal-fired electric utility plants with broader population data for two geographic areas: (1) One-mile radius from CCR management units (*i.e.,* landfills and impoundments) likely to be affected by groundwater releases from both landfills and impoundments; and (2) watershed catchment areas downstream of surface impoundments that receive surface water run-off and releases from CCR impoundments and are at risk of being contaminated from CCR impoundment discharges (*e.g.,* unintentional overflows, structural failures, and intentional periodic discharges).

For the population as a whole 24.8 percent belong to a minority group and 11.3 percent falls below the Federal Poverty Level. For the population living within one mile of plants with surface impoundments 16.1 percent belong to a minority group and 13.2 percent live below the Federal Poverty Level. These minority and low-income populations are not disproportionately high compared to the general population. The percentage of minority residents of the entire population living within the catchment areas downstream of surface impoundments is disproportionately high relative to the general population, *i.e.,* 28.7 percent, versus 24.8 percent for the national population. Also, the percentage of the population within the catchment areas of surface impoundments that is below the Federal Poverty Level is disproportionately high compared with the general population, *i.e.,* 18.6 percent versus 11.3 percent nationally.

Comparing the population percentages of minority and low income

residents within one mile of landfills to those percentages in the general population, EPA found that minority and low-income residents make up a smaller percentage of the populations near landfills than they do in the general population, *i.e.,* minorities comprised 16.6 percent of the population near landfills versus 24.8 percent nationwide and low-income residents comprised 8.6 percent of the population near landfills versus 11.3 percent nationwide. In summary, although populations within the catchment areas of plants with surface impoundments appear to have disproportionately high percentages of minority and low-income residents relative to the nationwide average, populations surrounding plants with landfills do not. Because landfills are less likely than impoundments to experience surface water run-off and releases, catchment areas were not considered for landfills.

The CCR rule is risk-reducing with reductions in risk occurring largely within the surface water catchment zones around, and groundwater beneath, coal-fired electric utility plants. Since the CCR rule is risk-reducing and this action does not add to risks, this action will not result in new disproportionate risks to minority or low-income populations.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 257

Environmental protection, Beneficial use, Coal combustion products, Coal combustion residuals, Coal combustion waste, Disposal, Hazardous waste, Landfill, Surface impoundment.

Dated: July 17, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

■ 1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), 6945(d); 33 U.S.C. 1345(d) and (e).

■ 2. Section 257.53 is amended by adding the definitions of ''Nonparticipating State'', ''Participating State'', and ''Participating State Director'' in alphabetical order to read as follows:

§ 257.53 Definitions.

* * * * *

Nonparticipating State means a State—

(1) For which the Administrator has not approved a State permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(B);

(2) The Governor of which has not submitted to the Administrator for approval evidence to operate a State permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(A);

(3) The Governor of which provides notice to the Administrator that, not fewer than 90 days after the date on which the Governor provides the notice to the Administrator, the State will relinquish an approval under RCRA section 4005(d)(1)(B) to operate a permit program or other system of prior approval and conditions; or

(4) For which the Administrator has withdrawn approval for a permit program or other system of prior approval and conditions under RCRA section 4005(d)(1)(E).

* * * * *

Participating State means a state with a state program for control of CCR that has been approved pursuant to RCRA section 4005(d).

Participating State Director means the chief administrative officer of any state agency operating the CCR permit program in a participating state or the delegated representative of the Participating State Director. If responsibility is divided among two or more state agencies, Participating State Director means the chief administrative officer of the state agency authorized to perform the particular function or procedure to which reference is made.

* * * * *

■ 3. Section 257.60 is amended by revising paragraph (b) to read as follows:

§ 257.60 Placement above the uppermost aquifer.

* * * * *

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

* * * * *

■ 4. Section 257.61 is amended by revising paragraph (b) to read as follows:

§ 257.61 Wetlands.

* * * * *

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

* * * * *

■ 5. Section 257.62 is amended by revising paragraph (b) to read as follows:

§ 257.62 Fault areas.

* * * * *

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

* * * * *

■ 6. Section 257.63 is amended by revising paragraph (b) to read as follows:

§ 257.63 Seismic impact zones.

* * * * *

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

* * * * *

■ 7. Section 257.64 is amended by revising paragraph (c) to read as follows:

§ 257.64 Unstable areas.

* * * * *

(c) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration meets the requirements of paragraph (a) of this section.

* * * * *

■ 8. Section 257.70 is amended by revising paragraphs (c)(2), (e), and (f) to read as follows:

§ 257.70 Design criteria for new CCR landfills and any lateral expansion of a CCR landfill.

* * * * *

(c) * * *

(2) The owner or operator must obtain certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the liquid flow rate through the lower component of the alternative composite liner is no greater than the liquid flow rate through two feet of compacted soil with a hydraulic conductivity of $1x10^{-7}$ cm/sec. The hydraulic conductivity for the two feet of compacted soil used in the comparison shall be no greater than $1x10^{-7}$ cm/sec. The hydraulic conductivity of any alternative to the two feet of compacted soil must be determined using recognized and generally accepted methods. The liquid flow rate comparison must be made using Equation 1 of this section, which is derived from Darcy's Law for gravity flow through porous media.

(Eq. 1):

$$\frac{Q}{A} = q = k\left(\frac{h}{t} + 1\right)$$

Where:

Q = flow rate (cubic centimeters/second);
A = surface area of the liner (squared centimeters);
q = flow rate per unit area (cubic centimeters/second/squared centimeter);
k = hydraulic conductivity of the liner (centimeters/second);
h = hydraulic head above the liner (centimeters); and
t = thickness of the liner (centimeters).

* * * * *

(e) Prior to construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the composite liner (or, if applicable, alternative composite liner) and the leachate collection and removal system meets the requirements of this section.

(f) Upon completion of construction of the CCR landfill or any lateral expansion of a CCR landfill, the owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the composite liner (or, if applicable, alternative composite liner) and the leachate collection and removal system have been constructed in accordance with the requirements of this section.

* * * * *

■ 9. Section 257.71 is amended by revising paragraph (b) to read as follows:

§ 257.71 Liner design criteria for existing CCR surface impoundments.

* * * * *

(b) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority attesting that the documentation as to whether a CCR unit meets the requirements of paragraph (a) of this section is accurate.

* * * * *

■ 10. Section 257.72 is amended by revising paragraphs (c) and (d) to read as follows:

§ 257.72 Liner design criteria for new CCR surface impoundments and any lateral expansion of a CCR surface impoundment.

* * * * *

(c) Prior to construction of the CCR surface impoundment or any lateral expansion of a CCR surface impoundment, the owner or operator must obtain certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the composite liner or, if applicable, the design of an alternative composite liner complies with the requirements of this section.

(d) Upon completion, the owner or operator must obtain certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the composite liner or if applicable, the alternative composite liner has been constructed in accordance with the requirements of this section.

* * * * *

■ 11. Section 257.80 is amended by revising paragraph (b)(7) to read as follows:

§ 257.80 Air criteria.

* * * * *

(b) * * *

(7) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the initial CCR fugitive dust control plan, or any subsequent amendment of it, meets the requirements of this section.

* * * * *

■ 12. Section 257.81 is amended by revising paragraph (c)(5) to read as follows:

§ 257.81 Run-on and run-off controls for CCR landfills.

* * * * *

(c) * * *

(5) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the initial and periodic run-on and run-off control system plans meet the requirements of this section.

* * * * *

■ 13. Section 257.82 is amended by revising paragraph (c)(5) to read as follows:

§ 257.82 Hydrologic and hydraulic capacity requirements for CCR surface impoundments.

* * * * *

(c) * * *

(5) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the initial and periodic inflow design flood control system plans meet the requirements of this section.

* * * * *

■ 14. Section 257.90 is amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ § 257.90 Applicability.

(a) All CCR landfills, CCR surface impoundments, and lateral expansions of CCR units are subject to the groundwater monitoring and corrective action requirements under §§ 257.90 through 257.99, except as provided in paragraph (g) of this section.

* * * * *

(g) *Suspension of groundwater monitoring requirements.* (1) The Participating State Director or EPA where EPA is the permitting authority may suspend the groundwater monitoring requirements under §§ 257.90 through 257.95 for a CCR unit for a period of up to ten years, if the owner or operator provides written documentation that, based on the characteristics of the site in which the CCR unit is located, there is no potential for migration of any of the constituents listed in appendices III and IV to this part from that CCR unit to the uppermost aquifer during the active life of the CCR unit and the post-closure care period. This demonstration must be certified by a qualified professional

engineer and approved by the Participating State Director or EPA where EPA is the permitting authority, and must be based upon:

(i) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, including at a minimum, the information necessary to evaluate or interpret the effects of the following properties or processes on contaminant fate and transport:

(A) Aquifer Characteristics, including hydraulic conductivity, hydraulic gradient, effective porosity, aquifer thickness, degree of saturation, stratigraphy, degree of fracturing and secondary porosity of soils and bedrock, aquifer heterogeneity, groundwater discharge, and groundwater recharge areas;

(B) Waste Characteristics, including quantity, type, and origin;

(C) Climatic Conditions, including annual precipitation, leachate generation estimates, and effects on leachate quality;

(D) Leachate Characteristics, including leachate composition, solubility, density, the presence of immiscible constituents, Eh, and pH; and

(E) Engineered Controls, including liners, cover systems, and aquifer controls (*e.g.,* lowering the water table). These must be evaluated under design and failure conditions to estimate their long-term residual performance.

(ii) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

(2) The owner or operator of the CCR unit may renew this suspension for additional ten year periods by submitting written documentation that the site characteristics continue to ensure there will be no potential for migration of any of the constituents listed in Appendices III and IV of this part. The documentation must include, at a minimum, the information specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this section and a certification by a qualified professional engineer and approved by the State Director or EPA where EPA is the permitting authority. The owner or operator must submit the documentation supporting their renewal request for the state's or EPA's review and approval of their extension one year before the groundwater monitoring suspension is due to expire. If the existing groundwater monitoring extension expires or is not approved, the owner or operator must begin groundwater monitoring according to paragraph (a) of this section within 90 days. The owner or operator may continue to renew the suspension for ten-year periods, provided the owner or operator demonstrate that the standard in paragraph (g)(1) of this section continues to be met for the unit. The owner or operator must place each completed demonstration in the facility's operating record.

(3) The owner or operator of the CCR unit must include in the annual groundwater monitoring and corrective action report required by § 257.90(e) or § 257.100(e)(5)(ii) any approved no migration demonstration.

■ 15. Section 257.91 is amended by revising paragraph (f) to read as follows:

§ 257.91 Groundwater monitoring systems.

* * * * *

(f) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the groundwater monitoring system has been designed and constructed to meet the requirements of this section. If the groundwater monitoring system includes the minimum number of monitoring wells specified in paragraph (c)(1) of this section, the certification must document the basis supporting this determination.

* * * * *

■ 16. Section 257.93 is amended by revising paragraph (f)(6) to read as follows:

§ 257.93 Groundwater sampling and analysis requirements.

* * * * *

(f) * * *

(6) The owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the selected statistical method is appropriate for evaluating the groundwater monitoring data for the CCR management area. The certification must include a narrative description of the statistical method selected to evaluate the groundwater monitoring data.

* * * * *

■ 17. Section 257.94 is amended by revising paragraphs (d)(3) and (e)(2) to read as follows:

§ 257.94 Detection monitoring program.

* * * * *

(d) * * *

(3) The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of this section. The owner or operator must include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified professional engineer or the approval from the Participating State Director or approval from EPA where EPA is the permitting authority in the annual groundwater monitoring and corrective action report required by § 257.90(e).

(e) * * *

(2) The owner or operator may demonstrate that a source other than the CCR unit caused the statistically significant increase over background levels for a constituent or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. The owner or operator must complete the written demonstration within 90 days of detecting a statistically significant increase over background levels to include obtaining a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority verifying the accuracy of the information in the report. If a successful demonstration is completed within the 90-day period, the owner or operator of the CCR unit may continue with a detection monitoring program under this section. If a successful demonstration is not completed within the 90-day period, the owner or operator of the CCR unit must initiate an assessment monitoring program as required under § 257.95. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority.

* * * * *

■ 18. Section 257.95 is amended by revising paragraphs (c)(3), (g)(3)(ii), (h)(2) and (3) to read as follows:

§ 257.95 Assessment monitoring program.

* * * * *

(c) * * *

(3) The owner or operator must obtain a certification from a qualified

professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority stating that the demonstration for an alternative groundwater sampling and analysis frequency meets the requirements of this section. The owner or operator must include the demonstration providing the basis for the alternative monitoring frequency and the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority in the annual groundwater monitoring and corrective action report required by § 257.90(e).

* * * * *

(g) * * *

(3) * * *

(ii) Demonstrate that a source other than the CCR unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. Any such demonstration must be supported by a report that includes the factual or evidentiary basis for any conclusions and must be certified to be accurate by a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority. If a successful demonstration is made, the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this section, and may return to detection monitoring if the constituents in Appendix III and Appendix IV of this part are at or below background as specified in paragraph (e) of this section. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority.

* * * * *

(h) * * *

(2) For the following constituents:

(i) Cobalt 6 micrograms per liter (μg/l);

(ii) Lead 15 μg/l;

(iii) Lithium 40 μg/l; and

(iv) Molybdenum 100 μg/l.

(3) For constituents for which the background level is higher than the levels identified under paragraphs (h)(1) and (h)(2) of this section, the background concentration.

* * * * *

■ 19. Section 257.96 is amended by revising paragraph (a) to read as follows:

§ 257.96 Assessment of corrective measures.

(a) Within 90 days of finding that any constituent listed in Appendix IV to this part has been detected at a statistically significant level exceeding the groundwater protection standard defined under § 257.95(h), or immediately upon detection of a release from a CCR unit, the owner or operator must initiate an assessment of corrective measures to prevent further releases, to remediate any releases and to restore affected area to original conditions. The assessment of corrective measures must be completed within 90 days, unless the owner or operator demonstrates the need for additional time to complete the assessment of corrective measures due to site-specific conditions or circumstances. The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority attesting that the demonstration is accurate. The 90-day deadline to complete the assessment of corrective measures may be extended for no longer than 60 days. The owner or operator must also include the demonstration in the annual groundwater monitoring and corrective action report required by § 257.90(e), in addition to the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority.

* * * * *

■ 20. Section 257.97 is amended by revising paragraph (a) to read as follows:

§ 257.97 Selection of remedy.

(a) Based on the results of the corrective measures assessment conducted under § 257.96, the owner or operator must, as soon as feasible, select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. This requirement applies in addition to, not in place of, any applicable standards under the Occupational Safety and Health Act. The owner or operator must prepare a semiannual report describing the progress in selecting and designing the remedy. Upon selection of a remedy, the owner or operator must prepare a final report describing the selected remedy and how it meets the standards specified in paragraph (b) of this section. The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the remedy selected meets the requirements of this section. The report has been completed when it is placed in the operating record as required by § 257.105(h)(12).

* * * * *

■ 21. Section 257.98 is amended by revising paragraph (e) to read as follows:

§ 257.98 Implementation of the corrective action program.

* * * * *

(e) Upon completion of the remedy, the owner or operator must prepare a notification stating that the remedy has been completed. The owner or operator must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority attesting that the remedy has been completed in compliance with the requirements of paragraph (c) of this section. The report has been completed when it is placed in the operating record as required by § 257.105(h)(13).

* * * * *

■ 22. Section 257.101 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 257.101 Closure or retrofit of CCR units.

(a) * * *

(1) Except as provided by paragraph (a)(3) of this section, if at any time after October 19, 2015, an owner or operator of an existing unlined CCR surface impoundment determines in any sampling event that the concentrations of one or more constituents listed in appendix IV of this part are detected at statistically significant levels above the groundwater protection standard established under § 257.95(h) for such CCR unit, within six months of making such determination or no later than October 31, 2020, whichever date is later, the owner or operator of the existing unlined CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of § 257.102.

* * * * *

(b) * * *

(1)(i) *Location standard under § 257.60.* Except as provided by paragraph (b)(4) of this section, the owner or operator of an existing CCR surface impoundment that has not demonstrated compliance with the location standard specified in § 257.60(a) must cease placing CCR and non-CCR wastestreams into such CCR

unit no later than October 31, 2020, and close the CCR unit in accordance with the requirements of § 257.102.

(ii) *Location standards under §§ 257.61 through 257.64.* Except as provided by paragraph (b)(4) of this section, within six months of determining that an existing CCR surface impoundment has not demonstrated compliance with any location standard specified in §§ 257.61(a), 257.62(a), 257.63(a), and 257.64(a), the owner or operator of the CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR unit and close the CCR unit in accordance with the requirements of § 257.102.

* * * * *

■ 23. Section 257.102 is amended by revising paragraphs (b)(4), (d)(3)(iii), (f)(3), (g), (h), (k)(2)(iv), (k)(4) and (k)(6) to read as follows:

§ 257.102 Criteria for conducting the closure or retrofit of CCR units.

* * * * *

(b) * * *

(4) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the initial and any amendment of the written closure plan meets the requirements of this section.

* * * * *

(d) * * *

(3) * * *

(iii) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority that the design of the final cover system meets the requirements of this section.

* * * * *

(f) * * *

(3) Upon completion, the owner or operator of the CCR unit must obtain a certification from a qualified professional engineer or approval from the Participating State Director or approval from EPA where EPA is the permitting authority verifying that closure has been completed in accordance with the closure plan specified in paragraph (b) of this section and the requirements of this section.

(g) No later than the date the owner or operator initiates closure of a CCR unit, the owner or operator must prepare a notification of intent to close a CCR unit. The notification must include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority for the design of the final cover system as required by § 257.102(d)(3)(iii), if applicable. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(7).

(h) Within 30 days of completion of closure of the CCR unit, the owner or operator must prepare a notification of closure of a CCR unit. The notification must include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority as required by § 257.102(f)(3). The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(8).

(k) * * *

(2) * * *

(iv) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority that the activities outlined in the written retrofit plan, including any amendment of the plan, meet the requirements of this section.

* * * * *

(4) Upon completion, the owner or operator must obtain a written certification from a qualified professional engineer or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority verifying that the retrofit activities have been completed in accordance with the retrofit plan specified in paragraph (k)(2) of this section and the requirements of this section.

* * * * *

(6) Within 30 days of completing the retrofit activities specified in paragraph (k)(1) of this section, the owner or operator must prepare a notification of completion of retrofit activities. The notification must include the certification from a qualified professional engineer or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority has is required by paragraph (k)(4) of this section. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(j)(6).

* * * * *

■ 24. Section 257.104 is amended by revising paragraphs (d)(1)(iii), (d)(4) and (e) to read as follows:

§ 257.104 Post-closure care requirements.

* * * * *

(d) * * *

(1) * * *

(iii) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other component of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this subpart. Any other disturbance is allowed if the owner or operator of the CCR unit demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of CCR, will not increase the potential threat to human health or the environment. The demonstration must be certified by a qualified professional engineer or approved by the Participating State Director or approved from EPA where EPA is the permitting authority, and notification shall be provided to the State Director that the demonstration has been placed in the operating record and on the owners or operator's publicly accessible internet site.

* * * * *

(4) The owner or operator of the CCR unit must obtain a written certification from a qualified professional engineer or an approval from the Participating State Director or an approval from EPA where EPA is the permitting authority that the initial and any amendment of the written post-closure plan meets the requirements of this section.

(e) *Notification of completion of post-closure care period.* No later than 60 days following the completion of the post-closure care period, the owner or operator of the CCR unit must prepare a notification verifying that post-closure care has been completed. The notification must include the certification by a qualified professional engineer or the approval from the Participating State Director or the approval from EPA where EPA is the permitting authority verifying that post-closure care has been completed in accordance with the closure plan specified in paragraph (d) of this section and the requirements of this section. The owner or operator has completed the notification when it has been placed in the facility's operating record as required by § 257.105(i)(13).

* * * * *

■ 25. Section 257.105 is amended by adding paragraph (h)(14) to read as follows:

§ 257.105 Recordkeeping requirements.

* * * * *

(h) * * *

(14) The demonstration, including long-term performance data, supporting the suspension of groundwater monitoring requirements as required by § 257.90(g).

* * * * *

■ 26. Section 257.106 is amended by adding paragraph (h)(11) to read as follows:

§ 257.106 Notification requirements.

* * * * *

(h) * * *

(11) Provide the demonstration supporting the suspension of groundwater monitoring requirements specified under § 257.105(h)(14).

* * * * *

■ 27. Section 257.107 is amended by adding paragraph (h)(11) to read as follows:

§ 257.107 Publicly accessible internet site requirements.

* * * * *

(h) * * *

(11) The demonstration supporting the suspension of groundwater monitoring requirements specified under § 257.105(h)(14).

* * * * *

[FR Doc. 2018–16262 Filed 7–27–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 153

[CMS–9920–F]

RIN 0938–AT65

Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program Under the Patient Protection and Affordable Care Act for the 2017 Benefit Year

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule adopts the risk adjustment methodology that HHS previously established for the 2017 benefit year. In February 2018, a district court vacated the use of statewide average premium as a basis for the HHS-operated risk adjustment methodology for the 2014, 2015, 2016, 2017, and 2018 benefit years. Accordingly, HHS is issuing this final rule to allow charges to be collected and payments to be made for the 2017 benefit year. We hereby adopt the final rules set out in the publication in the **Federal Register** on March 23, 2012 and the publication in the **Federal Register** on March 8, 2016.

DATES: These provisions of this final rule are effective on July 30, 2018.

FOR FURTHER INFORMATION CONTACT: Abigail Walker, (410) 786–1725; Adam Shaw, (410) 786–1091; Jaya Ghildiyal, (301) 492–5149; or Adrianne Patterson, (410) 786–0686.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Regulatory Overview

The Patient Protection and Affordable Care Act (Pub. L. 111–148), was enacted on March 23, 2010; the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010. These statutes are collectively referred to as ''PPACA'' in this final rule. Section 1343 of the PPACA established an annual permanent risk adjustment program under which payments are collected from health insurance issuers that enroll relatively low-risk populations, and payments are made to health insurance issuers that enroll relatively higher-risk populations. Consistent with section 1321(c)(1) of the PPACA, the Secretary is responsible for operating the risk adjustment program on behalf of any state that elected not to do so. For the 2017 benefit year, HHS is responsible for operation of the risk adjustment program in all 50 states and the District of Columbia.

HHS sets the risk adjustment methodology that it uses in states that elect not to operate the program in advance of each benefit year through a notice-and-comment rulemaking process with the intention that issuers will be able to rely on the methodology to price their plans appropriately (45 CFR 153.320; 76 FR 41930, 41932 through 41933; 81 FR 94058, 94702 (explaining the importance of setting rules ahead of time and describing comments supporting that practice)).

In the July 15, 2011 **Federal Register** (76 FR 41929), we published a proposed rule outlining the framework for the risk adjustment program. We implemented the risk adjustment program in a final rule, published in the March 23, 2012 **Federal Register** (77 FR 17219) (Premium Stabilization Rule). In the December 7, 2012 **Federal Register** (77 FR 73117), we published a proposed rule outlining the proposed Federally certified risk adjustment methodologies for the 2014 benefit year and other parameters related to the risk adjustment program (proposed 2014 Payment Notice). We published the 2014 Payment Notice final rule in the March 11, 2013 **Federal Register** (78 FR 15409). In the June 19, 2013 **Federal Register** (78 FR 37032), we proposed a modification to the HHS-operated methodology related to community rating states. In the October 30, 2013, **Federal Register** (78 FR 65046), we finalized the proposed modification to the HHS-operated methodology related to community rating states. We published a correcting amendment to the 2014 Payment Notice final rule in the November 6, 2013 **Federal Register** (78 FR 66653) to address how an enrollee's age for the risk score calculation would be determined under the HHS-operated risk adjustment methodology.

In the December 2, 2013 **Federal Register** (78 FR 72321), we published a proposed rule outlining the Federally certified risk adjustment methodologies for the 2015 benefit year and other parameters related to the risk adjustment program (proposed 2015 Payment Notice). We published the 2015 Payment Notice final rule in the March 11, 2014 **Federal Register** (79 FR 13743). In the May 27, 2014 **Federal Register** (79 FR 30240), the 2015 fiscal year sequestration rate for the risk adjustment program was announced.

In the November 26, 2014 **Federal Register** (79 FR 70673), we published a proposed rule outlining the proposed Federally certified risk adjustment methodologies for the 2016 benefit year and other parameters related to the risk adjustment program (proposed 2016 Payment Notice). We published the 2016 Payment Notice final rule in the February 27, 2015 **Federal Register** (80 FR 10749).

In the December 2, 2015 **Federal Register** (80 FR 75487), we published a proposed rule outlining the Federally certified risk adjustment methodology for the 2017 benefit year and other parameters related to the risk adjustment program (proposed 2017 Payment Notice). We published the 2017 Payment Notice final rule in the March 8, 2016 **Federal Register** (81 FR 12204).

In the September 6, 2016 **Federal Register** (81 FR 61455), we published a proposed rule outlining the Federally certified risk adjustment methodology for the 2018 benefit year and other parameters related to the risk adjustment program (proposed 2018 Payment Notice). We published the 2018 Payment Notice final rule in the December 22, 2016 **Federal Register** (81 FR 94058).

In the November 2, 2017 **Federal Register** (82 FR 51042), we published a proposed rule outlining the benefit and payment parameters for the 2019 benefit year, and to further promote stable premiums in the individual and small group markets. We proposed updates to the risk adjustment methodology and amendments to the risk adjustment data validation process (proposed 2019 Payment Notice). We published the 2019 Payment Notice final rule in the April 17, 2018 **Federal Register** (83 FR 16930). We published a correction to the 2019 risk adjustment coefficients in the 2019 Payment Notice final rule in the May 11, 2018 **Federal Register** (83 FR 21925).

B. The New Mexico Health Connections Court's Order

On February 28, 2018, in a suit brought by the health insurance issuer New Mexico Health Connections, the United States District Court for the District of New Mexico (the district court) vacated the use of statewide average premium in the HHS-operated risk adjustment methodology for the 2014, 2015, 2016, 2017, and 2018 benefit years. The district court reasoned that HHS had not adequately explained its decision to adopt a methodology that used the statewide average premium as the cost-scaling factor to ensure that amounts collected from issuers equal payments made to issuers for the applicable benefit year, that is, a methodology that maintains the budget neutrality of the program for the applicable benefit year.[1] The district court otherwise rejected New Mexico Health Connections' arguments. HHS's reconsideration motion remains pending with the district court.

HHS recently announced the collection and payment amounts for the 2017 benefit year as calculated under the HHS-operated risk adjustment methodology that uses the statewide average premium.[2] However, without this administrative action (that is, issuing this final rule), HHS would be unable to make those collections or distribute the payments for the 2017 benefit year, which total billions of dollars.[3] Uncertainty and delay in the distribution of those payments, which issuers anticipated when they set premiums for the 2017 benefit year, could add uncertainty to the market, as issuers are now in the process of determining the extent of their market participation and the rates and terms of plans they will offer for the 2019 benefit year.

II. Provisions of the Final Rule

This final rule adopts the HHS-operated risk adjustment methodology previously published at 81 FR 12204 for the 2017 benefit year with an additional explanation regarding the use of statewide average premium and the budget neutral nature of the program. This rule does not make any changes to the previously published HHS-operated risk adjustment methodology for the 2017 benefit year.

The risk adjustment program provides payments to health insurance issuers that enroll higher risk populations, such as those with chronic conditions, thereby reducing incentives for issuers to structure their plan benefit designs or marketing strategies in order to avoid these enrollees and lessening the potential influence of risk selection on the premiums that issuers charge. Instead, issuers are expected to set rates based on average risk and compete based on plan features rather than selection of healthier enrollees. The program applies to any health insurance issuer offering plans in the individual or small group markets, with the exception of grandfathered health plans, group health insurance coverage described in 45 CFR 146.145(c), individual health insurance coverage described in 45 CFR 148.220, and any plan determined not to be a risk adjustment covered plan in the applicable Federally certified risk adjustment methodology.[4] In 45 CFR part 153, subparts A, B, D, G, and H, HHS established standards for the administration of the permanent risk adjustment program. In accordance with § 153.320, any risk adjustment methodology used by a state, or by HHS on behalf of the state, must be a Federally certified risk adjustment methodology.

As stated in the 2014 Payment Notice final rule, the Federally certified risk adjustment methodology developed and used by HHS in states that elect not to operate the program is based on the premise that premiums for this market should reflect the differences in plan benefits, quality, and efficiency—not the health status of the enrolled population.[5] HHS developed the risk adjustment payment transfer formula that calculates the difference between the revenues required by a plan based on the projected health risk of the plan's enrollees and the revenues that a plan can generate for those enrollees. These differences are then compared across plans in the state market risk pool and converted to a dollar amount based on the statewide average premium. HHS chose to use statewide average premium and normalize the risk adjustment transfer formula to reflect state average factors so that each plan's enrollment characteristics are compared to the state average and the total calculated payment amounts equal total calculated charges in each state market risk pool. Thus, each plan in the risk pool receives a risk adjustment payment or charge designed to compensate for risk for a plan with average risk in a budget neutral manner. This approach supports the overall goal of the risk adjustment program to encourage issuers to rate for the average risk in the applicable state market risk pool, and avoids the creation of incentives for issuers to operate less efficiently, set higher prices, develop benefit designs or create marketing strategies to avoid high risk enrollees. Such incentives could arise if HHS used each issuer's plan's own premium in the risk adjustment payment transfer formula, instead of statewide average premium.

As explained above, the district court vacated the use of statewide average premium in the HHS-operated risk adjustment methodology for the 2014 through 2018 benefit years on the ground that HHS did not adequately explain its decision to adopt that aspect of the risk adjustment methodology. The district court recognized that use of statewide average premium maintained the budget neutrality of the program, but concluded that HHS had not adequately explained the underlying decision to adopt a methodology that kept the program budget neutral, that is, that ensured that amounts collected from issuers would equal payments made to issuers for the applicable benefit year. Accordingly, HHS is providing additional explanation herein.

[1] *New Mexico Health Connections* v. *United States Department of Health and Human Services et al.,* No. CIV 16–0878 JB/JHR (D.N.M. 2018).

[2] See, *Summary Report on Permanent Risk Adjustment Transfers for the 2017 Benefit Year,* available at *https://downloads.cms.gov/cciio/Summary-Report-Risk-Adjustment-2017.pdf.*

[3] See, July 7, 2018 *United States District Court Ruling Puts Risk Adjustment On Hold,* available at *https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2018-Press-releases-items/2018-07-07.html* and the July 9, 2018, *Summary Report on Permanent Risk Adjustment Transfers for the 2017 Benefit Year https://downloads.cms.gov/cciio/Summary-Report-Risk-Adjustment-2017.pdf.* Also see the CMS Memo: *Implications of the Decision by United States District Court for the District of New Mexico on the Risk Adjustment and Related Programs* (July 12, 2018), available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Implications-of-the-Decision-by-United-States-District-Court-for-the-District-of-New-Mexico-on-the-Risk-Adjustment-and-Related-Programs.pdf.*

[4] See the definition for ''risk adjustment covered plan'' at 45 CFR 153.20.

[5] See 78 FR 15409 at 15417.

First, Congress designed the risk adjustment program to be implemented and operated by states if they choose to do so. Nothing in section 1343 of the PPACA requires a state to spend its own funds on risk adjustment payments or allows HHS to impose such a requirement. Thus, while section 1343 may have provided leeway for states to spend additional funding on the program if they voluntarily chose to do so, HHS could not have required additional funding within the HHS-operated risk adjustment methodology.

Second, while the PPACA did not include an explicit requirement that the risk adjustment program be operated in a budget-neutral manner, it also does not proscribe designing the program in a budget-neutral manner. In fact, although the statutory provisions for many other PPACA programs appropriated or authorized amounts to be appropriated from the U.S. Treasury, or provided budget authority in advance of appropriations,[6] the PPACA neither authorized nor appropriated additional funding for risk adjustment payments beyond the amount of charges paid in, nor authorized HHS to obligate itself for risk adjustment payments in excess of charges collected.[7] Indeed, unlike the Medicare Part D statute, which expressly authorizes the appropriation of funds and provides budget authority in advance of appropriations to make Part D risk-adjusted payments, the PPACA's risk adjustment statute makes no reference to additional appropriations whatsoever.[8] Because Congress omitted from the PPACA any provision appropriating independent funding or creating budget authority in advance of an appropriation for the risk adjustment program, HHS could not—absent another source of appropriations—have designed the risk adjustment program in a way that required payments in excess of collections consistent with binding appropriations law. Thus, as a practical matter, Congress did not give HHS discretion to implement a program that was not budget neutral.

Furthermore, if HHS had elected to adopt a HHS-operated risk adjustment methodology that was contingent on appropriations from Congress in the annual appropriations process that would have created uncertainty for issuers in the amount of risk adjustment payments they could expect. That uncertainty would undermine one of the central objectives of the risk adjustment program, which is to assure issuers in advance that they will receive risk adjustment payments if, for the applicable benefit year, they enroll a high risk population compared to other issuers in the state market risk pool. The budget-neutral framework spreads the costs of covering higher-risk enrollees across issuers throughout a given state market risk pool, thereby reducing incentives for issuers to engage in risk-avoidance techniques such as designing or marketing their plans in ways that tend to attract healthier individuals, who cost less to insure. Moreover, relying on the possibility in each year's budget process for appropriation of additional funds to HHS that could be used to supplement risk adjustment transfers would have required HHS to delay setting the parameters for any risk adjustment payment proration rates until well after the plans were in effect for the applicable benefit year.[9] Without the adoption of a budget-neutral framework, HHS would have needed to assess a charge or otherwise collect additional funds, or prorate risk adjustment payments to balance the calculated risk adjustment transfer amounts. The resulting uncertainty would have conflicted with one of the overall goals of the risk adjustment program—to reduce incentives for issuers to avoid enrolling individuals with higher than average actuarial risk.

In light of the budget-neutral framework discussed above, HHS also chose not to use a different parameter for the payment transfer formula under the HHS-operated methodology, such as each plan's own premium, that would not have automatically achieved equality between risk adjustment payments and charges in each benefit year. As set forth in prior discussions,[10] use of the plan's own premium or some similar parameter would have required the application of a balancing adjustment in light of the program's budget neutrality—either reducing payments to issuers owed a payment, increasing charges on issuers due a charge, or splitting the difference in some fashion between issuers owed payments and issuers assessed charges. Such adjustments would have impaired the risk adjustment program's goals, discussed above, of encouraging issuers to rate for the average risk in the applicable risk pool and avoiding the creation of incentives for issuers to operate less efficiently, set higher prices, develop benefit designs or create marketing strategies to avoid higher-risk enrollees. Use of an after-the-fact balancing adjustment is also less predictable for issuers than a methodology that can be calculated in advance of a benefit year. Such predictability is important to serving the risk adjustment program's goals of premium stabilization and reducing issuer incentives to avoid enrolling higher-risk populations. Additionally, using a plan's own premium to scale transfers may provide additional incentive for plans with high-risk enrollees to increase premiums in order to receive additional risk adjustment payments. As noted by commenters to the 2014 Payment Notice proposed rule, transfers may be more volatile from year to year and sensitive to anomalous premiums if they were scaled to a plan's own premium instead of the statewide average premium. Scaling the risk adjustment transfers by the statewide average premium promotes premium stabilization by encouraging pricing to average risk in a risk pool, and results in a calculation of equal payments and charges.

In the risk adjustment methodologies applicable to the 2018 and 2019 benefit years, HHS has adjusted statewide average premium by reducing it by 14 percent to account for an estimated proportion of administrative costs that do not vary with claims. HHS is not applying this adjustment retroactively to the 2017 benefit year, but is instead

[6] For examples of PPACA provisions appropriating funds, *see* PPACA secs. 1101(g)(1), 1311(a)(1), 1322(g), 1323(c). For examples of PPACA provisions authorizing the appropriation of funds, *see* PPACA secs. 1002, 2705(f), 2706(e), 3013(c), 3015, 3504(b), 3505(a)(5), 3505(b), 3506, 3509(a)(1), 3509(b), 3509(e), 3509(f), 3509(g), 3511, 4003(a), 4003(b), 4004(j), 4101(b), 4102(a), 4102(c), 4102(d)(1)(C), 4102(d)(4), 4201(f), 4202(a)(5), 4204(b), 4206, 4302(a), 4304, 4305(a), 4305(c), 5101(h), 5102(e), 5103(a)(3), 5203, 5204, 5206(b), 5207, 5208(b), 5210, 5301, 5302, 5303, 5304, 5305(a), 5306(a), 5307(a), 5309(b).

[7] *See* 42 U.S.C. 18063.

[8] *Compare* 42 U.S.C. 18063 (failing to specify source of funding other than risk adjustment charges), *with* 42 U.S.C. 1395w–116(c)(3) (authorizing appropriations for Medicare Part D risk adjusted payments); 42 U.S.C. 1395w–115(a) (establishing ''budget authority in advance of appropriations Acts'' for risk adjusted payments under Medicare Part D).

[9] It has been suggested that the annual lump sum appropriation to CMS for program management was potentially available for risk adjustment payments. The lump sum appropriation for each year was not enacted until after the applicable rule announcing the methodology to calculate payments for the applicable benefit year. Moreover, HHS does not believe that the lump sum is legally available for risk adjustment payments. As the underlying budget requests reflect, the lump sum is for program management expenses, such as administrative costs for various CMS programs such as Medicaid, Medicare, the Children's Health Insurance Program, and the PPACA's insurance market reforms—not for the program payments themselves. CMS would have elected to use the lump sum for these important program management expenses even if CMS had discretion to use all or part of the lump sum for risk adjustment payments.

[10] See, *e.g.,* September 12, 2011, *Risk Adjustment Implementation Issues* White Paper, available at: *https://www.cms.gov/CCIIO/Resources/Files/Downloads/riskadjustment_whitepaper_web.pdf.*

maintaining the definition of statewide average premium previously established for the 2017 benefit year. As discussed above, HHS has repeatedly stressed the importance of providing a risk adjustment methodology in advance of the benefit year to which it applies to provide issuers the opportunity to price their plans accordingly.[11] To protect the settled expectations of issuers that have structured their pricing and offering decisions in reliance on the previously promulgated 2017 benefit year methodology, this rule maintains for the 2017 benefit year the description of statewide average premium set forth in the 2017 Payment Notice.

Therefore, for the 2017 benefit year, we are issuing this final rule that adopts the HHS-operated risk adjustment methodology previously established for the 2017 benefit year in the **Federal Register** publications cited above, including use of statewide average premium. As set forth in reports previously issued, HHS has completed final risk adjustment calculations for the 2017 benefit year, but has not yet collected or paid risk adjustment amounts to issuers of risk adjustment covered plans. The provisions of this final rule adopt the methodology that applies to collection and payment of risk adjustment amounts for the 2017 benefit year. Because this final rule does not alter any previously announced risk adjustment methodology, the amounts previously calculated by HHS have not changed by virtue of this rule's issuance.

HHS will begin collection of the 2017 benefit year risk adjustment charge amounts announced in the *Summary Report on Permanent Risk Adjustment Transfers for the 2017 Benefit Year*[12] through netting pursuant to 45 CFR 156.1215(b) and subsequently issuing invoices if an amount remains outstanding in the September 2018 monthly payment cycle. HHS will begin making the 2017 benefit year risk adjustment payments outlined in the *Summary Report on Permanent Risk Adjustment Transfers for the 2017 Benefit Year* as part of the October 2018 monthly payment cycle, continuing on a monthly basis as collections are received. Under this timeline, issuers would receive invoices on or about September 11–13, 2018 and payments would begin to be made around October 22, 2018.

III. Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program Under the Patient Protection and Affordable Care Act

This rule adopts the final rules set out in the publication in the March 23, 2012 **Federal Register** (77 FR 17220 through 17252) and publication in the March 8, 2016 **Federal Register** (81 FR 12204 through 12352). For the 2017 benefit year, in states where HHS is operating the risk adjustment program under section 1343 of the PPACA, HHS will use the criteria and methods as specified in the publication in the March 23, 2012 **Federal Register** (77 FR 17220 through 17252) and publication in the March 8, 2016 **Federal Register** (81 FR 12204 through 12352).

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), a notice of proposed rulemaking and an opportunity for public comment are generally required before issuing a regulation. We also ordinarily provide a 30-day delay in the effective date of the provisions of a rule in accordance with the APA (5 U.S.C. 553(d)), unless the rule is a major rule and subject to the 60-day delayed effective date required by the Congressional Review Act (5 U.S.C. 801(a)(3)). However, these procedures can be waived if the agency, for good cause, finds that notice and public comment and delay in effective date are impracticable, unnecessary, or contrary to public interest and incorporates a statement of the finding and its reasons in the rule issued. See 5 U.S.C. 553(d)(3); 5 U.S.C. 808(2).

HHS has determined that issuing this rule in proposed form, such that it would not become effective until after public comments are submitted, considered, and responded to in a final rule, would be impracticable, unnecessary, and contrary to the public interest. As discussed above, immediate administrative action is imperative to maintain the stability and predictability in the individual and small group insurance markets. It is also consistent with settled expectations in that this rule adopts the risk adjustment methodology previously established for the 2017 benefit year.[13] Under normal operations, risk adjustment invoices for the 2017 benefit year would be issued beginning in August 2018 and risk adjustment payments for the 2017 benefit year would be made beginning in the September 2018 monthly payment cycle. Accordingly, it is now less than 2 months until risk adjustment payments for the 2017 benefit year, expected to total $5.2 billion, are due to begin. Immediate action is also necessary to maintain issuer confidence in the HHS-operated risk adjustment program. Issuers have already accounted for expected risk adjustment transfers in their rates for the 2017 benefit year and uncompensated payments for the 2017 benefit year could lead to higher premiums in future benefit years as issuers incorporate a risk premium into their rates. Issuers file rates for the 2019 benefit year in the summer of 2018, and if a projected $5.2 billion in risk adjustment payments is unavailable or there is uncertainty as to whether payments for the 2018 benefit year will be made, there is a serious risk issuers will substantially increase 2019 premiums to account for the uncompensated risk associated with high-risk enrollees. Consumers enrolled in certain plans could see a significant premium increase, which could make coverage in those plans particularly unaffordable for unsubsidized enrollees. Furthermore, issuers are currently making decisions on whether to offer qualified health plans (QHPs) through the Exchanges for the 2019 benefit year, and, for the Federally-facilitated Exchange (FFE), this decision must be made before the August 2018 deadline to finalize QHP agreements. In states with limited Exchange options, a QHP issuer exit would restrict consumer choice, and put additional upward pressure on Exchange premiums, thereby increasing the cost of coverage for unsubsidized individuals and federal spending for premium tax credits. The combination of these effects could lead to significant, involuntary coverage losses in certain state market risk pools.

Additionally, HHS's failure to make timely risk adjustment payments could impact the solvency of plans providing coverage to sicker (and costlier) than average enrollees that require the influx of risk adjustment payments to continue operations. When state regulators determine issuer solvency, any uncertainty surrounding risk adjustment transfers jeopardizes regulators' ability to make decisions that protect consumers and support the long-term health of insurance markets. Therefore, HHS has determined that delaying the effective date of the use of statewide average premium in the payment transfer calculation under the HHS-operated risk adjustment methodology for the 2017 benefit year to allow for

[11] See 76 FR 41930, 41932–33. Also see 81 FR 94058, 94702.

[12] *https://downloads.cms.gov/cciio/Summary-Report-Risk-Adjustment-2017.pdf.*

[13] The risk adjustment methodology for those benefit years was published at the February 27, 2015 **Federal Register** (80 FR 10749) and the March 8, 2016 **Federal Register** (81 FR 12203).

proposed rulemaking and comment is impracticable and contrary to the public interest because consumers would be negatively impacted by premium changes should risk adjustment payments be interrupted or confidence in the program undermined.

There is also good cause to proceed without notice and comment for the additional reason that such procedures are unnecessary here. HHS has received and considered comments in issuing the 2014 through 2017 Payment Notices. In each of these rulemaking processes, parties had the opportunity to comment on HHS's use of statewide average premium in the payment transfer formula under the HHS-operated risk adjustment methodology. Because this final rule adopts the same HHS-operated risk adjustment methodology issued in the 2017 Payment Notice final rule, the comments received in those rulemakings are sufficiently current to indicate a lack of necessity to engage in further notice and comment. In the 2014 Payment Notice final rule, we received a number of comments in support of our proposal to use the statewide average premium as the basis for risk adjustment transfers. In subsequent benefit year rulemakings, some commenters expressed a desire for HHS to use a plan's own premium. HHS addressed those comments by reiterating that we had considered the use of a plan's own premium instead of the statewide average premium and chose to use statewide average premium. As this approach supports the overall goal of the risk adjustment program to encourage issuers to rate for the average risk in the applicable state market risk pool, and avoids the creation of incentives for issuers to operate less efficiently, set higher prices, develop benefit designs or create marketing strategies to avoid high risk enrollees.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

VI. Regulatory Impact Analysis

A. Statement of Need

This final rule adopts the HHS-operated risk adjustment methodology for the 2017 benefit year set forth in the 2017 Payment Notice final rule to ensure that the risk adjustment program works as intended to protect consumers from the effects of adverse selection and premium increases due to issuer uncertainty. The Premium Stabilization Rule and previous Payment Notices noted above provided detail on the implementation of the risk adjustment program, including the specific parameters applicable for the 2017 benefit year.

B. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs. 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

OMB has determined that this final rule is ''economically significant'' within the meaning of section 3(f)(1) of Executive Order 12866, because it is likely to have an annual effect of $100 million in any 1 year. In addition, for the reasons noted above, OMB has determined that this is a major rule under the Congressional Review Act.

This final rule offers a further explanation on budget neutrality and the use of statewide average premium in the risk adjustment payment transfer formula when HHS is operating the permanent risk adjustment program established in section 1343 of the PPACA on behalf of a state for the 2017 benefit year. We note that we previously estimated transfers associated with the risk adjustment program in the Premium Stabilization Rule and the 2017 Payment Notice, and that the provisions of this final rule do not change the risk adjustment transfers previously estimated under the HHS-operated risk adjustment methodology established in those final rules. The approximate risk adjustment transfers for the 2017 benefit year are $5.179 billion. As such, we also adopt the RIA in the 2017 Payment Notice proposed and final rules.

Dated: July 23, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 24, 2018.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 18–175; FCC 18–65]

Assessment and Collection of Regulatory Fees for Fiscal Year 2018

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Federal Communications Commission (Commission) makes decisions involving submarine cables, international bearer circuits, and the calculation of cable television subscribers.

DATES: This final action is effective August 29, 2018.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *FY 2018 Report and Order* (FY 2018 Report and Order), FCC 18–65, MD Docket No. 18–175 adopted on May 21, 2018 and released on May 22, 2018. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW, Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their website, *http://www.bcpi.com,* or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

I. Procedural Matters

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),[1] the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is located towards the end of this document.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

3. The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

II. Introduction

In this *Report and Order,* we address several regulatory fee issues raised in the *Further Notice of Proposed Rulemaking* that published after the Commission's *FY 2017 Report and Order.*[2] More specifically, in this *Report and Order,* we (1) adopt new tiers for calculating regulatory fees for submarine cable systems; (2) decline to adopt a new regulatory fee for international section 214 authorizations; and (3) retain the optional bulk rate calculation for determining the number of subscribers in multiple dwelling units used in the calculation of cable television regulatory fees.

III. Report and Order

A. Submarine Cable Regulatory Fees

1. In 2009, the Commission adopted a new methodology for calculating submarine cable regulatory fees, based on a proposal from the submarine cable industry.[3] The methodology adopted was a tiered per-cable system, with higher fees for larger systems and lower fees for smaller systems. The Commission concluded that the methodology was in the public interest and competitively neutral because it included both common carriers and non-common carriers; all entities with cable landing licensees would be required to pay this regulatory fee.[4] At that time, the Commission adopted a five-tier system for the submarine cable industry, but since that date the subsequent growth in the industry has moved all but two systems into the highest tier.[5] In the *2017 FNPRM,* we sought comment on revising the regulatory fee tiers for submarine cable systems.[6] One commenter, the Submarine Cable Coalition, generally agrees with our proposal to revise the existing tiers.[7]

2. We adjust the tiers proposed in the *2017 FNPRM* to reflect capacity growth since 2009 when the submarine cable tiers were first established. Specifically, the regulatory fee tiers for submarine cable systems we adopt below add higher thresholds to reflect capacity growth in the industry. Based on this increase in capacity, we believe the tiers better capture varying types of submarine cable operators.

- Systems with capacity equal to or greater than 4,000 Gbps will now pay 16 payment units.
- Systems with capacity equal to or greater than 1,000 Gbps but less than 4,000 Gbps will now pay 8 payment units.
- Systems with capacity equal to or greater than 250 Gbps but less than 1,000 Gbps will now pay 4 payment units.
- Systems with capacity equal to or greater than 50 Gbps but less than 250 Gbps, will pay 2 payment units.
- Systems with capacity less than 50 Gbps will pay 1 payment unit.

3. Under the revised regulatory fee tiers we adopt today, we estimate that approximately half of the submarine cable systems will be in the bottom or middle tiers, while the remaining systems will be in the new highest tier. The FCC will provide proposed rates for submarine cable systems for FY 2018 in future rulemaking.

4. Finally, while the Submarine Cable Coalition contends that non-common carrier submarine cable systems should pay lower fees than common carriers, we note that the Commission adopted a competitively neutral methodology that included both common carriers and non-common carriers in the *Submarine Cable Order,* based on a consensus proposal from a group of operators, including at least one member of the Coalition, GU Holdings, Inc., an indirect, wholly-owned subsidiary of Google, Inc.[8] The Coalition has not provided any evidence to support its claim that we should depart from this competitively neutral methodology and treat non-common carrier submarine cable systems differently from common carrier systems at this time.

B. International Bearer Circuits and Section 214 Authorizations

5. In the *2017 FNPRM,* the Commission sought comment on a proposal raised by the Submarine Cable Coalition, that in lieu of regulatory fees for international bearer circuits (IBCs), we should assess a regulatory fee, based on International Bureau FTEs, on every holder of an international section 214 authorization.[9] SIA supports replacing the satellite IBC fee with a fee on each international section 214 authorization and contends that such a fee for all entities with international section 214 authorizations would be appropriate because the holders of international section 214 authority are ''directly involved in international common carrier services and benefit from associated Commission regulation. . . .'' [10] The Submarine Cable Coalition contends that adopting a flat fee for all holders of international section 214 authorizations would be an efficient and equitable methodology for assessing regulatory fees.[11]

6. Other commenters oppose this approach. CTIA argues that assessing a fee based on international section 214 authorizations would change the basis for the IBC fees, which is ownership and use of international circuits, because many international 214 authorization holders only provide resold service and do not have international facilities.[12] AT&T agrees with CTIA and notes that this approach would impose a new IBC regulatory fee on hundreds of entities

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[2] *See generally Assessment and Collection of Regulatory Fees for Fiscal Year 2017* (Final Rule), 82 FR 44322 (Sept. 22, 2017), 32 FCC Rcd 7057 (2017) (*FY 2017 Report and Order*) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2017* (Further Notice of Proposed Rulemaking), 82 FR 50598 (Nov. 1, 2017), 32 FCC Rcd 7057 (2017) (*2017 FNPRM*).

[3] *Submarine Cable Order,* 74 FR 22104 (May 12, 2009), 24 FCC Rcd at 4212–4216, paras. 7–18.

[4] *Id.,* 24 FCC Rcd at 4212–13, paras. 8–9.

[5] *FY 2017 Report and Order,* 32 FCC Rcd at 7074, para. 46.

[6] *2017 FNPRM,* 32 FCC Rcd at 7074–75, para. 46.

[7] Coalition Reply Comments at 3–4, 7–8.

[8] *Submarine Cable Order,* 24 FCC Rcd at 4208, para. 1 & note 3.

[9] *2017 FNPRM,* 32 FCC Rcd at 7075, para. 48. This proposal was from the Submarine Cable Coalition.

[10] SIA Comments at 6.

[11] Coalition Reply Comments at 3.

[12] CTIA Comments at 2–3.

that do not currently pay IBC fees.[13] These commenters also explain that because only common carriers hold international section 214 authorizations, this approach would essentially reverse our decision in the *FY 2017 Report and Order* to include non-common carrier terrestrial IBCs in the IBC regulatory fee methodology.[14] For example, AT&T states that replacing all or part of the IBC fee with a flat fee on international section 214 authorizations would ''effectively reverse the Commission's decisions to provide a competitively neutral IBC fee structure.'' [15] CenturyLink argues that entities holding an international 214 authorization but that do not have active international circuits do not receive the benefits of Commission international activities, and therefore should not be subject to regulatory fees.[16] CTIA also states that international section 214 applicants already pay a $1,155 filing fee with each application and there is no evidence of other International Bureau costs associated with international section 214 authorizations.[17] Commenters also note that such an approach would present administrative difficulties since many carriers have multiple international 214 authorizations and can surrender them if the Commission adopted a per-international section 214 authorization regulatory fee.[18]

7. We decline to impose regulatory fees on international section 214 authorizations in lieu of our existing IBC regulatory fees for terrestrial and satellite IBCs and submarine cable systems. The record does not demonstrate that this approach is advantageous over the existing scheme established in section 9(g) of the Act to charge the IBC regulatory fee based on active international bearer circuits.[19] The Submarine Cable Coalition's proposal is also problematic because it would exclude non-common carriers from paying the fee. However, the Commission concluded in the *FY 2017 Report and Order* that regulatory fees should be paid for non-common carrier satellite and terrestrial circuits, as well as submarine cable systems.[20] Further, the Submarine Cable Coalition has not shown how a CMRS provider or an ITSP with an international section 214 authorization is subject to regulation or oversight by the International Bureau that would justify an additional annual regulatory fee based on International Bureau FTEs. We recognize that oversight or regulation by the International Bureau is not limited to the processing of international section 214 authorizations.[21] We are, however, unconvinced at this time that such costs justify requiring hundreds of carriers regulated by other bureaus to pay additional regulatory fees [22] based on International Bureau FTEs. For these reasons, we decline to adopt a new regulatory fee category for international section 214 authorizations to replace IBC regulatory fees at this time.

C. Cable Television Services—Calculation of Number of Subscribers

8. In the *FY 2008 FNPRM,* the Commission sought comment on the optional bulk rate calculation for determining the number of subscribers in a multiple dwelling unit or MDU.[23] The methodology for calculating the number of cable subscribers has been the following:

> Cable television system operators should compute their number of basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. *Note:* Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December [year], rather than on a count as of December 31, [year].[24]

9. In the *2017 FNPRM,* we sought comment on whether we should keep the bulk rate calculation or if, due to the passage of time, we should modify the methodology to more accurately calculate the number of subscribers in a MDU.[25] Commenters addressing this issue unanimously support retaining the current optional bulk rate calculation.[26] In particular, commenters state that our methodology continues to be ''a reasonable and feasible approach to determining the number of MDU subscribers for regulatory fee purposes, and should be retained.'' [27] And, there is no evidence in the record to support revising or eliminating this optional bulk rate calculation. For these reasons, we retain the bulk rate calculation.

IV. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[28] an Initial Regulatory Flexibility Analysis (IRFA) was included in the *2017 FNPRM.*[29] The Commission sought written public comment on these proposals including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.[30]

A. Need for, and Objectives of, the Report and Order

2. This Report and Order adopts a revision to the existing tiers for submarine cable regulatory fees.

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

3. None.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[31] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [32] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[33] A ''small business

[13] AT&T Reply Comments at 6; CTIA Comments at 2–3.

[14] CTIA Comments at 4–5; CenturyLink Comments at 5; AT&T Reply Comments at 5–6.

[15] AT&T Jan. 17, 2018 ex parte at 1.

[16] CenturyLink Comments at 5. *See also* AT&T Reply Comments at 6.

[17] CTIA Comments at 3–4.

[18] CTIA Comments at 5; CenturyLink Comments at 5; AT&T Reply Comments at 6. The Submarine Cable Coalition contends that their proposal would reduce the burden on the International Bureau because of the costs associated with ''overseeing redundant international Section 214 licensees.'' Submarine Cable Coalition Reply Comments at 9. However, there is no evidence in the record that there are such costs to the International Bureau.

[19] 47 U.S.C. 159(g).

[20] *FY 2017 Report and Order,* 32 FCC Rcd at 7071–2, paras. 34–35.

[21] For example, International Bureau FTEs could be involved in an international section 214 rulemaking proceeding, a proceeding related to revocation of a carrier's international section 214 authorization, or other matters related to section 214 of the Act.

[22] The holders of such authorization pay regulatory fees based on the service provided (*e.g.,* CMRS or ITSP).

[23] *FY 2008 FNPRM,* 73 FR 30563 (May 28, 2018), 24 FCC Rcd at 6407–6408, paras. 51–52.

[24] This is essentially the same methodology we sought comment on in the *FY 2008 FNPRM.*

[25] *2017 FNPRM,* 32 FCC Rcd at 7076, paras. 50–51.

[26] ITTA Comments at 1–2; NCTA and ACA Comments at 1–3.

[27] NCTA and ACA Comments at 2.

[28] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996).

[29] *Assessment and Collection of Regulatory Fees for Fiscal Year 2017,* 32 FCC Rcd 7057 (2017).

[30] 5 U.S.C. 604.

[31] 5 U.S.C. 603(b)(3).

[32] 5 U.S.C. 601(6).

[33] 5 U.S.C. 601(3) (incorporating the definition of ''small-business concern'' from the Small Business

concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[34] Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.[35]

5. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' [36] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[37] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[38] Thus, under this size standard, most firms in this industry can be considered small.

6. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[39] According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[40] The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

7. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[41] According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.[42] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[43] Of this total, an estimated 1,006 have 1,500 or fewer employees.[44]

8. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.[45] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[46] Based on this data, the Commission concludes that most Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[47] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.[48] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[49] Also, 72 carriers have reported that they are Other Local Service Providers.[50] Of this total, 70 have 1,500 or fewer employees.[51] Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

9. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[52] U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[53] According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[54] Of this total, an estimated 317 have 1,500 or fewer employees.[55] Consequently, the Commission estimates that most interexchange service providers are small entities that may be affected by the rules adopted.

10. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card

Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[34] 15 U.S.C. 632.

[35] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' *https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.*

[36] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[37] *See* 13 CFR 120.201, NAICS code 517110.

[38] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[39] 13 CFR 121.201, NAICS code 517110.

[40] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[41] 13 CFR 121.201, NAICS code 517110.

[42] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[43] *See Trends in Telephone Service,* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[44] *Id.*

[45] 13 CFR 121.201, NAICS code 517110.

[46] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[47] *See Trends in Telephone Service,* at Table 5.3.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] 13 CFR 121.201, NAICS code 517110.

[53] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[54] *See Trends in Telephone Service,* at Table 5.3.

[55] *Id.*

providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.[56] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[57] U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[58] Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.[59] All 193 carriers have 1,500 or fewer employees.[60] Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules adopted.

11. *Local Resellers.* Neither the Commission nor the SBA has developed a small business size standard specifically for Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[61] Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[62] Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[63] Of this total, an estimated 211 have 1,500 or fewer employees.[64] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the rules adopted.

12. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers.[65] Under that size standard, such a business is small if it has 1,500 or fewer employees.[66] Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[67] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[68] Of this total, an estimated 857 have 1,500 or fewer employees.[69] Consequently, the Commission estimates that the majority of toll resellers are small entities.

13.*Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[70] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[71] Thus, under this category and the associated small business size standard, most Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[72] Of these, an estimated 279 have 1,500 or fewer employees.[73] Consequently, the Commission estimates that most Other Toll Carriers are small entities.

14. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[74] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.[75] Of this total, an estimated 261 have 1,500 or fewer employees.[76] Thus, using available data, we estimate that the majority of wireless firms can be considered small.

15. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' [77] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: those

[56] *http://www.census.gov/cgi-bin/ssd/naics/naicsrch.*

[57] 13 CFR 121.201, NAICS code 517911.

[58] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[59] *See Trends in Telephone Service,* at Table 5.3.

[60] *Id.*

[61] 13 CFR 121.201, NAICS code 517911.

[62] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[63] *See Trends in Telephone Service,* at Table 5.3.

[64] *Id.*

[65] 13 CFR 121.201, NAICS code 517911.

[66] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[67] *Id.*

[68] *Trends in Telephone Service* at Table 5.3.

[69] *Id.*

[70] 13 CFR 121.201, NAICS code 517110.

[71] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[72] *Trends in Telephone Service* at Table 5.3.

[73] *Id.*

[74] NAICS code 517210. *See http://www.census.gov/cgi-bin/ssd/naics/naicsrch.*

[75] *Trends in Telephone Service* at Table 5.3.

[76] *Id.*

[77] U.S. Census Bureau, 2012 NAICS code Economic Census Definitions, *http://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

having $38.5 million or less in annual receipts.[78] The 2012 Economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than $25 million per year. Based on that Census data we conclude that most firms that operate television stations are small. The Commission has estimated the number of licensed commercial television stations to be 1,383.[79] In addition, according to Commission staff review of the BIA Advisory Services, LLC's Media Access Pro Television Database, on March 28, 2012, about 950 of an estimated 1,300 commercial television stations (or approximately 73 percent) had revenues of $14 million or less.[80] We therefore estimate that the majority of commercial television broadcasters are small entities.

16. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [81] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

17. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 394.[82] These stations are non-profit, and therefore considered to be small entities.[83] There are also 2,382 low power television stations, including Class A stations.[84] Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

18. *Radio Broadcasting.*

This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' [85] The SBA has established a small business size standard for this category, which is: such firms having $38.5 million or less in annual receipts.[86] Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year.[87] According to Commission staff review of BIA Advisory Services, LLC's Media Access Pro Radio Database, on March 28, 2012, about 10,759 (97 percent) of 11,102 commercial radio stations had revenues of $38.5 million or less. Therefore, most such entities are small entities.

19. In assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[88] In addition, to be determined to be a ''small business,'' the entity may not be dominant in its field of operation.[89] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

20. *Cable Television and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[90] The SBA has established a size standard for this industry of $38.5 million or less. Census data for 2012 shows that there were 367 firms that operated that year. Of this total, 319 operated with annual receipts of less than $25 million.[91] Thus under this size standard, most firms offering cable and other program distribution services can be considered small and may be affected by rules adopted.

21. *Cable Companies and Systems.* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide.[92] Industry data indicate that there are currently 4,413 active cable systems in the United States.[93] Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.[94] In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[95] Current Commission records show 4,413 cable systems nationwide.[96] Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[97] Thus, under this standard as well, we estimate that most cable systems are small entities.

22. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [98] There are approximately 53 million cable video subscribers in the United

[78] 13 CFR 121.201, NAICS code 515120.

[79] *See FCC News Release,* ''Broadcast Station Totals as of March 31, 2017,'' April 11, 2017; *https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.*

[80] We recognize that BIA's estimate differs slightly from the FCC total.

[81] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

[82] *See FCC News Release,* ''Broadcast Station Totals as of March 31, 2017,'' April 11, 2017; *https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.*

[83] *See generally* 5 U.S.C. 601(4), (6).

[84] *See FCC News Release,* ''Broadcast Station Totals as of March 31, 2017,'' April 11, 2017; *https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.*

[85] *https://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

[86] 13 CFR 121.201, NAICS code 515112.

[87] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.*

[88] ''Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.'' 13 CFR 121.103(a)(1) (an SBA regulation).

[89] 13 CFR 121.102(b) (an SBA regulation).

[90] *https://www.census.gov.cgi-bin/sssd/naics/naicsrch.*

[91] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US-51SSSZ5&prodType=Table.*

[92] 47 CFR 76.901(e).

[93] *See Eighteenth Competition Report,* 32 FCC Rcd at 584, para. 39 (citing the Commission's Cable Operations and Licensing Systems (COALS) database).

[94] *See https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs* (last visited July 18, 2017).

[95] 47 CFR 76.901(c).

[96] *See* footnote 2, *supra.*

[97] August 5, 2015 report from the Media Bureau based on its research in COALS. *See www.fcc.gov/coals.*

[98] 47 CFR 76.901 (f) and notes ff. 1, 2, and 3.

States today.[99] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[100] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[101] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[102] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

23. *Direct Broadcast Satellite (DBS) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[103] The SBA determines that a wireline business is small if it has fewer than 1500 employees.[104] Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[105] Based on that data, we conclude that most wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, AT&T and DISH Network. AT&T and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that DBS service is provided only by large firms.

24. *All Other Telecommunications.* ''All Other Telecommunications'' is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[106] The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less.[107] For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[108] Thus, most ''All Other Telecommunications'' firms potentially affected by the rules adopted can be considered small.

25. *RespOrgs. RespOrgs, i.e.,* Responsible Organizations, are entities chosen by toll-free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber.[109] Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, *i.e.,* Carrier RespOrgs and Non-Carrier RespOrgs.

26. *Carrier RespOrgs.* Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications Carriers[110] and Wireless Telecommunications Carriers (except satellite).[111]

27. The U.S. Census Bureau defines Wired Telecommunications Carriers as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[112] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[113] Census data for 2012 show that there were 3,117 Wired Telecommunications Carrier firms that operated for that entire year. Of that number, 3,083 operated with less than 1,000 employees.[114] Based on that data, we conclude that most Carrier RespOrgs that operated with wireline-based technology are small.

28. The U.S. Census Bureau defines Wireless Telecommunications Carriers (except satellite) as establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the

[99] *See* NCTA Industry Data, Cable's Customer Base, available at *https://www.ncta.com/industry-data* (last visited July 6, 2017).

[100] 47 CFR 76.901(f) and notes ff. 1, 2, and 3.

[101] *See https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs* (last visited July 18, 2018).

[102] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.901(f).

[103] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch.*

[104] NAICS code 517110; 13 CFR 121.201.

[105] *http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.*

[106] *http://www.census.gov/cgi-bin/ssssd/naics/naicsrch.*

[107] 13 CFR 121.201; NAICS code 517919.

[108] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[109] *See* 47 CFR 52.101(b).

[110] 13 CFR 121.201, NAICS code 517110.

[111] 13 CFR 121.201, NAICS code 517210.

[112] *http://www.census.gov/cgi-bin/sssd/naics.naicsrch.*

[113] 13 CFR 120,201, NAICS code 517110.

[114] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.[115] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[116] Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees.[117] Based on that data, we conclude that most Carrier RespOrgs that operated with wireless-based technology are small.

29. *Non-Carrier RespOrgs.* Neither the Commission, the Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are ''Other Services Related To Advertising'' [118] and ''Other Management Consulting Services.'' [119]

30. The U.S. Census defines Other Services Related to Advertising as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services.[120] The SBA has established a size standard for this industry as annual receipts of $15 million dollars or less.[121] Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,249 operated with annual receipts of less than $10 million.[122] Based on that data we conclude that most Non-Carrier RespOrgs who provide TFN-related advertising services are small.

31. The U.S. Census defines Other Management Consulting Services as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.[123] The SBA has established a size standard for this industry of $15 million dollars or less.[124] Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than $10 million in annual receipts.[125] Based on this data, we conclude that most non-carrier RespOrgs who provide TFN-related management consulting services are small.[126]

32. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier RespOrgs provide, Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016, there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.[127]

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

33. This *Report and Order* does not adopt any new reporting, recordkeeping, or other compliance requirements.

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

34. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[128]

35. This *Report and Order* adopts new tiers in assessing regulatory fees for submarine cable systems. There should not be a significant impact on small entities because the fee is based on the number of systems and would therefore reflect the size of the entity. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. For example, the Commission has increased the de minimis threshold to $1,000, which will impact many small entities that pay regulatory fees. This increase in the de minimis threshold to $1,000 will relieve regulatees both financially and administratively. Regulatees may also seek waivers or other relief on the basis of financial hardship. *See* 47 CFR 1.1166.

F. Federal Rules That May Duplicate, Overlap, or Conflict

None.

V. Ordering Clause

36. Accordingly, *it is ordered* that, pursuant to Section 9(a), (b), (e), (f), and (g) of the Communications Act of 1934, as amended, 47 U.S.C. 159(a), (b), (e), (f), and (g), this *Report and Order is hereby adopted.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–15651 Filed 7–27–18; 8:45 am]

BILLING CODE 6712–01–P

[115] *http://www.census.gov/cgi-bin/sssd/naics.naicsrch.*

[116] 13 CFR 120.201, NAICS code 517120.

[117] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[118] 13 CFR 120.201, NAICS code 541890.

[119] 13 CFR 120.201, NAICS code 541618.

[120] *http://www.census.gov/cgi-bin/sssd/naics.naicsrch.*

[121] 13 CFR 120.201, NAICS code 541890.

[122] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[123] *http://www.census.gov/cgi-bin/sssd/naics.naicsrch.*

[124] 13 CFR 120.201, NAICS code 514618.

[125] *http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.*

[126] The four NAICS code-based categories selected above to provide definitions for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all RespOrgs. Therefore, all RespOrgs, including those not identified specifically or individually, must comply with the rules adopted in the Regulatory Fees Report and Order associated with this Final Regulatory Flexibility Analysis.

[127] Email from Jennifer Blanchard, Somos, July 1, 2016.

[128] 5 U.S.C. 603(c)(1)–(c)(4).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[GN Docket No. 13–5; RM–11358; FCC 16–90]

Technology Transitions; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's discontinuance rules. This document is consistent with the

Technology Transitions et al. Declaratory Ruling, Second Report and Order, and Order on Reconsideration, FCC 16–90, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The amendments to 47 CFR 63.19(a), 63.60(h), 63.71(a)(6)–(7), (f), (h), and 63.602, published at 81 FR 62632, September 12, 2016, are effective on July 30, 2018.

FOR FURTHER INFORMATION CONTACT: Michele Levy Berlove, Attorney Advisor, Wireline Competition Bureau, at (202) 418–1477, or by email at *Michele.Berlove@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements, contact Nicole Ongele at (202) 418–2991 or *nicole.ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on July 2, 2018, OMB approved, for a period of three years, the information collection requirements relating to certain discontinuance rules contained in the Commission's *Technology Transitions et al. Declaratory Ruling, Second Report and Order, and Order on Reconsideration,* FCC 16–90, published at 81 FR 62632, September 12, 2016, as specified above.

The OMB Control Number is 3060–0149. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, Room 1–A620, 445 12th Street SW, Washington, DC 20554. Please include the OMB Control Number, 3060–0149, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on July 2, 2018, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR part 63. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0149.

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

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

OMB Control Number: 3060–0149.

OMB Approval Date: July 2, 2018.

OMB Expiration Date: July 31, 2021.

Title: Part 63, Application and Supplemental Information Requirement, Technology Transitions, GN Docket No. 13–5, *et al.*

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 63 respondents; 83 responses.

Estimated Time per Response: 5.3 hours.

Frequency of Response: One-time reporting requirement and third-party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 214 and 402 of the Communications Act of 1934, as amended.

Total Annual Burden: 1,923 hours.

Total Annual Cost: $27,900.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking Office of Management and Budget (OMB) approval for a revision of a currently approved collection. The Commission will submit this information collection after this 60-day comment period. Section 214 of the Communications Act of 1934, as amended, requires that a carrier must first obtain FCC authorization either to (1) construct, operate, or engage in transmission over a line of communications; or (2) discontinue, reduce or impair service over a line of communications. Part 63 of Title 47 of the Code of Federal Regulations (CFR) implements Section 214. Part 63 also implements provisions of the Cable Communications Policy Act of 1984 pertaining to video which was approved under this OMB Control Number 3060–0149. In 2009, the Commission modified Part 63 to extend to providers of interconnected Voice of internet Protocol (VoIP) service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under Section 214 of the Communications Act of 1934, as amended. In 2014, the Commission adopted improved administrative filing procedures for domestic transfers of control, domestic discontinuances and notices of network changes, and among other adjustments, modified Part 63 to require electronic filing for applications for authorization to discontinue, reduce, or impair service under section 214(a) of the Act. In July 2016, the Commission concluded that applicants seeking to discontinue a legacy time division multiplexing (TDM)-based voice service as part of a transition to a new technology, whether internet Protocol (IP), wireless, or another type (technology transition discontinuance application) must demonstrate that an adequate replacement for the legacy service exists in order to be eligible for streamlined treatment and revised part 63 accordingly. For any other domestic service for which a discontinuance application is filed, the existing framework governs automatic grant procedures. Unlike traditional applicants, technology transition discontinuance applicants seeking streamlined treatment will be required to submit with their application either a certification or a showing as to whether an ''adequate replacement'' exists in the service area. Voice technology transition discontinuance applicants that decline to pursue this path are not eligible for streamlined treatment and will have their applications evaluated on a non-streamlined basis under the traditional five factor test. The Commission concluded that an applicant for a technology transition discontinuance may demonstrate that a service is an adequate replacement for a legacy voice service by certifying or showing that one or more replacement service(s) offers all of the following: (i) Substantially similar levels of network infrastructure and service quality as the applicant service; (ii) compliance with existing federal and/or industry standards required to ensure that critical applications such as 911, network security, and applications

for individuals with disabilities remain available; and (iii) interoperability and compatibility with an enumerated list of applications and functionalities determined to be key to consumers and competitors. One replacement service must satisfy all the criteria to retain eligibility for automatic grant. The Commission also determined that information about the price of the legacy service and the proposed replacement service should be provided as part of the application. To reduce burdens on carriers, the Commission (1) adopted a more streamlined approach for legacy voice discontinuances involving services that are substantially similar to those for which a Section 214 discontinuance meeting the adequate replacement criteria has previously been approved, and (2) now allows Section 214 discontinuance applications to be eligible for automatic grant if the applicant seeks to discontinue a legacy voice service operating at speeds lower than 1.544 Mbps that either has zero customers in the relevant service area and no requests for service in the last 30 days, or if the applicant plans to grandfather existing customers of the service while ceasing to accept new customers. The Commission estimates that there will be five respondents submitting 25 applications/responses related to these revisions. The Commission also estimates that these revisions will result in a total of 1,575 annual burden hours and a total annual cost of $27,900. The Commission estimates that the total annual burden and annual cost of the entire collection, as revised, is 1,923 and $27,900, respectively.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–16198 Filed 7–27–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapter I

[Docket No. FWS–HQ–ES–2015–0165; FXES11140900000–178; FF09E33000]

Endangered and Threatened Wildlife and Plants; Endangered Species Act Compensatory Mitigation Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Policy; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce we are withdrawing the Endangered Species Act (ESA) Compensatory Mitigation Policy, published December 27, 2016 (ESA–CMP). In our document of November 6, 2017 we requested additional public comments regarding the policy's overall mitigation planning goal of net conservation gain. We are now withdrawing this policy. The Service does not have authority to require ''net conservation gain'' under the ESA, and the policy is inconsistent with current Executive branch policy. Except as otherwise specified, all policies or guidance documents that were superseded by ESA–CMP are reinstated.

DATES: Withdrawal effective on July 30, 2018.

ADDRESSES: Comments and materials received, as well as supporting documentation, are available on the internet at *http://www.regulations.gov* at Docket Number FWS–HQ–ES–2015–0165.

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, U.S. Fish and Wildlife Service, Division of Environmental Review, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703–358–2442.

SUPPLEMENTARY INFORMATION: The ESA–CMP (81 FR 95316, December 27, 2016) was developed to ensure consistency with existing directives in effect at the time of issuance, including former President Obama's Memorandum on Mitigating Impacts on Natural Resources From Development and Encouraging Related Private Investment (November 3, 2015). Under the memorandum, all Federal mitigation policies were directed to clearly set a net-benefit goal or, at minimum, a no-net-loss goal for natural resources, wherever doing so is allowed by existing statutory authority and is consistent with agency mission and established natural resource objectives. The Presidential Memorandum was subsequently rescinded by Executive Order 13783, ''Promoting Energy Independence and Economic Growth'' (March 28, 2017).

The ESA–CMP also described its consistency with the Secretary of the Interior's Order 3330 on Improving Mitigation Policies and Practices of the Department of the Interior (October 31, 2013), which established a Department-wide mitigation strategy to ensure consistency and efficiency in the review and permitting of infrastructure-development projects and in conserving natural and cultural resources. The Secretary's Order was subsequently revoked by Secretary of the Interior's Order 3349 on American Energy Independence (March 29, 2017). It directed Department of the Interior bureaus to reexamine mitigation policies and practices to better balance conservation strategies and policies with job creation for American families.

In light of the revocation of the 2015 Presidential Memorandum and Secretary's Order 3330, on November 6, 2017, the Service requested comment on the ESA–CMP, along with the Service-Wide Mitigation Policy (81 FR 83440, November 21, 2016), specifically ''regarding whether to retain or remove net conservation gain as a mitigation planning goal within our mitigation policies.'' Mitigation Policies of the U.S. Fish and Wildlife Service; Request for Comment (82 FR 51382, 51383, November 6, 2017). The comment period for this request ended on January 5, 2018.

Under Supreme Court precedent, the Takings Clause of the Fifth Amendment of the United States Constitution limits the ability of government to require monetary exactions as a condition of permitting private activities, particularly private activities on private property. In *Koontz* v. *St. Johns River Water Management District,* 570 U.S. 595 (2013), the Supreme Court held that a proposal to fund offsite mitigation proposed by the State of Florida as a condition of granting a land-use permit must satisfy the test established in *Nollan* v. *California Coastal Commission,* 483 U.S. 825 (1987), and *Dolan* v. *City of Tigard,* 512 U.S. 374 (1994). Specifically, ''a unit of government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use.'' *Id.* at 599. Compensatory mitigation raises serious questions of whether there is a sufficient nexus between the potential harm and the proposed remedy to satisfy constitutional muster.

Further, because by definition compensatory mitigation does not directly avoid or minimize the anticipated harm, its application is particularly ripe for abuse. At times the nexus between a proposed undertaking and compensatory mitigation requirements is far from clear. These concerns are particularly acute when coupled with a net conservation gain goal, which necessarily seeks to go beyond mitigating actual or anticipated harm to forcing participants to pay to address harms they, by definition, did not cause.

In light of the change in national policy reflected in Executive Order

13783 and Secretary's Order 3349, the comments received by the Service, and concerns regarding the legal and policy implications of a net conservation gain goal, the Service has concluded that it is no longer appropriate to retain a net conservation gain standard in the Service's overall mitigation planning goal within the ESA–CMP. Because the net conservation gain standard is so prevalent throughout the ESA–CMP, the Service is implementing this conclusion by withdrawing it.

Summary of Comments and Responses

Executive Order 13783—''Promoting Energy Independence and Economic Growth'' (March 28, 2017)—rescinded the Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment. The Secretary of the Interior subsequently issued Secretarial Order 3349 on American Energy Independence (March 29, 2017), which directed Department of the Interior (DOI) bureaus to reexamine mitigation policies and practices to better balance conservation strategies and policies with job creation for American families. Pursuant to Secretarial Order 3349, we published a notice on November 6, 2017 (82 FR 51382) requesting additional public comments specifically addressing the advisability of retaining or removing references to net conservation gain as a mitigation planning goal within our mitigation policies. In addition, in carrying out Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' DOI published a document with the title ''Regulatory Reform'' in the **Federal Register** of June 22, 2017 (82 FR 28429). The document requested public comment on how DOI can improve implementation of regulatory reform initiatives and policies and identify regulations for repeal, replacement, or modification. This notice addresses comments that DOI has received in response to the regulatory reform docket that relates to the Service's use of mitigation.

During the combined comment periods, for the ESA–CMP we received approximately 335 public comment letters, including comments from Federal, State, and local government entities; industry; trade associations; conservation organizations; nongovernmental organizations; private citizens; and others. The range of comments varied from those that provided general statements of support or opposition to the draft and final 2016 ESA–CMP, to those that provided extensive comments and information supporting or opposing the draft and final 2016 ESA–CMP.

We considered all of the comments we received in the comment period beginning November 6, 2017 (82 FR 51382), and following the DOI's ''Regulatory Reform'' **Federal Register** announcement (June 22, 2017, 82 FR 28429); we respond to the substantive comments below.

A. Authority To Include Net Conservation Gain or No Net Loss Under the ESA

Comment (1): One commenter stated there were constitutional limits on requiring mitigation, referencing the *Koontz* v. *St. Johns River Water Management District* case decided by the U.S. Supreme Court, 570 U.S. 595 (2013). This commenter noted that any compensatory mitigation measures must have an essential nexus with the proposed impacts and be roughly proportional, or have a reasonable relationship between the permit conditions required and the impacts of the proposed development being addressed by those permit conditions.

Response: The Service agrees that the *Koontz* case, as well as predecessor cases including, but not limited to, *Nollan* v. *California Coastal Commission,* 483 U.S. 825 (1987), and *Dolan* v. *City of Tigard,* 512 U.S. 374 (1994), raise serious constitutional concerns about the viability of some elements of compensatory-mitigation programs. These concerns are particularly acute for offsite compensatory-mitigation programs and programs that seek a net conservation gain. Offsite compensatory-mitigation programs raise concerns regarding an appropriate nexus between the anticipated impact and the mitigation requirement. As mitigation moves further away from the direct impacts of a project, the risk that the connection between required compensation and the initial project becomes more attenuated increases. Further, by seeking to err on the side of mitigating above and beyond the impacts of the specific project at issue, the net conservation gain standard raises inherent concerns about proportionality, as well as the appropriate nexus between project impacts and mitigation methods, particularly where mitigation is in essence being used to rectify past, unrelated harms. We, like all agencies, must implement our authorities consistent with any applicable case law as appropriate. Consideration of the Constitutional standard set forth in *Koontz* is one reason, though not the only reason, that the Service is withdrawing its previous Mitigation Policy and ESA–CMP. In light of the *Koontz* case and any other relevant court decisions, the Service, in using its previous guidance (*e.g.,* 2003 guidance on the establishment, use, and operation of conservation banks (68 FR 24753, May 8, 2003) and 2008 recovery crediting guidance (73 FR 44761, July 31, 2008)), will make sure that any statutorily authorized mitigation measures will have a clear connection (*i.e.,* have an essential nexus) and be commensurate (*i.e.,* have rough proportionality) to the impact of the project or action under consideration.

Comment (2): Many commenters addressed the mitigation planning goal of improving (*i.e.,* a net gain) or, at minimum, maintaining (*i.e.,* no net loss) the current status of affected resources. A number of commenters supported the goal while a number of commenters opposed the inclusion of a net conservation gain. Of commenters opposed to net conservation gain, their specific reasons included:

(a) The Service lacks the statutory authority to implement the net conservation gain goal for mitigation planning;

(b) the net conservation gain goal imposes a new standard for mitigation and that mitigation requirements should be commensurate with the level of impacts;

(c) concern about the costs associated with achieving net conservation gain;

(d) questions about the ability to achieve net conservation gain and how it would be measured;

(e) the ESA–CMP does not provide the methodology to assess or measure the net conservation gain; and

(f) net conservation gain is incompatible with the standards of ESA sections 7 and 10.

Also, several commenters asserted that a mitigation planning goal of no net loss is inconsistent with the ESA and exceeds our authorities under the ESA.

Response: The ESA requires neither ''net conservation benefit'' nor ''no net loss,'' and the Service has not previous required a ''net benefit'' nor ''no net loss'' while implementing the ESA. Under the ESA, the standard for section 7 is that a ''Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat.'' (§ 7(a)(2)); under section 10 the requirement is ''to the maximum extent practicable, minimize and mitigate the impacts of such taking'' (§ 10(a)(2)(B)(ii)). As one court has

noted, ''[t]he words 'maximum extent practicable' signify that the applicant may do something less than fully minimize and mitigate the impacts of the take where to do more would not be practicable. Moreover, the statutory language does not suggest that an applicant must ever do more than mitigate the effect of its take of species.'' *National Wildlife Federation* v. *Norton,* 306 F. Supp. 2d 920, 928 (E.D. Cal. 2004); *see also Union Neighbors United, Inc.* v. *Jewell,* 831 F.3d 564 (D.C. Cir. 2016) (holding that the obligation to minimize and mitigate to the maximum extent practicable was satisfied by a plan that the Service found to fully offset the impact of the proposed taking). Since what is ''practicable'' may not fully offset proposed take, the ''maximum extent practicable'' standard is inconsistent with both a general net conservation gain and no-net-loss mitigation objective. Nothing in the ESA requires that the Service apply a net conservation gain or no net loss standard.

Those commenters supporting the goal generally asserted, among other points, that the Service has the authority to require compensatory mitigation, found the measures to be clear, and thought the policy encouraged consistent implementation. While we appreciate these comments, for the reasons described above, we are not persuaded.

As noted above, because the concepts of ''net conservation gain'' and ''no net loss'' were central to and embedded throughout the policies, modifying the policies would likely have caused significant confusion. This fact, together with the more recently issued Executive and Secretarial Orders that questioned ''net gain,'' lead to our decision here to withdraw the ESA–CMP.

B. Landscape-Scale Approach

Comment (3): Several commenters described their concerns with the implications of the ESA–CMP's landscape-scale approach including:

(a) There is no statutory authority for taking a landscape-scale approach;

(b) Including a landscape-scale approach would lead to the Service seeking mitigation for impacts beyond a project under review, including impacts that happened in the past or in unrelated locations;

(c) A general concern that a landscape-scale approach would mean Federal overreach, including disregard for the plans, processes, and resource interests of States, Tribes, and local governments.

Response: We agree with commenters that proponents' and action agencies' responsibilities include the provisions of relevant authorities and that those responsibilities do not extend to impacts unrelated to their action. Requiring mitigation to impacts unrelated to a proponent's action would likely conflict with the ''essential nexus'' required under *Koontz* for property development (see Comment 1 above). Accordingly, any effort to apply a landscape-scale approach to mitigation must ensure that there is an essential nexus between the proposed activity and the contemplated mitigation and that mitigation is not being imposed to correct for past impacts by other actors.

C. Authority To Include Candidate or At-Risk Species

Comment (4): Several commenters stated that the Service has no statutory authority under the ESA to include candidate or at-risk species in compensatory-mitigation mechanisms.

Response: The commenter is correct that the Service cannot require the inclusion of compensatory mitigation for impacts to at-risk and candidate species. Including candidate or other at-risk species in mitigation would be voluntary on the part of the Federal agency or applicant, which may, if the species is listed, streamline future reinitiation of consultation or amendments to habitat conservation plans (HCPs). Under section 10 of the ESA, although the applicant voluntarily develops its HCPs in consultation with the Service, the applicant ultimately decides which candidate or non-listed at-risk species it desires to include in its HCP. Many applicants voluntarily include at-risk species in their HCPs to receive ''no surprises'' assurances and preclude the need to amend the associated incidental take permit, should the species become listed in the future. This is consistent with ESA goals of recovering listed species and, ideally, avoiding the need to list species because threats to them have been addressed. Furthermore, applicants may include candidate or other at-risk species to address State or other local requirements (*e.g.,* California's Natural Community Conservation Planning Act). But in all cases, considerations of non-ESA-listed species are voluntary on the part of the Federal agency or applicant.

National Environmental Policy Act (NEPA)

We have analyzed the withdrawal of this policy in accordance with the criteria of the National Environmental Policy Act, as amended (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and the Department of the Interior's NEPA procedures (516 DM 2 and 8; 43 CFR part 46). Issuance of policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature, or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case may be categorically excluded under NEPA (43 CFR 46.210(i)). We have determined that a categorical exclusion applies to withdrawing this policy.

Paperwork Reduction Act of 1995

This policy withdrawal does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the information collection requirements for applications for incidental take permits, annual reports, and notifications of incidental take for native endangered and threatened species for safe harbor agreements, candidate conservation agreements with assurances, and habitat conservation plans under OMB Control Number 1018–0094, which expires on March 31, 2019. We 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.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior Manual at 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have determined that there are no potential adverse effects of withdrawing this policy. Our intent with withdrawing these policies is to reduce confusion of mitigation programs, projects, and measures, including those taken on Tribal lands. We will work with Tribes as applicants proposing mitigation as part of proposed actions and with Tribes as mitigation sponsors.

Authority

The multiple authorities for this action include the: Endangered Species

Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Fish and Wildlife Coordination Act, as amended, (16 U.S.C. 661–667(e)); and National Environmental Policy Act (42 U.S.C. 4371 *et seq.*).

Dated: July 24, 2018.

Gregory J. Sheehan,

Principal Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2018–16171 Filed 7–27–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapter I

[Docket No. FWS–HQ–ES–2015–0126]; [FXHC11220900000–156–FF09E33000]

U.S. Fish and Wildlife Service Mitigation Policy

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Policy; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce we are withdrawing the Mitigation Policy published November 21, 2016, which guides Service recommendations on mitigating the adverse impacts of land and water developments on fish, wildlife, plants, and their habitats. In our document of November 6, 2017, we requested additional public comments regarding this policy's overall mitigation planning goal of net conservation gain. We are now withdrawing this policy as it is no longer appropriate to retain the ''net conservation gain'' standard throughout various Service-related activities and is inconsistent with current Executive branch policy. Until further notice, all policies that were superseded by the 2016 Mitigation Policy are reinstated, including the Fish and Wildlife Service Mitigation Policy (46 FR 7644–7663) published in the **Federal Register** on January 23, 1981.

DATES: Withdrawal effective on July 30, 2018.

ADDRESSES: Comments and materials received, as well as supporting documentation, are available on the internet at *http://www.regulations.gov* at Docket Number FWS–HQ–ES–2015–0126.

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, U.S. Fish and Wildlife Service, Division of Environmental Review, 5275 Leesburg Pike, Falls Church, VA 22041–3803, telephone 703–358–2442.

SUPPLEMENTARY INFORMATION: The Mitigation Policy (81 FR 83440, November 21, 2016) was developed to ensure consistency with directives in effect at the time of issuance, including former President Obama's Memorandum on Mitigating Impacts on Natural Resources From Development and Encouraging Related Private Investment (November 3, 2015). Under the memorandum, all Federal mitigation policies were directed to clearly set a net-benefit goal or, at minimum, a no-net-loss goal for natural resources, wherever doing so is allowed by existing statutory authority and is consistent with agency mission and established natural resource objectives. The Presidential Memorandum was subsequently rescinded by Executive Order 13783, ''Promoting Energy Independence and Economic Growth'' (March 28, 2017).

The Mitigation Policy also described its consistency with the Secretary of the Interior's Order 3330 on Improving Mitigation Policies and Practices of the Department of the Interior (October 31, 2013), which established a Department-wide mitigation strategy to ensure consistency and efficiency in the review and permitting of infrastructure-development projects and in conserving natural and cultural resources. The Secretary's Order was subsequently revoked by Secretary of the Interior's Order 3349 on American Energy Independence (March 29, 2017). It directed Department of the Interior bureaus to reexamine mitigation policies and practices to better balance conservation strategies and policies with job creation for American families.

In light of the revocation of the 2015 Presidential Memorandum and Secretary's Order 3330, on November 6, 2017, the Service requested comment on the Mitigation Policy, as well as the Endangered Species Act—Compensatory Mitigation Policy (81 FR 95316, December 27, 2016), specifically ''regarding whether to retain or remove net conservation gain as a mitigation planning goal within our mitigation policies.'' Mitigation Policies of the U.S. Fish and Wildlife Service; Request for Comment (82 FR 51382, 51383, November 6, 2017). The comment period for this request ended on January 5, 2018.

Under Supreme Court precedent, the Takings Clause of the Fifth Amendment of the United States Constitution limits the ability of government to require monetary exactions as a condition of permitting private activities, particularly private activities on private property. In *Koontz* v. *St. Johns River Water Management District,* 570 U.S. 595 (2013), the Supreme Court held that a proposal to fund offsite mitigation proposed by the State of Florida as a condition of granting a land-use permit must satisfy the test established in *Nollan* v. *California Coastal Commission,* 483 U.S. 825 (1987) and *Dolan* v. *City of Tigard,* 512 U.S. 374 (1994). Specifically, ''a unit of government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use.'' *Id.* at 599.

Compensatory mitigation requirements in particular raise serious questions of whether there is a sufficient nexus between the potential harm and the proposed remedy to satisfy constitutional muster. Further, because by definition compensatory mitigation does not directly avoid or minimize the anticipated harm, its application is particularly ripe for abuse. These concerns are particularly acute when coupled with a net conservation gain standard, which necessarily goes beyond mitigating actual or anticipated harm to forcing participants to pay to address harms they, by definition, did not cause.

In light of the change in national policy reflected in Executive Order 13783 and Secretary's Order 3349, the comments received by the Service, and concerns regarding the legal and policy implications of compensatory mitigation, particularly compensatory mitigation with a net conservation gain policy, the Service has concluded that it is no longer appropriate to retain references to or mandate a net conservation gain standard in the Service's overall mitigation planning goal within each document. Because the net conservation gain standard is so prevalent throughout the Mitigation Policy, the Service is implementing this conclusion by withdrawing the Mitigation Policy.

Summary of Comments and Responses

Executive Order 13783—''Promoting Energy Independence and Economic Growth'' (March 28, 2017)—rescinded the Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment. The Secretary of the Interior subsequently issued Secretarial Order 3349 on American Energy Independence (March 29, 2017), which directed Department of the Interior (DOI) bureaus to reexamine mitigation policies and practices to better balance conservation strategies and policies with job creation for American families. Pursuant to Secretarial Order 3349, we published a

notice on November 6, 2017 (82 FR 51382), requesting additional public comments specifically addressing the advisability of retaining or removing references to net conservation gain as a mitigation planning goal within our mitigation policies. In addition, in carrying out Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' DOI published a document with the title ''Regulatory Reform'' in the **Federal Register** of June 22, 2017 (82 FR 28429). The document requested public comment on how DOI can improve implementation of regulatory reform initiatives and policies and identify regulations for repeal, replacement, or modification. This notice addresses comments that DOI has received in response to the regulatory reform docket that relates to the Service's use of mitigation.

During the combined comment periods, for the Service-wide Mitigation Policy we received approximately 427 comments from Federal, State, and local government entities, industry, trade associations, conservation organizations, nongovernmental organizations, private citizens, and others. Two of those submissions transmitted the discrete comments from an additional 1,756 citizens expressing support for the Service's mitigation policy approach. The range of comments otherwise varied from those that provided general statements of support or opposition to the draft or final Policy, to those that provided extensive comments and information supporting or opposing the draft or final Policy, or specific aspects thereof. The majority of comments submitted included detailed suggestions for revisions addressing major concepts as well as editorial suggestions for specific wording or line edits.

We considered all of the comments we received in the comment period beginning November 6, 2017 (82 FR 51382), and following the DOI's ''Regulatory Reform'' **Federal Register** announcement (June 22, 2017, 82 FR 28429); we respond to the substantive comments below.

A. Policy Addresses Multiple Authorities

Comment (1): One commenter stated there were constitutional limits on requiring mitigation, referencing the *Koontz* v. *St. Johns River Water Management District* case decided by the U.S. Supreme Court, 570 U.S. 595 (2013). This commenter noted that any compensatory mitigation measures must have an essential nexus with the proposed impacts and be roughly proportional, or have a reasonable relationship between the permit conditions required and the impacts of the proposed development being addressed by those permit conditions.

Response: The Service agrees that the *Koontz* case, as well as predecessor cases including, but not limited to, *Nollan* v. *California Coastal Commission,* 483 U.S. 825 (1987), and *Dolan* v. *City of Tigard,* 512 U.S. 374 (1994), raise serious constitutional concerns about the viability of some elements of the Service's mitigation programs. These concerns are particularly acute for offsite compensatory-mitigation programs and programs that seek a net conservation gain. Offsite compensatory-mitigation programs raise concerns regarding an appropriate nexus between the anticipated impact and the mitigation requirement. As mitigation moves further away from the direct impacts of a project, the risk that the connection between required compensation and the initial project becomes more attenuated increases. Further, by seeking to err on the side of mitigating above and beyond the impacts of the specific project at issue, a net conservation gain standard raises inherent concerns about proportionality, as well as the appropriate nexus between project impacts and mitigation methods, particularly where mitigation is in essence being used to rectify past, unrelated harms. We, like all agencies, must implement our authorities consistent with any applicable case law as appropriate. Consideration of the Constitutional standard set forth in *Koontz* is one reason, though not the only reason, that the Service is withdrawing its previous Mitigation Policy. In light of the *Koontz* case and any other relevant court decisions, the Service, in using its previous policies (*e.g.,* 1981 Policy), will make sure that any statutorily authorized mitigation measures will have a clear connection (*i.e.,* have an essential nexus) and be commensurate (*i.e.,* have rough proportionality) to the impact of the project or action under consideration.

Comment (2): Several commenters addressed aspects of the Service's authority under the Bald and Golden Eagle Protection Act (Eagle Act). One commenter supported the acknowledgement that compensatory mitigation for bald and golden eagles may include preservation of those species' habitats and enhancing their prey base. The commenter noted that existing regulations establishing a permit program for the non-purposeful take of bald and golden eagles recognize these options but that these options have not been used. One commenter stated the Service was incorrect in stating in the proposed Policy: ''the statute and implementing regulations allow the Service to require habitat preservation and/or enhancement as compensatory mitigation for eagle take.'' The commenter said that Congress has not exercised jurisdiction over the habitats of eagles, meaning the Service lacks authority to require mitigation for impacts to eagle habitats. One commenter suggested the Policy should articulate whether compensatory mitigation would be in addition to current requirements of a 1-for-1 take offset.

Response: We agree that the authority of the Eagle Act is limited, and the Service has outlined its authority in its regulations (50 CFR part 22). Nothing in the Eagle Act directly addresses eagle habitat, or requires that the Service apply a net conservation gain standard. Accordingly, the withdrawal of the 2016 Mitigation Policy and reinstatement of the 1981 Mitigation Policy will not change our authority under the Eagle Act.

Comment (3): Several commenters addressed the Service's authority under the Migratory Bird Treaty Act (MBTA). One commenter said the Service was incorrect in describing implied authority to permit incidental take of migratory birds under the MBTA and noted that the Service has no authority to require compensatory mitigation for incidental take of migratory birds. Several commenters said that mitigation for migratory birds exceeds MBTA authority and that the Policy should exclude potential incidental impacts to migratory birds under the MBTA until the Service establishes statutory or regulatory authority to require landowners to obtain incidental take authorization prior to undertaking otherwise lawful activities. They added that the MBTA does not directly address mitigation or habitat impacts.

One commenter said the Service was incorrect in writing that the Fish and Wildlife Conservation Act implicitly provided for mitigation of impacts to migratory birds. The commenter said that the language does not authorize the Service to engage in any management activities associated with migratory birds, particularly over private parties, only directing the Service to monitor and assess population trends and species status of migratory nongame birds.

Response: DOI's Office of the Solicitor issued M-Opinion 37050, The Migratory Bird Treaty Act Does Not Prohibit Incidental Take (M-Opinion), on December 22, 2017, which concludes that the take of birds resulting from an

activity is not prohibited by the MBTA when the underlying purpose of that activity is not to take birds. In addition, the Service does not have specific statutory authority pursuant to the MBTA to require Federal action agencies and/or their permittees to provide compensatory mitigation for unavoidable impacts to (loss of) migratory bird habitat resulting from federally conducted or approved, authorized, or funded projects or activities. Like the Eagle Act, the MBTA does not directly protect habitat. When the Service authorizes otherwise prohibited intentional take, however, it can make that authorization subject to appropriate conditions, including non-compensatory mitigation, such as measures to avoid, minimize, reduce, or rectify anticipated harm. In addition, Executive Order (E.O.) 13186 directs Federal agencies ''taking actions that have, or are likely to have, a measurable negative effect on migratory bird populations'' to sign a Memorandum of Understanding with the Service ''that shall promote the conservation of migratory bird populations.''

Comment (4): One commenter specifically questioned the treatment of Natural Resource Damage Assessment actions conducted under the Comprehensive Environmental Response, Compensation, and Liability Act, Oil Pollution Act, and the Clean Water Act, stating that the Presidential Memorandum on Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment, dated November 3, 2015, requires that separate guidance be developed for when restoration banking or advance restoration would be appropriate.

Response: The Presidential Memorandum on Mitigation was rescinded by Executive Order 13783, Promoting Energy Independence and Economic Growth (March 28, 2017). Furthermore, when a release of hazardous substance or oil injures natural resources subject to the natural resource damage assessment and restoration trusteeship of States, Tribes, or the Federal Government, appropriate restoration is determined by the scope and scale of the injury and the nexus of the restoration action to that specific injury.

B. Net Conservation Gain/No Net Loss

Comment (5): Many commenters addressed the Policy's mitigation planning goal of improving (*i.e.,* a net gain) or, at minimum, maintaining (*i.e.,* no net loss) the current status of affected resources. A number of commenters supported the goal while a number of commenters opposed the inclusion of a net conservation gain. Of commenters opposed to net conservation gain, their specific reasons included:

(a) The Service lacks the statutory authority to implement the net conservation gain goal for mitigation planning.

(b) The net conservation gain goal imposes a new standard for mitigation and that mitigation requirements should be commensurate with the level of impacts.

(c) Concern about the costs associated with achieving net conservation gain.

(d) Questions about the ability to achieve net conservation gain and how it would be measured.

(e) The Policy does not provide the methodology to assess or measure the net conservation gain.

(f) Net conservation gain is incompatible with the standards of the ESA sections 7 and 10. One commenter asked that we clarify that the net conservation gain goal does not modify or expand proponents' obligations under ESA sections 7 or 10 permitting programs. One commenter stated that the Policy's goal would have limited relevance to section 10 decisions other than serving as an aspiration or goal for negotiating conservation measures. One commenter asked that we specify how the Policy's goal will be applied to processing incidental take permit applications under section 10(a)(2)(B)(ii), especially for projects predicted to directly kill listed species. This commenter added that neither no net loss nor net gain is an appropriate goal under section 10 if the goal implies that impacts at the individual level will not be minimized to the maximum extent practicable.

Response: We agree with concerns expressed by commenters that the Service generally lacks the statutory authority to implement ''net conservation gain'' for mitigation planning. No statute within the Service's purview mandates that the Service directly apply a net conservation gain standard. For example, under the Endangered Species Act (ESA), the standard for section 7 is that a ''Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat'' (§ 7(a)(2)); under section 10, the requirement is ''to the maximum extent practicable, minimize and mitigate the impacts of such taking'' (§ 10(a)(2)(B)(ii)). As one court has noted, ''[t]he words 'maximum extent practicable' signify that the applicant may do something less than fully minimize and mitigate the impacts of the take where to do more would not be practicable. Moreover, the statutory language does not suggest that an applicant must ever do more than mitigate the effect of its take of species.'' *National Wildlife Federation* v. *Norton,* 306 F. Supp. 2d 920, 928 (E.D. Cal. 2004); *see also Union Neighbors United, Inc.* v. *Jewell,* 831 F.3d 564 (D.C. Cir. 2016) (holding that the obligation to minimize and mitigate to the maximum extent practicable was satisfied by a plan that the Service found to fully offset the impact of the proposed taking). Since what is ''practicable'' may not fully offset proposed take, the ''maximum extent practicable'' standard is inconsistent with both a general net conservation gain and a no-net-loss mitigation objective. Nothing in the ESA requires that the Service apply a net conservation gain or no-net-loss standard.

Those commenters supporting the goal generally asserted, among other points, that the Service has the authority to require compensatory mitigation, found the measures to be clear, and thought the policy encouraged consistent implementation. While we appreciate these comments, for the reasons described above, we are not persuaded.

As ''net conservation gain'' was central to and integrated throughout the policies, in addition to the more recently issued 2017 Executive and Secretarial Orders, modifying these policies would likely have caused even more confusion. Thus, we are withdrawing the 2016 Mitigation Policy, and restoring the policies and guidance that were superseded by the 2016 policies.

C. Landscape-Scale Approach

Comment (6): Several commenters described their concerns with the implications of the Policy's inclusion of a landscape-scale approach:

(a) There is no statutory authority for taking a landscape-scale approach.

(b) Including a landscape-scale approach would lead to the Service seeking mitigation for impacts beyond a project under review, including impacts that happened in the past or in unrelated locations. They said that meeting the standards of an applicable authority within the narrow geographic scope of their project is the proponent's only responsibility.

(c) General concern that a landscape-scale approach would mean Federal overreach, including disregard for the

plans, processes, and resource interests of States, tribes, and local governments.

Response: We agree with commenters that proponents' and action agencies' responsibilities include the provisions of relevant authorities and that those responsibilities do not extend to impacts unrelated to their action. Requiring mitigation to impacts unrelated to a proponent's action would likely conflict with the ''essential nexus'' required under *Koontz* for property development (see Comment 1 above). Accordingly, any effort to apply a landscape-scale approach to mitigation must ensure that there is an essential nexus between the proposed activity and the contemplated mitigation and that mitigation is not being imposed to correct for past impacts by other actors.

Section 5 of the Mitigation Policy, ''Mitigation Framework,'' calls for both consideration of a landscape-scale approach in addition to ''net conservation gain.'' Because net conservation gain is integral to the policies, even though considerations of landscape-scale approaches may be useful in some cases, withdrawing these policies will reduce confusion over the net conservation gain goal. This notice does not affect the Service authorities that already allow the flexibility to consider landscape-scale approach. In some cases, taking the broader ecological context of both impacts and mitigation opportunities into account by applying a landscape-scale approach is an effective means of implementing the Service's mission in a way that also benefits proponents.

National Environmental Policy Act (NEPA)

We have analyzed the withdrawals of this policy in accordance with the criteria of the National Environmental Policy Act, as amended (NEPA) (42 U.S.C. 4332(c)), the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and the Department of the Interior's NEPA procedures (516 DM 2 and 8; 43 CFR part 46). Issuance of policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature, or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case may be categorically excluded under NEPA (43 CFR 46.210(i)). We have determined that a categorical exclusion applies to withdrawing this policy.

Paperwork Reduction Act of 1995

This policy withdrawal does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the information collection requirements for applications for incidental take permits, annual reports, and notifications of incidental take for native endangered and threatened species for safe harbor agreements, candidate conservation agreements with assurances, and habitat conservation plans under OMB Control Number 1018–0094, which expires on March 31, 2019. We 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.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior Manual at 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have determined that there are no potential adverse effects of withdrawing this policy. Our intent with withdrawing these policies is to reduce confusion of mitigation programs, projects, and measures, including those taken on Tribal lands. We will work with Tribes as applicants proposing mitigation as part of proposed actions and with Tribes as mitigation sponsors.

Authority

The multiple authorities for this action include the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Fish and Wildlife Coordination Act, as amended, (16 U.S.C. 661–667(e)); and National Environmental Policy Act (42 U.S.C. 4371 *et seq.*).

Dated: July 24, 2018.

Gregory J. Sheehan,

Principal Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2018–16172 Filed 7–27–18; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 83, No. 146
Monday, July 30, 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

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–SC–17–0067; SC17–959–4]

Onions Grown in South Texas; Proposed Amendments to Marketing Order 959 and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This rulemaking proposes amendments to Marketing Order No. 959, which regulates the handling of onions grown in South Texas. The proposed amendments would reduce the size of the South Texas Onion Committee (Committee) and make conforming and clarifying amendments as needed.

DATES: The referendum will be conducted from August 6, 2018 through August 27, 2018. The representative period for the referendum is August 1, 2016 through July 31, 2017.

ADDRESSES: Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, or Julie Santoboni, Rulemaking Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Geronimo.Quinones@ams.usda.gov* or *Julie.Santoboni@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal, pursuant to 5 U.S.C. 553, proposes amendments to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposal is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. Part 959 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of onion producers and handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering onions grown in South Texas.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendment, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendments proposed are not unduly complex and the nature of the proposed amendments is appropriate for utilizing the informal rulemaking process to amend the Order.

The proposed amendments were unanimously recommended by the Committee following deliberations at a public meeting held on June 7, 2017. The proposal would amend the Order by reducing the size of the Committee from 34 to 26 members. The change would remove one voting producer and one voting handler member, and one producer and one handler alternate member from each of the two districts. Conforming and clarifying changes would also be made to §§ 959.24, 959.26, 959.32, and §§ 959.110 and 959.111 would be removed and reserved.

A proposed rule soliciting comments on the proposed amendment was issued on February 23, 2018 and published in the **Federal Register** on March 1, 2018 (83 FR 8804). Two opposing comments were received. AMS will conduct a producer referendum to determine support for the proposed amendments. If appropriate, a final rule will then be issued to effectuate the amendment if it is favored by producers in the referendum.

The Committee's recommended amendments would amend the Order by reducing the size of the Committee from 34 to 26 members. The reduction would

remove one voting producer and one voting handler member, and one producer and one handler alternate member from each of the two districts (eight members total).

Proposal—Reduce Committee Size

Section 959.22 provides that the Committee consists of seventeen members, ten of whom shall be producers and seven of whom shall be handlers. For each member of the Committee there shall be an alternate.

This proposal would amend § 959.22 by reducing the size of the Committee from 34 to 26 members. The Committee size is based on membership per district. The Order initially established five districts, which were reestablished as two districts in § 959.110. Section 959.111 reapportioned the 34 Committee members between the two districts so that District 1 was comprised of 20 members and alternates and District 1 was comprised of 14 members and alternates. However, due to contractions in the size of the industry, the Committee has had difficulties finding nominees to fill positions on the Committee. The change would remove one voting producer and one voting handler member, and one producer and handler alternate member from each of the two districts (eight members total).

This proposed action is necessary to adjust the number of handlers and producers on the Committee to reflect industry consolidation. There has been a decrease in the number of onion producers and handlers over the past 15 years. The current structure of the Committee requires 34 members, with half the members elected on biennial terms. Many seats remain vacant, as finding sufficient members to nominate has been challenging. Having a smaller size committee would enable it to fulfill membership and quorum requirements, thereby ensuring a more efficient and orderly flow of business.

For the reasons stated above, it is proposed that § 959.22 be modified to reduce the size of the Committee from 34 to 26 members. Conforming and clarifying changes would also be made to §§ 959.24, 959.26, 959.32, and §§ 959.110 and 959.111 would be removed and reserved.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 60 producers of onions in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

Based on information from the National Agricultural Statistics Service, the weighted grower price for South Texas onions during the 2015–16 season was approximately $12.30 per 50-pound equivalent. Furthermore, according to Committee data, total shipments were approximately three million 50-pound equivalents for the 2015–16 season with a total 2015–16 crop value estimated at $37 million. Dividing the crop value by the estimated number of producers (60) yields an estimated average receipt per producer of $617,000. This is below the $750,000 SBA definition of small producers. The average handler price for South Texas onions during the 2015–16 season was approximately $14.05 per 50-pound equivalent. Multiplying the average handler price by shipment information of 3 million 50-pound equivalent results in an estimated handler-level value of $42 million. Dividing this figure by the number of handlers (30) yields an estimated average annual handler receipts of $1.4 million, which is below the SBA definition of small agricultural service firms. Assuming a normal distribution, most producers and handlers of South Texas onions may be classified as small entities.

The amendment recommended by the Committee would reduce the size of the Committee from 34 to 26 members under the Order. The reduction would remove one voting producer and one voting handler member, and one producer and one handler alternate member from each of the two districts.

The Committee's proposed amendment was unanimously recommended at a meeting on June 7, 2017. If this proposal is approved in the referendum, there would be no direct financial effects on producers or handlers. Over the past 15 years there has been a 31-percent decrease in the number of onion producers, and a 34-percent decrease in the number of handlers in the production area. Many seats on the Committee remain vacant, as it has been challenging to find sufficient nominees. Having a smaller size Committee should enable it to fulfill those membership and quorum requirements.

AMS believes this change will serve the needs of the Committee and the industry thereby ensuring a more efficient and orderly flow of business. No economic impact is expected if the amendment is approved because it would not establish any regulatory requirements on handlers, nor does it contain any assessment or funding implications. There would be no change in financial costs, reporting, or recordkeeping requirements if this proposal is approved.

Alternatives to this proposal, including making no changes at this time, were considered. However, the Committee believes that given reductions in the size of the industry, a smaller Committee size is necessary in order to ensure its ability to locally administer the program. Reducing the size of the Committee would enable it to fulfill membership and quorum requirements, thereby ensuring a more efficient and orderly flow of business.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178 (Vegetable and Specialty Crops). No changes in those requirements are necessary because of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies.

AMS 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

The Committee's meeting was widely publicized throughout the South Texas onion production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the June 7, 2017, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposal.

A proposed rule concerning this action was published in the **Federal Register** on March 1, 2018 (83 FR 8804). Copies of the rule were mailed or sent via facsimile to all Committee members and South Texas onion handlers. Finally, the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending April 30, 2018, was provided to allow interested persons to respond to the proposal.

Two comments were received. The first comment suggested that decreasing the Committee size was an inefficient use of government resources and those resources should be allocated to other more important initiatives. The second comment contended that having more members on the Committee might lead to better discussions.

The reduction in Committee size was recommended by representatives responsible for locally administering the Order and representing the industry's best interest. As stated above, because of a consolidation within the industry, Committee seats have been left vacant. Without a full Committee or enough members to meet quorum requirements, Committee meetings are ineffective and an inefficient use of Committee and industry resources. Therefore, this amendment should increase efficient use of resources. Additionally, AMS is pursuing this amendment through informal rulemaking as opposed to formal rulemaking. This will spare resources being expended on a public hearing.

In response to the second comment, all Committee meetings are open to public and industry attendance. Attendees have an opportunity to ask questions and provide comments. Therefore, discussion is not limited by the number of Committee members.

Because of the above, no changes will be made to the proposed amendment based on the comments received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

The findings and conclusions and general findings and determinations included in the proposed rule set forth in the March 1, 2018, issue of the **Federal Register** are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of Onions Grown in South Texas.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered, that this entire proposed rule be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400–407) to determine whether the annexed order amending the Order regulating the handling of onions grown in South Texas is approved by growers, as defined under the terms of the Order, who during the representative period were engaged in the production of onions in the production area. The representative period for the conduct of such referendum is hereby determined to be August 1, 2016 through July 31, 2017.

The agents designated by the Secretary to conduct the referendum are Doris Jamieson and Christian D. Nissen, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov,* respectively.

Order Amending the Order Regulating the Handling of Onions Grown in South Texas [1]

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the Order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The Order, as amended, and as hereby proposed to be further amended, and all the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The Order, as amended, and as hereby proposed to be further amended, regulates the handling of onions grown in South Texas in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the Order;

3. The Order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The Order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions produced in the production area; and

5. All handling of onions produced or packed in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of onions grown in South Texas shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the Order contained in the proposed rule issued by the Administrator on February 23, 2018 and published in the **Federal Register** (83 FR 8804) on March 1, 2018, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 959

Onions, Marketing agreements, Reporting and recordkeeping requirements.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Dated: July 19, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 959 as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 959.22 to read as follows:

§ 959.22 Establishment and membership.

The South Texas Onion Committee, consisting of thirteen members, eight of whom shall be producers and five of whom shall be handlers, is hereby established. For each member of the Committee there shall be an alternate. Producer members and alternates shall not have a proprietary interest in or be employees of a handler organization.

■ 3. Revise § 959.24 to read as follows:

§ 959.24 Districts.

To determine a basis for selecting Committee members, the following districts of the production area are hereby established:

(a) *District No. 1:* (Coastal Bend-Lower Valley) The Counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

(b) *District No. 2:* (Laredo-Winter Garden) The Counties of Zapata, Webb, Jim Hogg De Witt, Wilson, Atascosa, Karnes Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and La Salle in the State of Texas.

■ 4. Revise § 959.26 to read as follows:

§ 959.26 Selection.

The Secretary shall select members and respective alternates from districts established pursuant to §§ 959.24 or 959.25. Selections shall be as follows:

(a) *District No. 1:* Five producer members and alternates; three handler members and alternates.

(b) *District No. 2:* Three producer members and alternates; two handler members and alternates.

■ 5. Amend § 959.32 by revising paragraph (a) to read as follows:

§ 959.32 Procedure.

(a) Nine members of the Committee shall be necessary to constitute a quorum. Seven concurring votes, or two-thirds of the votes cast, whichever is greater, shall be required to pass any motion or approve any Committee action. At assembled meetings all votes shall be cast in person.

* * * * *

§§ 959.110 and 959.111 [Removed and Reserved]

■ 6. Remove and reserve §§ 959.110 and 959.111.

[FR Doc. 2018–15793 Filed 7–27–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2011–BT–NOA–0013]

Energy Conservation Program: Data Collection and Comparison With Forecasted Unit Sales of Five Lamp Types

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

ACTION: Notice of data availability.

SUMMARY: The U.S. Department of Energy (DOE) is informing the public of its collection of shipment data and creation of spreadsheet models to provide comparisons between 2016 and 2017 unit sales and benchmark estimate unit sales of five lamp types (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps). For 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps, the 2016 and 2017 sales are not greater than 200 percent of the forecasted estimates. The 2016 and 2017 unit sales for vibration service lamps are greater than 200 percent of the benchmark unit sales estimate. The 2016 unit sales for rough service lamps are greater than 200 percent of the benchmark unit sales estimate but the 2017 unit sales are below the benchmark unit sales estimate. DOE has prepared, and is making available on its website, a spreadsheet showing the comparisons of projected sales versus 2016 and 2017 sales, as well as the model used to generate the original sales estimates. The spreadsheet is available online at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=16.*

DATES: As of July 30, 2018, the DOE has determined that no regulatory action is necessary at this time.

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

A link to the docket web page can be found at *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=16.* The docket web page contains simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Peter Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *peter.cochran@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

The Energy Independence and Security Act of 2007 (EISA 2007; Pub. L. 110–140) was enacted on December 19, 2007. Among the requirements of subtitle B (Lighting Energy Efficiency) of title III of EISA 2007 were provisions directing DOE to collect, analyze, and monitor unit sales of five lamp types (*i.e.,* rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps). In relevant part, section 321(a)(3)(B) of EISA 2007 amended section 325(l) of the Energy Policy and Conservation Act of 1975

(EPCA) by adding paragraph (4)(B), which generally directs DOE, in consultation with the National Electrical Manufacturers Association (NEMA), to: (1) Collect unit sales data for each of the five lamp types for calendar years 1990 through 2006 in order to determine the historical growth rate for each lamp type; and (2) construct a model for each of the five lamp types based on coincident economic indicators that closely match the historical annual growth rates of each lamp type to provide a neutral comparison benchmark estimate of future unit sales. (42 U.S.C. 6295(l)(4)(B)) Section 321(a)(3)(B) of EISA 2007 also amends section 325(l) of EPCA by adding paragraph (4)(C), which, in relevant part, directs DOE to collect unit sales data for calendar years 2010 through 2025, in consultation with NEMA, for each of the five lamp types. DOE must then compare the actual lamp sales in that year with the benchmark estimate. (42 U.S.C. 6295(l)(4)(C)) If DOE finds that the unit sales for a given lamp type in any year between 2010 and 2025 exceed the benchmark estimate of unit sales by at least 100 percent (*i.e.,* are greater than 200 percent of the anticipated sales), DOE must issue a finding within 90 days of the end of the analyzed calendar year that the estimate has been exceeded. (42 U.S.C. 6295(l)(4)(D)(i)(I), (E)(i)(I), (F)(i)(I), and (H)(i)(I)).[1]

On December 18, 2008, DOE issued a notice of data availability (NODA) for the *Report on Data Collection and Estimated Future Unit Sales of Five Lamp Types* (hereafter the ''2008 analysis''), which was published in the **Federal Register** on December 24, 2008. 73 FR 79072. The 2008 analysis presented the 1990 through 2006 shipment data collected in consultation with NEMA, the spreadsheet model DOE constructed for each lamp type, and the benchmark unit sales estimates for 2010 through 2025. On April 4, 2011, DOE published a NODA in the **Federal Register** announcing the availability of updated spreadsheet models presenting the benchmark estimates from the 2008 analysis and the collected sales data from 2010 for the first annual comparison. 76 FR 18425. Similarly, DOE published NODAs in the **Federal Register** in the following five years announcing the updated spreadsheet models and sales data for the annual comparisons. 77 FR 16183 (March 20, 2012); 78 FR 15891 (March 13, 2013); 79 FR 15058 (March 18, 2014); 80 FR 13791 (March 17, 2015); 81 FR 20261 (April 7, 2016). This NODA presents the seventh comparison; specifically, section IV of this report compares the actual unit sales against benchmark unit sales estimates for 2016 and 2017.[2]

EISA 2007 also amended section 325(l) of EPCA by adding paragraphs (4)(D) through (4)(H), which state that if DOE finds that the unit sales for a given lamp type in any year between 2010 and 2025 exceed the benchmark estimate of unit sales by at least 100 percent (*i.e.,* are greater than 200 percent of the anticipated sales), then DOE must take regulatory action for such lamps. (42 U.S.C. 6295(l)(4)(D) through (H)) For 2,601–3,300 lumen general service incandescent lamps, DOE must impose a statutorily prescribed maximum-wattage level and packaging requirement. (42 U.S.C. 6295(l)(4)(G)) For the other four types of lamps, the statute requires DOE to initiate an accelerated rulemaking to establish energy conservation standards. If the Secretary does not complete the accelerated rulemakings within one year from the end of the previous calendar year, EPCA specifies maximum wattage and related requirements (*i.e.,* a ''backstop requirement'') for each lamp type. (42 U.S.C. 6295(l)(4)(D)(ii), (E)(ii), (F)(ii), and (H)(ii))

As in the 2008 analysis and previous comparisons, DOE uses manufacturer shipments as a surrogate for unit sales in this NODA because manufacturer shipment data are tracked and aggregated by the trade organization, NEMA. DOE believes that annual shipments track closely with actual unit sales of these five lamp types, as DOE presumes that retailer inventories remain constant from year to year. DOE believes this is a reasonable assumption because the markets for these five lamp types have existed for many years, thereby enabling manufacturers and retailers to establish appropriate inventory levels that reflect market demand. In addition, increasing unit sales must eventually result in increasing manufacturer shipments. This is the same methodology presented in DOE's 2008 analysis and subsequent annual comparisons, and DOE did not receive any comments challenging this assumption or the general approach.

II. Definitions

A. Rough Service Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''rough service lamp.'' A ''rough service lamp'' means a lamp that—(i) has a minimum of 5 supports with filament configurations that are C–7A, C–11, C–17, and C–22 as listed in Figure 6–12 of the 9th edition of the IESNA [Illuminating Engineering Society of North America] Lighting handbook, or similar configurations where lead wires are not counted as supports; and (ii) is designated and marketed specifically for ''rough service'' applications, with—(I) the designation appearing on the lamp packaging; and (II) marketing materials that identify the lamp as being for rough service. (42 U.S.C. 6291(30)(X))

As noted above, rough service incandescent lamps must have a minimum of five filament support wires (not counting the two connecting leads at the beginning and end of the filament), and must be designated and marketed for ''rough service'' applications. This type of incandescent lamp can be used in applications where the lamp would be subject to mechanical shock or vibration while it is operating. Other incandescent lamps have only two support wires (which also serve as conductors), one at each end of the filament coil. When operating (*i.e.,* when the tungsten filament is glowing so hot that it emits light), rough service applications could cause an incandescent lamp's filament to break prematurely. To address this problem, lamp manufacturers developed lamp designs that incorporate additional support wires along the length of the filament to ensure that it has support not just at each end, but at several other points as well. The additional support protects the filament during operation and enables longer operating life for incandescent lamps in rough service applications.

B. Vibration Service Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''vibration service lamp.'' A ''vibration service lamp'' means a lamp that—(i) has filament configurations that are C–5, C–7A, or C–9, as listed in Figure 6–12 of the 9th Edition of the IESNA Lighting Handbook or similar configurations; (ii) has a maximum wattage of 60 watts; (iii) is sold at retail in packages of 2 lamps or less; and (iv) is designated and marketed specifically for vibration service or vibration-resistant applications, with—(I) the designation

[1] For 2,601–3,300 lumen general service incandescent lamps, EPCA does not specify a requirement to publish such findings, but as discussed further in this notice, EPCA does establish requirements upon the benchmark estimate being exceeded.

[2] The notices and related documents for the 2008 analysis and successive annual comparisons, including this NODA, are available through the DOE website at: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=16.*

appearing on the lamp packaging; and (II) marketing materials that identify the lamp as being vibration service only. (42 U.S.C. 6291(30)(AA))

The statute mentions three examples of filament configurations for vibration service lamps in Figure 6–12 of the *IESNA Lighting Handbook,* one of which, C–7A, is also listed in the statutory definition of ''rough service lamp.'' The definition of ''vibration service lamp'' requires that such lamps have a maximum wattage of 60 watts and be sold at a retail level in packages of two lamps or fewer. Vibration service lamps must be designated and marketed for vibration service or vibration-resistant applications. As the name suggests, this type of incandescent lamp can be used in applications where the incandescent lamp would be subject to a continuous low level of vibration, such as in a ceiling fan light kit. In such applications, incandescent lamps without additional filament support wires may not achieve the full rated life, because the filament wire is brittle and would be subject to breakage at typical operating temperature. To address this problem, lamp manufacturers typically use a more malleable tungsten filament to avoid damage and short circuits between coils.

C. Three-Way Incandescent Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''3-way incandescent lamp.'' A ''3-way incandescent lamp'' includes an incandescent lamp that—(i) employs 2 filaments, operated separately and in combination, to provide 3 light levels; and (ii) is designated on the lamp packaging and marketing materials as being a 3-way incandescent lamp. (42 U.S.C. 6291(30)(Y))

Three-way lamps are commonly found in wattage combinations such as 50, 100, and 150 watts or 30, 70, and 100 watts. These lamps use two filaments (*e.g.,* a 30-watt and a 70-watt filament) and can be operated separately or together to produce three different lumen outputs (*e.g.,* 305 lumens with one filament, 995 lumens with the other, or 1,300 lumens using the filaments together). When used in three-way sockets, these lamps allow users to control the light level. Three-way incandescent lamps are typically used in residential multi-purpose areas, where consumers may adjust the light level to be appropriate for the task they are performing.

D. 2,601–3,300 Lumen General Service Incandescent Lamps

The statute does not provide a definition of ''2,601–3,300 Lumen General Service Incandescent Lamps;'' however, DOE is interpreting this term to be a general service incandescent lamp [3] that emits light between 2,601 and 3,300 lumens. These lamps are used in general service applications when high light output is needed.

E. Shatter-Resistant Lamps

Section 321(a)(1)(B) of EISA 2007 amended section 321(30) of EPCA by adding the definition of a ''shatter-resistant lamp, shatter-proof lamp, or shatter-protected lamp.'' ''Shatter-resistant lamp, shatter-proof lamp, and shatter-protected lamp'' mean a lamp that—(i) has a coating or equivalent technology that is compliant with NSF/ANSI 51 [National Sanitation Foundation/American National Standards Institute] and is designed to contain the glass if the glass envelope of the lamp is broken; and (ii) is designated and marketed for the intended application, with—(I) the designation on the lamp packaging; and (II) marketing materials that identify the lamp as being shatter-resistant, shatter-proof, or shatter-protected. (42 U.S.C. 6291(30)(Z)) Although the definition provides three names commonly used to refer to these lamps, DOE simply refers to them collectively as ''shatter-resistant lamps.''

Shatter-resistant lamps incorporate a special coating designed to prevent glass shards from being dispersed if a lamp's glass envelope breaks. Shatter-resistant lamps incorporate a coating compliant with industry standard NSF/ANSI 51,[4] ''Food Equipment Materials,'' and are labeled and marketed as shatter-resistant, shatter-proof, or shatter-protected. Some types of the coatings can also protect the lamp from breakage in applications subject to heat and thermal shock that may occur from water, sleet, snow, soldering, or welding.

[3] ''The term 'general service incandescent lamp' means a standard incandescent or halogen type lamp that—(I) is intended for general service applications; (II) has a medium screw base; (III) has a lumen range of not less than 310 lumens and not more than 2,600 lumens or, in the case of a modified spectrum lamp, not less than 232 lumens and not more than 1,950 lumens; and (IV) is capable of being operated at a voltage range at least partially within 110 and 130 volts.'' (42 U.S.C. 6291(30)(D)(i))

[4] NSF/ANSI 51 applies specifically to materials and coatings used in the manufacturing of equipment and objects destined for contact with foodstuffs.

III. Comparison Methodology

In the 2008 analysis, DOE reviewed each of the five sets of shipment data that was collected in consultation with NEMA and applied two curve fits to generate unit sales estimates for the five lamp types after calendar year 2006. One curve fit applied a linear regression to the historical data and extended that line into the future. The other curve fit applied an exponential growth function to the shipment data and projected unit sales into the future. For this calculation, linear regression treats the year as a dependent variable and shipments as the independent variable. The linear regression curve fit is modeled by minimizing the differences among the data points and the best curve-fit linear line using the least squares function.[5] The exponential curve fit is also a regression function and uses the same least squares function to find the best fit. For some data sets, an exponential curve provides a better characterization of the historical data, and, therefore, a better projection of the future data.

For 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps, DOE found that the linear regression and exponential growth curve fits produced nearly the same estimates of unit sales (*i.e.,* the difference between the two forecasted values was less than 1 or 2 percent). However, for rough service and vibration service lamps, the linear regression curve fit projected lamp unit sales would decline to zero for both lamp types by 2018. In contrast, the exponential growth curve fit projected a more gradual decline in unit sales, such that lamps would still be sold beyond 2018, and it was, therefore, considered the more realistic forecast. While DOE was satisfied that either the linear regression or exponential growth spreadsheet model generated a reasonable benchmark unit sales estimate for 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps, DOE selected the exponential growth curve fit for these lamp types for consistency with the selection made for rough service and vibration service lamps.[6] DOE examines

[5] The least squares function is an analytical tool that DOE uses to minimize the sum of the squared residual differences between the actual historical data points and the modeled value (*i.e.,* the linear curve fit). In minimizing this value, the resulting curve fit will represent the best fit possible to the data provided.

[6] This selection is consistent with the previous annual comparisons. See DOE's 2008 forecast

Continued

the benchmark unit sales estimates and actual sales for each of the five lamp types in the following section and also makes the comparisons available in a spreadsheet online: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=16.*

IV. Comparison Results

A. Rough Service Lamps

On October 18, 2016, DOE published a notice announcing that the actual unit sales for rough service lamps were 219.7 percent of the benchmark estimate for the 2015 calendar year. 81 FR 71794, 71800.[7] For the 2016 and 2017 calendar years, the exponential growth forecast projected the benchmark unit sales estimate for rough service lamps to be 4,722,000 and 4,489,000 units respectively. The NEMA-provided shipment data reported shipments of 9,674,000 units in 2016 and 5,860,000 units in 2017. These findings are 204.9 and 130.5 percent of the benchmark estimate.

Since unit sales for rough service lamps exceeded 200 percent of the benchmark estimate in 2015, and DOE did not complete an energy conservation standards rulemaking for these lamps by the end of calendar year 2016, the backstop requirement was triggered. DOE published a final rule on December 26, 2017, to adopt the statutory backstop requirements for rough service lamps which require that rough service lamps: (I) Have a shatter-proof coating or equivalent technology that is compliant with NSF/ANSI 51 and is designed to contain the glass if the glass envelope of the lamp is broken and to provide effective containment over the life of the lamp; (II) have a maximum 40-watt limitation; and (III) be sold at retail only in a package containing 1 lamp. (42 U.S.C. 6295(l)(4)(D)(ii)) DOE will continue to collect and model data for rough service lamps for two years after the effective date of January 25, 2018, in accordance with 42 U.S.C. 6295(l)(4)(I)(ii).

B. Vibration Service Lamps

On April 7, 2016, DOE published a notice announcing that the actual unit sales for vibration service lamps were 272.5 percent of the benchmark estimate for the 2015 calendar year. 81 FR 20261. For the 2016 and 2017 calendar years, the exponential growth forecast projected the benchmark unit sales estimate for vibration service lamps to be 2,467,000 and 2,345,000 units respectively. The NEMA-provided shipment data reported shipments of 6,869,000 units in 2016 and 6,018,000 units in 2017. These findings are 278.5 and 256.6 percent of the benchmark estimate.

Similar to rough service lamps, since unit sales for vibration service lamps exceeded 200 percent of the benchmark estimate in 2015, and DOE did not complete an energy conservation standards rulemaking for these lamps by the end of calendar year 2016, the backstop requirement was triggered. DOE published a final rule on December 26, 2017 to adopt the statutory backstop requirements for vibration service lamps which require that vibration service lamps: (I) Have a maximum 40-watt limitation; and (II) be sold at retail only in a package containing 1 lamp. (42 U.S.C. 6295(l)(4)(E)(ii)) DOE will continue to collect and model data for vibration service lamps for two years after the effective date of January 25, 2018, in accordance with 42 U.S.C. 6295(l)(4)(I)(ii).

C. Three-Way Incandescent Lamps

For 3-way incandescent lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2016 to be 48,104,000 units and for 2017 to be 47,610,000 units. The NEMA-provided shipment data reported shipments of 31,768,000 units in 2016 and 28,468,000 units in 2017. As these findings are only 66 percent and 60 percent of the benchmark estimate respectively, DOE will continue to track 3-way incandescent lamp sales data and will not initiate an accelerated standards rulemaking for this lamp type at this time.

D. 2,601–3,300 Lumen General Service Incandescent Lamps

For 2,601–3,300 lumen general service incandescent lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2016 to be 34,241,000 units and for 2017 to be 34,307,000 units. The NEMA-provided shipment data reported shipments of 3,679,000 units in 2016 and 2,794,000 units in 2017. As these findings are 10.7 and 8.1 percent of the benchmark estimate respectively, DOE will continue to track 2,601–3,300 lumen general service incandescent lamp sales data and will not impose statutory requirements for this lamp type at this time.

E. Shatter-Resistant Lamps

For shatter-resistant lamps, the exponential growth forecast projected the benchmark unit sales estimate for 2016 to be 1,679,000 units and for 2017 to be 1,684,000 units. The NEMA-provided shipment data reported shipments of 548,000 units in 2016 and 474,000 units in 2017. As these findings are only 32.6 and 28.2 percent of the benchmark estimate respectively, DOE will continue to track shatter-resistant lamp sales data and will not initiate an accelerated standards rulemaking for this lamp type at this time.

V. Conclusion

This NODA compares the 2016 and 2017 shipments against benchmark unit sales estimates for rough service lamps, vibration service lamps, 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps. For 3-way incandescent lamps, 2,601–3,300 lumen general service incandescent lamps, and shatter-resistant lamps, the 2016 and 2017 sales are not greater than 200 percent of the forecasted estimates. The 2016 and 2017 unit sales for vibration service lamps are greater than 200 percent of the benchmark unit sales estimate. The 2016 unit sales for rough service lamps are greater than 200 percent of the benchmark unit sales estimate but the 2017 unit sales are below the benchmark unit sales estimate. DOE will continue to monitor these lamp types and will assess 2018 unit sales next year.

Signed in Washington, DC, on July 20, 2018.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency Energy Efficiency and Renewable Energy.

[FR Doc. 2018–16097 Filed 7–27–18; 8:45 am]

BILLING CODE 6450–01–P

spreadsheet models of the lamp types for greater detail on the estimates.

[7] The October 2016 finding for rough service lamps was the result of a correction by NEMA to the data it initially submitted and relied upon by DOE for the April 7, 2016 notice. See, *https://www.regulations.gov/document?D=EERE-2013-BT-STD-0051-0075.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9442; Airspace Docket No. 16–ASO–15]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Crystal Springs, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: Comments must be received on or before September 13, 2018.

ADDRESSES: Send comments on this rule to: U. S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Bldg. Ground Floor Rm. W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202)-366–9826. You must identify the Docket No. FAA–2016–9442; Airspace Docket No. 16–ASO–15, at the beginning of your comments. You may also submit and review received 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 on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish Class E airspace extending upward from 700 feet above the surface at Copiah County Airport, Crystal Springs, MS, to support standard instrument approach procedures for IFR operations at this airport.

Comments Invited

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

Communications should identify both docket numbers (Docket No. FAA–2016–9442 and Airspace Docket No. 16–ASO–15) and be submitted in triplicate to DOT Docket Operations (see ''**ADDRESSES**'' section for the address and phone number.) You may also submit comments through the internet at *http://www.regulations.gov.*

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2016–9442; Airspace Docket No. 16–ASO–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. All communications received on or 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 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 the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 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 considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace extending upward from 700 Feet above the surface within a 7-mile radius of Copiah County Airport, Crystal Springs, MS, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at the airport.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 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 proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO MS E5 Crystal Springs, MS [New]

Copiah County Airport, MS
(Lat. 31°54′09″ N, long. 90°22′00″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Copiah County Airport.

Issued in College Park, Georgia, on July 19, 2018.

Ryan W. Almasy,

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

[FR Doc. 2018–16134 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AE78

Segregation of Assets Held as Collateral in Uncleared Swap Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend selected provisions of its regulations in order to simplify certain requirements for swap dealers (''SDs'') and major swap participants (''MSPs'') concerning notification of counterparties of their right to segregate initial margin for uncleared swaps, and to modify requirements for the handling of segregated initial margin (the ''Proposal'').

DATES: Comments must be received on or before September 28, 2018.

ADDRESSES: You may submit comments, identified by RIN 3038–AE78, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''),[1] a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

FOR FURTHER INFORMATION CONTACT: Matthew Kulkin, Director, (202) 418–5213, *mkulkin@cftc.gov;* Erik Remmler, Deputy Director, (202) 418–7630, *eremmler@cftc.gov;* or Christopher Cummings, Special Counsel, (202) 418–5445, *ccummings@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Existing Requirements

Subpart L of the Commission's regulations (''Segregation of Assets Held as Collateral in Uncleared Swap Transactions'' consisting of Regulations 23.700 through 23.704) was published in the **Federal Register** on November 6, 2013 and became effective January 6, 2014.[3] Subpart L implements the requirements for segregation of initial margin for uncleared swap transactions set forth in section 4s(*l*) of the Commodity Exchange Act (''CEA'' or the ''Act'').[4]

CEA section 4s(*l*) addresses segregation of initial margin held as collateral in certain uncleared swap transactions. The section applies only to swaps between a counterparty and an SD or MSP that are not submitted for clearing to a derivatives clearing

[1] 5 U.S.C. 552.

[2] 17 CFR 145.9 (2017). Commission regulations referred to herein are found at 17 CFR chapter I, and can be accessed through the Commission's website, *www.cftc.gov.*

[3] *See* 78 FR 66621 (Nov. 6, 2013).

[4] 7 U.S.C. 6s(*l*) (2012 & Supp. 2015). Like the Commission's regulations, the CEA can be accessed through the Commission's website.

organization (''DCO''). It requires that an SD or MSP notify a counterparty that the counterparty has the right to require that any funds or property the counterparty provides as initial margin be segregated in a separate account from the SD's or MSP's assets. The separate account must be held by an independent third-party custodian and designated as a segregated account for the counterparty. CEA section 4s(*l*) does not preclude the counterparty and the SD or MSP from agreeing to their own terms regarding investment of initial margin (subject to any regulations adopted by the Commission) or allocation of gains or losses from such investment. If the counterparty elects not to require segregation of margin, the SD or MSP is required to report quarterly to the counterparty that the SD's or MSP's back office procedures relating to margin and collateral are in compliance with the agreement between the counterparty and the SD or MSP.

In January 2016, the Commission adopted margin requirements for certain uncleared swaps applicable to SDs and MSPs for which there is no prudential regulator (''CFTC Margin Rule'').[5] The prudential regulators (''Prudential Regulators'') include the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency.[6] The Prudential Regulators adopted margin requirements similar to the CFTC Margin Rule for swaps entered into by SDs and MSPs that they regulate (''Prudential Regulator Margin Rules'') in November 2015.[7] The CFTC Margin Rule and the Prudential Regulator Margin Rules establish initial and variation margin requirements for SDs and MSPs.[8]

Prior to the CFTC Margin Rule effective date of April 1, 2016, if initial margin was to be exchanged by counterparties to uncleared swaps involving an SD or MSP, the requirements of subpart L applied. The CFTC Margin Rule amended Regulation 23.701 to clarify that from and after the effective date of the CFTC Margin Rule, the requirements of Regulations 23.702 and 23.703 did not apply in those circumstances where segregation is mandatory under the CFTC Margin Rule.[9] As a result, Regulations 23.702 and 23.703 generally only apply when initial margin is to be exchanged between an SD or MSP and (i) a nonfinancial end-user, or (ii) a financial end-user without ''material swaps exposure,'' as defined in the CFTC Margin Rule.

Regulation 23.700 defines certain terms used in subpart L. Regulation 23.701 requires an SD or MSP: (1) To notify each counterparty to a swap that is not submitted for clearing, that the counterparty has the right to require that any initial margin it provides be segregated; (2) to identify a creditworthy custodian that is a non-affiliated legal entity, independent of the SD or MSP and the counterparty, to act as depository for segregated margin assets; and (3) to provide information regarding the costs of such segregation. The regulation specifies that the notification is to be made (with receipt confirmed in writing) to an officer (of the counterparty) responsible for management of collateral (or to specified alternative person(s)), and that it need only be made once in any calendar year. Finally, the regulation provides that a counterparty can change its election to require (or not to require) segregation of initial margin by written notice to the SD or MSP.

Regulation 23.702 reiterates the requirement that the custodian be a legal entity independent of the SD or MSP and the counterparty. It also requires that segregated initial margin be held in an account segregated for, and on behalf of, the counterparty and designated as such. Finally, the regulation specifies that the segregation agreement is to provide that: (1) Withdrawals from the segregated account be made pursuant to agreement of both the counterparty and the SD or MSP, with notification to the non-withdrawing party; and (2) the custodian can turn over segregated assets upon presentation of a sworn statement that the presenting party is entitled to control of the assets pursuant to agreement among the parties.

Regulation 23.703 restricts investment of segregated assets to investments permitted under Regulation 1.25, and (subject to that restriction) permits the SD or MSP and the counterparty to agree in writing as to investment of margin and allocation of gains and losses.

Regulation 23.704 requires the SD's or MSP's chief compliance officer (''CCO'') to report quarterly to any counterparty that does not elect to segregate initial margin whether or not the SD's or MSP's back office procedures regarding margin and collateral requirements were, at any point in the previous calendar quarter, not in compliance with the agreement of the counterparties.

B. Factors Considered by the Commission

After more than four years of administering subpart L of part 23, the Commission has observed that the detailed requirements of those regulations have proven difficult for SDs and MSPs to implement and to satisfy in a reasonably efficient manner. These observations have been buttressed by suggestions submitted in response to the Commission's Project KISS initiative as described below. In addition, the Commission understands that very few swap counterparties have exercised their rights to elect to segregate initial margin collateral pursuant to subpart L during the four years the regulations have been effective.

Early in the implementation period, in response to multiple inquiries, Commission staff issued Staff Letter 14–132 (October 31, 2014)[10] providing interpretative guidance to SDs and MSPs regarding application of certain of the segregated margin requirements. In particular, the letter noted concerns expressed by SDs and MSPs that despite their earnest efforts to obtain confirmation of receipt of notification and election regarding segregation, failure by a counterparty to respond to the SD or MSP could bar any further swap transactions with the counterparty until a response was received.[11] However, notwithstanding the issuance of Staff Letter 14–132, issues regarding compliance with subpart L continue to be raised.[12]

[5] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150 through 23.159, 23.161.

[6] 7 U.S.C. 1a(39).

[7] *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015).

[8] *See* 17 CFR 23.151.

[9] 81 FR 704 (Jan. 6, 2016). The amendment did not address the application of subpart L to swaps subject to mandatory segregation under the Prudential Regulator Margin Rules. As described below, this Proposal would clarify that the swaps subject to the Prudential Regulator Margin Rules are to be addressed in the same manner as swaps subject to the CFTC Margin Rule.

[10] *See* CFTC Staff Letter No. 14–132 (October 31, 2014), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/14-132.pdf.*

[11] The Proposal would address generally some of the confusion that prompted the issuance of Staff Letter 14–132 in the context of other changes to subpart L that are proposed.

[12] For example, issues regarding compliance with these regulations have been raised with the National Futures Association as recently as January 2018, indicating ongoing uncertainty. *See* pp. 6–7 of the transcript of the NFA Swap Dealer Examination Webinar, January 18, 2018, available at *https://www.nfa.futures.org/members/member-*

Continued

On May 9, 2017, the Commission published in the **Federal Register** a request for information [13] pursuant to the Commission's Project KISS initiative seeking suggestions from the public for simplifying the Commission's regulations and practices, removing unnecessary burdens, and reducing costs. A number of suggestions received addressed various provisions of subpart L. In general, the suggestions echoed Commission staff concerns that the requirements in subpart L may be more burdensome than is necessary to achieve the purposes of the statute and that the requirements may be counterproductive by discouraging the use of individual segregation accounts.[14] Persons responding to Project KISS also noted that some requirements cause confusion because they overlap with segregation requirements in the margin regulations more recently adopted by the CFTC and Prudential Regulators.[15] Furthermore, responders noted that the requirements in subpart L are overly prescriptive eliminating the possibility for reasonable bilateral negotiation of certain terms that takes place in the normal course to determine appropriate collateral arrangements based on the circumstances of the broader counterparty relationship.[16]

Responders also asserted that counterparties to uncleared swaps rarely elect to require segregation of margin pursuant to the existing provisions of subpart L.[17] Commission staff has observed evidence of minimal uptake of the election to segregate. In addition, Commission staff has discussed this issue with the National Futures Association (''NFA'') to ascertain NFA's observations from examining a substantial number of SDs in connection with the implementation of subpart L. Based on this experience, it appears that for nearly every SD examined, fewer than five counterparties elected segregation pursuant to subpart L since registration. For some SDs, not a single counterparty has elected to segregate pursuant to subpart L.

In light of these considerations, the Commission is proposing to amend the regulations governing segregation of margin for uncleared swaps. The Commission believes that the amendments proposed today will reduce unnecessary burdens on registrants and market participants by simplifying some overly detailed provisions, thereby reducing the intricate and prescriptive requirements that have been found during implementation to provide little or no benefit. These changes will also facilitate more efficient swap execution by eliminating complexity and confusion that slows down documentation and negotiation of hedging and other swap transactions. Finally, the amendments, by reducing the prescriptive elements of the rule, potentially could encourage more segregation (as was intended by the statute) by providing flexibility for the parties to establish segregation arrangements that better suit their specific needs.

At the same time that the Commission is proposing specific changes, it is seeking comment from the public on the appropriateness of these changes, as well as suggestions for other amendments that can streamline, simplify, and reduce the costs of these regulations without sacrificing the protections called for by CEA section 4s(*l*).

II. The Proposal

A. Regulation 23.700—Definitions

Section 23.700 defines ''Margin'' as ''both Initial Margin and Variation Margin.'' [18] As proposed to be amended, subpart L would no longer refer collectively to initial margin and variation margin, since the right to require segregation applies only to initial margin, and not to variation margin. Thus, there is no need for the separate defined term ''Margin.'' The Commission therefore proposes to eliminate the definition of Margin from Regulation 23.700, and to make conforming changes to subpart L by replacing the term ''Margin'' with ''Initial Margin'' in Regulations 23.701, 23.702, and 23.703.[19]

B. Regulation 23.701—Notification of the Right To Require Segregation

Paragraphs (a) and (b) of Regulation 23.701 direct an SD or MSP to notify each counterparty of the right to require segregation of initial margin. The language used is consistent with CEA section 4s(*l*). Paragraphs (c), (d) and (e) add specific requirements not expressly established in the statute. Paragraph (c) requires the SD or MSP to furnish the required notification to an officer of the counterparty responsible for management of collateral, or if no such person is identified by the counterparty, then to the chief risk officer, or if there is no such officer, to the chief executive officer, or if none, the highest-level decision-maker for the counterparty. Paragraph (d) requires the SD or MSP, ''prior to confirming the terms of any such swap,'' to obtain confirmation of receipt of the notification, and the counterparty's election to require or not require segregation of initial margin (such confirmation to be retained in accordance with Regulation 1.31). Paragraph (e) provides that the notification need be made only once in any calendar year.[20] Finally, paragraph (f) provides that the counterparty may change the segregation election at its discretion by providing a written notice to the SD or MSP. Paragraph (f) is not being amended in this Proposal except to redesignate it as paragraph (d).

Based on staff's implementation experience and on suggestions received in connection with Project KISS, the Commission believes that these requirements are unnecessarily prescriptive and that they do not reflect the practical realities of how over-the-counter swap transactions are negotiated and managed by the parties. Accordingly, the Commission is proposing to modify the notification requirement in paragraph (a) and to remove the requirements in existing paragraphs (c), (d) and (e).

Under the Proposal, paragraph (a) would be revised to require that the notification to a counterparty be made prior to execution of the first uncleared swap transaction that provides for the

resources/files/transcripts/sdexamswebinar transcriptjan2018.pdf.

[13] *See* 82 FR 21494 (May 6, 2017) and 82 FR 23765 (May 24, 2017).

[14] *See, e.g.* letter from the Financial Services Roundtable (''FSR Letter''), dated September 30, 2017 at 55 (noting that ''compliance with these regulations has proven to be unduly burdensome for swap dealers when weighed against the protections afforded to swap counterparties thereunder''), *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61427&SearchText=.*

[15] *Id. See also* letter from the Securities Industry and Financial Markets Association (''SIFMA Letter'') dated September 29, 2017 at 2 (''These requirements create unnecessarily burdensome obligations, which in many instances are duplicative or create confusion due to parallel mandatory collateral segregation requirements found within the CFTC and [prudential regulator] rules on margin requirements for non-centrally cleared swaps, and similar requirements in foreign jurisdictions.'').

[16] *See* SIFMA Letter at 2. *See also* letter from the Global Foreign Exchange Division of the Global Financial Markets Association, dated September 29, 2017.

[17] *See* FSR Letter at 55 (''Our members have advised that counterparties (i) rarely, if ever, elect to segregate [initial margin] and (ii) have found little use for receiving the notices.'').

[18] *See* 17 CFR 23.700.

[19] A grammatical change is also proposed for the definition of the term ''segregate.''

[20] Some confusion has been caused by the requirement in paragraph (d) to provide the notice ''prior to confirming the terms of any such swap,'' and the requirement in paragraph (e) to provide the notice once in any calendar year.

exchange of initial margin,[21] not prior to each transaction or annually as currently prescribed by paragraphs (d) and (e).[22] CEA section 4s(*l*) requires notification of the right to segregate ''at the beginning of a swap transaction.'' The Commission is interpreting that phrase to mean at the beginning of an SD's or MSP's swap transaction relationship with each counterparty.

This interpretation is consistent with the Commission's stated view when it originally proposed and adopted Regulation 23.701(e), which only requires notice once a year. With respect to the phrase in the statute ''at the beginning of a swap transaction,'' the Commission noted that ''[w]hile this language could be read to require transaction-by-transaction notification, where the parties have a pre-existing or on-going relationship, such repetitive notification could be redundant, costly and needlessly burdensome.'' [23]

When adopting final Regulation 23.701(e), the Commission considered comments requesting a loosening of the once-per-year notice requirement and rejected the requests in the belief that requiring notification once each year would balance the burden of providing notices and getting responses with the importance of the right to segregate initial margin.[24] At this time, based on implementation experience, the Commission is proposing to require notification at the beginning of a swap trading relationship that provides for exchange of initial margin. The importance of the notification informing the counterparty of the right to segregate is paramount at the beginning of the SD/MSP—counterparty relationship. It is at the time the parties initiate the first transaction that the decision to segregate initial margin will typically be made.[25] Subsequent notifications are repetitive to the initial notification and risk adding confusion over the duration of the contractual relationship of the parties. In this regard, the Commission understands that counterparties rarely change their election, once made. Accordingly, in addition to modifying the notification requirement in paragraph (a), the Commission proposes to eliminate paragraph (e)'s annual notification requirement in lieu of the proposed notification at the beginning of the first uncleared swap transaction that provides for exchange of initial margin.

Paragraph (a) would also be revised to eliminate the notification requirement where segregation is mandatory under Regulation 23.157 and where it is mandated under applicable rules adopted by a Prudential Regulator under CEA section 4s(e)(3). Paragraph (a)(2) (the requirement that the notification identify one or more creditworthy, independent custodians) would be deleted because selection of a custodian can be made when and if the counterparty elects to require segregation. Because very few counterparties elect to require segregation, it is unnecessarily burdensome to require an SD or MSP to confirm which custodians are available and continually update its notification form with the name of the custodian(s) available. Moreover, the Commission understands that a counterparty's initial decision to consider requiring (or not requiring) segregation is driven principally by whether the counterparty is concerned about protecting its initial margin and the terms of the segregation agreement, and not by the identity of the custodian. Similarly, paragraph (a)(3) (information regarding the price for segregation for each custodian) would be deleted because such pricing may vary for each segregation arrangement and would normally be subject to negotiation. To the extent pricing would be a factor in the decision to segregate, counterparties can and do discuss pricing as a term of the custodial arrangement when the counterparty indicates an interest in segregation. Moreover, the requirements in paragraphs (a)(2) and (a)(3) are not found in CEA section 4s(*l*).

Similarly, the Proposal would eliminate the requirement in current paragraph (c) that the SD or MSP provide the notification to a person at the counterparty with a specific job title. Based on implementation experience, the Commission is of the view that the regulation as initially adopted is unnecessarily prescriptive in dictating who must receive the notification. For example, in many cases, the person at the counterparty best situated to evaluate the notification and the decision to segregate will be a person directly involved in negotiating the swap regardless of that person's title. The Commission notes that in removing the specific designation of officers to receive the notification it is not eliminating the expectation that each registrant will use reasonable judgment in identifying an appropriate person at the counterparty who can evaluate the right to elect segregation (and either act on it or bring it to the attention of someone in a position to act on it). The Commission continues to believe that, to be effective, the notification must be made to a person at the counterparty who understands its meaning and, to the extent necessary, can direct it to the appropriate personnel at the counterparty. The proposed change seeks to advance the same underlying policy objective as the current requirement (namely that the notification be given to appropriate personnel at the counterparty), but would recognize that dictating how counterparties communicate the information in question creates unnecessary burdens and potentially hinders the ability of the parties to direct the information to the person(s) best situated to evaluate it.

As proposed, new paragraph (c) would simplify requirements in existing Regulation 23.701 by providing that ''[i]f the counterparty elects to segregate initial margin, the terms of segregation shall be established by written agreement.''

As noted above, the Commission is proposing to eliminate the additional requirements in existing paragraph (d), which are more extensive than the notification requirements set forth in CEA section 4s(*l*). Subsequent to adoption of subpart L, experience with implementation of the requirements of Regulation 23.701 has made the Commission aware of problems experienced by registrants in complying with these additional requirements. For example, persons seeking guidance have noted that paragraph (d)'s current requirement that the SD not execute a swap with the counterparty until it receives confirmation of the counterparty's receipt of the notification has the potential to block swap trading in some circumstances.[26] Instances of forestalled trading caused by this requirement could be particularly harmful for nonfinancial end-users that have ongoing, dynamic hedging programs (to hedge, for example, commodity price risk or foreign exchange risk).

Based on implementation experience, compliance with the existing segregation notification requirements in the regulation necessitates lengthy explanations and instructions from SDs and MSPs to their counterparties and imposes additional administrative

[21] This revision is consistent with guidance provided in Staff Letter 14–132, cited above.

[22] Thus, under the Proposal paragraph (e) of Regulation 23.701 (providing that the notification need only be made once in any calendar year) would become unnecessary, and is proposed to be deleted.

[23] 78 FR 66625.

[24] *Id.*

[25] For existing master netting agreements for which the SD has already sent a segregation notice, the Commission is of the view that such notice would be sufficient for purposes of complying with the amended regulations, if adopted, and therefore the SD would not be required to send a new notice.

[26] *See* Staff Letter 14–132, cited above.

processes requiring counterparties to take steps that are outside of the normal course of transacting in swaps. Some of these steps cause transaction delays and deviations from established business procedures for collateral custodial arrangements and disclosure of counterparty rights generally, and do not advance the counterparty's right to segregate initial margin. For nonfinancial end-user counterparties who tend to use swaps primarily for hedging purposes, these added compliance steps often cause confusion and uncertainty that can inhibit opportune, timely hedging. For counterparties that execute swaps frequently and have determined that they wish to segregate, the additional requirements merely add unnecessary hurdles to the transaction process. Accordingly, the Commission does not believe that the burdens imposed by these prescriptive requirements provide meaningful regulatory benefits beyond those provided by the provisions in proposed amended Regulation 23.701.

C. Regulation 23.702—Requirements for Segregated Margin

Existing Regulation 23.702 sets forth requirements for the custody of initial margin segregated pursuant to a counterparty's election under Regulation 23.701. Paragraph (c)(2) of Regulation 23.702 provides specific requirements for the withdrawal and turnover of control of initial margin. In particular, paragraph (c)(2) requires the custodian to turn over control of initial margin upon presentation of a written statement made by an authorized representative under oath or under penalty of perjury as specified in 28 U.S.C. 1746. The Statement must state that the counterparty, SD or MSP, as the case may be, is entitled to assume control of the initial margin pursuant to the parties' agreement. The other party must be immediately notified of the turnover of control.

The Commission believes that, while paragraph (c)(2) may generally be consistent with the manner in which custodial arrangements work, the prescriptive requirements of the regulation, including requiring a specific form, the language used, and the certification needed, do not account for change in control arrangements in custodial agreements that are sometimes customized to reflect the unique business facts and circumstances that may exist between any two parties and the custodian. For example, the unique nature of the collateral posted or the specific terms of change in control triggers may warrant different notice procedures than those specified by paragraph (c)(2). Alternative notice procedures may allow for more timely and effective change in control under real-world circumstances and better protect each party's interests. Accordingly, the Commission believes that more flexibility is warranted, and that it is more appropriate to leave these matters up to negotiation by the parties.

D. Regulation 23.703—Investment of Segregated Margin

Regulation 23.703 requires initial margin segregated pursuant to subpart L to be invested consistent with Commission Regulation 1.25. Regulation 1.25 sets forth standards for investment of customer funds by a futures commission merchant or derivatives clearing organization in the context of exchange-traded futures and cleared swaps. When proposing Regulation 23.703, the Commission expressed its view that Regulation 1.25 ''has been designed to permit an appropriate degree of flexibility in making investments with segregated property, while safeguarding such property for the parties who have posted it, and decreasing the credit, market, and liquidity risk exposures of the parties who are relying on that margin.'' [27]

A suggestion in response to the Project KISS initiative noted that Regulation 1.25 is designed to protect exchange customers for which margin investment decisions are outside of their control.[28] Regulation 1.25 includes fairly extensive and specific requirements as to the mechanisms for holding and investing margin and the qualitative aspects of the investments held. With respect to initial margin for uncleared swaps that is not held in accordance with Regulation 23.157 or with the Prudential Regulator Margin Rules, the margin investment decisions are typically a matter of contract subject to negotiation between the parties. As such, each counterparty has a voice in how the initial margin may be invested.

In addition, the terms of most exchange-traded and cleared products are standardized and the customer's primary relationship with the FCM or DCO centers upon the trading and clearing of those standardized products. Conversely, over-the-counter swaps, by their nature, tend to be more customized and are often part of a broader financial relationship. For example: Interest rate swaps with end-users are often designed to match maturities of loans or bonds, with the rate of the swap tied to the rate on the loan or bond; commodity swaps often hedge the counterparty's physical commodity production or consumption risks that arise from a particular commercial enterprise; and foreign exchange swaps often hedge an entity's exposure to cross-border commercial transactions. In each case, the SD or MSP sometimes plays additional financial roles, such as providing a loan or other credit or liquidity support, brokering physical commodity purchases or sales, or acting as a correspondent bank. Accordingly, each counterparty, particularly nonfinancial end-user counterparties, may find better transactional efficiencies and may be better served and protected in related credit transactions if the types of collateral and the investment procedures and mechanisms used are determined through bilateral negotiation of the terms thereof by the parties.

Given the greater breadth and variability, both in the terms and purposes of uncleared swaps and in the nature of the relationship between the counterparty and the SD or MSP, the Commission believes a regulation that provides greater flexibility for the parties to negotiate appropriate initial margin investment terms will, in most cases, better serve the interests of the parties. For the same reasons, allowing greater flexibility may also encourage more counterparties to elect to segregate pursuant to subpart L.

The Commission recognizes that in some circumstances, nonfinancial end-user counterparties might have less negotiating leverage with a sophisticated SD or MSP. However, the regulations as originally adopted give little or no flexibility for counterparties and SDs or MSPs to negotiate mutually beneficial terms and to consider other factors such as the broader financial relationship between the parties. For nonfinancial end-user counterparties the segregation of initial margin is at their discretion. If these counterparties have a voice in how segregated initial margin is invested, the returns of which they will often receive, they may be more likely to elect to require segregation.

E. Regulation 23.704—Requirements for Non-Segregated Margin

Existing Regulation 23.704(a) requires the CCO of each SD or MSP to report quarterly to each counterparty that does not elect segregation of initial margin on whether or not the SD's or MSP's back office procedures relating to margin and collateral requirements failed at any time during the previous calendar quarter to comply with the agreement of

[27] *See* 75 FR 75432, 75434 (Dec. 3, 2010).

[28] *See* SIFMA Letter at 4.

the counterparties.[29] The Commission believes it is unnecessary to specify that the CCO be the individual that makes such reports, so long as the information is provided to counterparties. For many firms, middle or back office staff, not the CCO, implement collateral management pursuant to the terms of each collateral management agreement. Those staff people are therefore better situated to assess compliance with agreements and to provide the quarterly report. Accordingly, there are likely personnel at each SD other than the CCO who are better situated to more accurately and efficiently provide the report.[30] The Commission therefore proposes to require that the SD or MSP make the reports without specifying any particular person to perform that requirement. The Commission further proposes to simplify the language regarding timing of the required reports to eliminate uncertainty as to the regulation's meaning. With respect to paragraph (b) of the regulation, the Commission is proposing to specify that the reports required under paragraph (a) need be delivered only to counterparties who choose not to require segregation (as opposed to the current wording that simply says ''with respect to each counterparty'') to more closely follow the statutory language underlying this requirement.

III. Request for Comment

The Commission requests comments, generally, regarding the proposed changes to Regulations 23.700, 23.701, 23.702, 23.703, and 23.704. The Commission also specifically requests comment on the following questions:

- Are the proposed amendments to subpart L appropriate in light of the requirements of CEA section 4s(*l*) and in light of the commercial realities encountered by SDs, MSPs, and counterparties engaging in uncleared swap transactions?
- Should the Commission revise or eliminate any other provisions of subpart L? Are there additional ways in which the Commission can simplify, streamline, and reduce the costs of these regulations without impairing the rights and safeguards intended by CEA section 4s(*l*)?
- Do the proposed amendments appropriately preserve the rights of counterparties articulated in CEA section 4s(*l*)? Is the Commission's proposed interpretation of CEA section 4s(*l*)(1)(A) reasonable given the commercial realities of uncleared swaps transactions and relationships between SDs and MSPs and their counterparties?
- As proposed, Regulation 23.701(a) provides that ''[a]t the beginning of the first swap transaction that provides for the exchange of Initial Margin'' an SD or MSP must notify the counterparty of its right to require segregation of initial margin. Should the Commission provide specific benchmark events that call for delivery of a segregation notification? If so, would entering into a master netting agreement or other contractual relationship be appropriate? What other events may be relevant for marking ''the beginning of the first swap transaction''? Should the Commission provide that the counterparty may request or opt to continue to receive an annual or some other periodic notification? Should the Commission provide that the counterparty may request or opt to receive notification at the beginning of each swap transaction?
- The Commission notes that the proposed deletion of paragraph (a)(2) of Regulation 23.701 (requirement to identify one or more custodians as an acceptable depository for segregated initial margin) also removes language specifying that one of the identified custodians ''be a creditworthy non-affiliate.'' Under the Proposal, Regulation 23.702(a) would continue to require that the custodian ''must be a legal entity independent of both the swap dealer or major swap participant and the counterparty.'' Should the Commission adopt more specific financial or affiliation qualifications for the custodian that an SD or MSP uses as a depository for segregated initial margin, and if so, what should those qualifications be?
- Under Regulation 23.703(a), margin that is segregated pursuant to an election under Regulation 23.701 may only be invested consistent with Regulation 1.25. How has the limitation impacted counterparties' decisions to make an election under Regulation 23.701?

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies to consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[31] Whenever an agency publishes a general notice of proposed rulemaking for any regulation, pursuant to the notice-and-comment provisions of the Administrative Procedure Act,[32] a regulatory flexibility analysis or certification typically is required.[33] The Commission previously has established certain definitions of ''small entities'' to be used in evaluating the impact of its regulations on small entities in accordance with the RFA.[34] The Commission has previously established that SDs, and MSPs and ECPs [35] are not small entities for purposes of the RFA.[36]

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the Proposal will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Background

The Paperwork Reduction Act of 1995 (''PRA'') [37] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring a collection of information as defined by the PRA. The Proposal would result in such a collection, as discussed below. A person is not required to respond to a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB''). The Proposal contains a collection of information for which the Commission has previously received a control number from OMB. The title for this collection of information is ''Disclosure and Retention of Certain Information Relating to Swaps Customer Collateral, OMB control number 3038–0075.'' [38] Collection 3038–0075 is currently in force with its control number having been provided by OMB.

The Commission is proposing to revise collection 3038–0075 to

[29] Consistent with Staff Letter 14–132, the Commission confirms that the reporting requirement under Regulation 23.704 does not apply if no initial margin will be required as part of the swap transaction.

[30] The Commission notes that the CCO continues to be responsible, under Commission regulation 3.3, to report in the CCO annual report any material non-compliance issues involving back office procedure relating to margin and collateral requirements.

[31] 5 U.S.C. 601 *et seq.*

[32] 5 U.S.C. 553. The Administrative Procedure Act is found at 5 U.S.C. 500 *et seq.*

[33] *See* 5 U.S.C. 601(2), 603, 604, and 605.

[34] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012).

[35] Eligible contract participants, as defined in CEA section 1a(18), 7 U.S.C. 1a(18).

[36] *See* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596, 30701 (May 23, 2012).

[37] 44 U.S.C. 3501 *et seq.*

[38] *See* OMB Control No. 3038-0075, *https://www.reginfo.gov/public/do/PRAOMBHistory?omb ControlNumber=3038-0075#* (last visited June 29, 2017).

incorporate proposed changes to reduce the number of notices a SD or MSP must provide to its counterparties with respect to the rights of such counterparties to segregate initial margin for uncleared swaps. The Commission does not believe the Proposal would impose any other new collections of information that require approval of OMB under the PRA.

2. Modification of Collection 3038–0075

The Proposal would modify collection 3038–0075 by eliminating the requirement that the notification of the right to segregate be provided on an annual basis to a specified officer of the counterparty such that the notice would only need to be provided once to each counterparty at the beginning of the first non-cleared swap transaction that provides for the exchange of initial margin. The Commission originally estimated that each SD and MSP would, on average, provide the segregation notice to approximately 1,300 counterparties each year and that the burden for preparing and furnishing the notice would be 2 hours, for an annual burden of 2,600 hours.[39] The Commission is estimating that each SD and MSP would, on average, have approximately 300 new counterparties each year for a total burden of 600 hours per registrant. Accordingly, the Commission is proposing to revise its overall burden estimate associated with Regulation 23.701 for this collection by reducing the per registrant annual burden by 2,000 hours.

C. Cost-Benefit Considerations

1. Background

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[40] Section 15(a) further specifies that the 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, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. With respect to the proposed regulation changes discussed above, the Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors, and seeks comments from interested persons regarding the nature and extent of such costs and benefits.

2. Regulations 23.700, 23.701, 23.702 and 23.703—Notification of Right to Initial Margin Segregation

The baseline for these cost and benefit considerations is the status quo, which is existing market conditions and practice in response to the requirements of current §§ 23.700, 23.701, 23.702, and 23.703.[41] Subpart L: (1) Requires SDs or MSPs to notify counterparties of the right to segregate initial margin; (2) establishes certain procedures regarding the notification; and (3) establishes certain requirements for the initial margin segregation arrangements.

The Commission is proposing a more flexible approach that reduces some regulatory burdens that provide little or no corresponding benefit. The Proposal would eliminate the definition of ''Margin'' because it would no longer be needed. The Proposal would also revise when the segregation notice is required. Additionally, the Proposal would eliminate the requirements that (1) the SD or MSP provide the segregation notice to an officer of the counterparty with specific qualifications, and (2) the SD or MSP obtain the counterparty's confirmation of receipt of the segregation notice. Finally, the Proposal would allow the parties to establish the notice of change of control provisions and the commercial arrangements for investment of segregated collateral by contract instead of imposing specific requirements.

(i) Cost and Benefit Considerations

The general purpose of the changes proposed is to reduce burdens and improve the benefits intended by subpart L. The Commission preliminarily believes the proposed changes to subpart L would not impose any new requirements on registrants and instead would reduce or make the regulations more flexible allowing market participants to use standard market practices regarding the implementation of the initial margin segregation requirements. The simplification of the notification requirements would likely reduce the time needed to complete the notification process and may facilitate more efficient and timely trading for new customer relationships. The proposed changes would also reduce costs by eliminating the requirements for those swaps that must comply with the Prudential Regulator Margin Rules mandatory margin requirements. In addition, the changes will provide benefits to the parties to swaps by allowing the parties to establish by contract the terms for collateral management and for change in control and investment of segregated initial margin in a manner that better suits their business needs. To the extent the parties would be able to negotiate more efficient segregation agreements and agree to investment arrangements that generate higher returns that are passed on to the counterparty, as is most often the case for uncleared swaps, the parties would benefit. The Commission believes that the simplification of the requirements and greater flexibility will therefore encourage more counterparties to elect to segregate initial margin.

As noted above, in some circumstances, nonfinancial end-user counterparties might have less negotiating leverage when negotiating the terms of segregation agreements with experienced SDs or MSPs. Reducing the prescriptive requirements in the current rule could therefore reduce protections for the counterparties. However, it is not clear how incentives or disincentives may impact the negotiating choices of SDs and MSPs as well as the counterparties and therefore the extent to which the requirements provide protections. For example, regarding the choice of investments, the SD or MSP may seek to restrict investments to the most liquid investments that would be easily liquidated if the counterparty defaults. Those liquid investments, which would likely be similar to the investments permitted under Regulation 1.25, may in turn generate lower returns passed on to the SD/MSP's counterparties. Conversely, the current regulations give little or no flexibility for counterparties and SDs or MSPs to negotiate mutually beneficial terms and consider other factors such as the broader financial relationship between the parties. Furthermore, for nonfinancial end-user counterparties, the segregation of initial margin is discretionary. If the counterparties have no voice in how segregated initial margin is invested, there may be less incentive for the counterparty to elect to require segregation.

The Commission believes that the proposed changes to subpart L might lead to reduced costs for registrants, because they would no longer have to comply with some of the more prescriptive requirements imposed by the regulations. The Commission is, however, unable to quantify the potential cost savings because the cost savings depend on numerous factors that are particular to each SD or MSP

[39] *See* 78 FR at 66631.

[40] 7 U.S.C. 19(a).

[41] *See* 78 FR at 66632–36 (discussing the cost-benefit considerations with regard to the segregation regulation).

and each counterparty relationship. For example, the factors affecting the costs involved could include: The size and complexity of an SD's dealing activities, the complexity of the swap transactions, the level of sophistication of each counterparty, the degree to which automated notice technologies may be used to satisfy these requirements, and the nature of the custodial and investment documents in particular segregation arrangements.

(ii) Section 15(a) Considerations

a. Protection of Market Participants and the Public

Subpart L is intended to provide counterparties to SDs and MSPs with notice of the right to elect to segregate initial margin. The Commission recognizes that the proposed changes to make the regulations less prescriptive might potentially negatively impact the goal of protecting market participants by removing specific requirements for the segregation agreements. However, the Commission is of the view that the intended purpose and benefits of subpart L remain in place because the Proposal continues to implement the statutory requirements. In addition, the parties and the selected custodian would now have the flexibility to establish requirements for margin segregation through negotiated contracts that meet their respective needs, thereby providing market participants with the flexibility and opportunity to protect themselves better by contract. Finally, the greater flexibility provided by the amended regulations may increase the voluntary use of initial margin segregation by counterparties, a process that was intended to provide better protection for the counterparty in the event of default by the SD or MSP.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

Subpart L promotes the financial integrity of markets by providing for the protection of counterparty collateral and by mitigating systemic risk that may result from the loss of access to the collateral in the event of a counterparty default. As discussed above, given that registrants would still be expected to enter into segregation arrangements with counterparties that elect to segregate, and, with the amendments, registrants would now be able to develop segregation arrangements tailored to their businesses and swap transactions, the Commission is of the view that the proposed changes likely would have a positive impact on market integrity.

The Commission preliminarily believes that the proposed amendments will not have a significant impact on the competiveness or efficiency of markets because this rulemaking only affects how collateral is protected and segregated but not how market participants elect to trade.

c. Price Discovery

The Commission believes the proposed amendments to subpart L will not have a significant effect on price discovery.

d. Sound Risk Management

Subpart L provides for the management and protection of counterparty collateral and therefore mitigates the risk of loss of access to the collateral, which loss can have an adverse impact on registrants, counterparties and the U.S. financial markets. As discussed, the proposed changes remove certain prescriptive requirements, but do not alter the overall principles of the existing requirements of subpart L. Therefore, the Commission is of the view that sound risk management practices will not be adversely impacted by the proposed changes.

e. Other Public Interest Considerations

The Commission has not identified any other public purpose considerations for the proposed changes to subpart L.

(iii) Request for Comment

The Commission invites comment on its preliminary consideration of the costs and benefits associated with the proposed changes to subpart L, especially with respect to the five factors the Commission is required to consider under CEA section 15(a). In addressing these areas and any other aspect of the Commission's preliminary cost-benefit considerations, the Commission encourages commenters to submit any data or other information they may have quantifying and/or qualifying the costs and benefits of the proposal. The Commission also specifically requests comment on the following questions:

- To what extent do the proposed amendments reduce or increase burdens and costs for SDs or MSPs or their counterparties?
- To what extent do the proposed amendments impact collateral management risk considerations?
- Will there be any effects on the financial system if initial margin is not invested pursuant to Regulation 1.25? If yes, please explain.
- Are counterparties to SDs or MSPs at a substantial disadvantage when negotiating the terms for segregation arrangements that would no longer be required if the proposed amendments are adopted? Would that disadvantage cause them to receive unfair terms on those segregation arrangements? Are there mitigating factors?
- Would the elimination of the requirement to list at least one non-affiliated custodian and the cost of the custodial services have an effect on the selection of an independent custodian and the cost of the services to the non-SD/MSP counterparty? If yes, please explain.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of the CEA.[42]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the proposed rule implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposed rule to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requests comment on whether the proposed rule is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the proposed rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the proposed rule.

List of Subjects in 17 CFR Part 23

Custodians, Major swap participants, Margin, Segregation, Swap dealers, Swaps, Uncleared swaps.

For the reasons stated in the preamble, the Commodity Futures

[42] *See* 7 U.S.C. 19(b).

Trading Commission proposes to amend 17 CFR part 23 as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. Revise subpart L to read as follows:

Subpart L—Segregation of Assets Held as Collateral in Uncleared Swap Transactions

Sec.
23.700 Definitions.
23.701 Notification of right to segregation.
23.702 Requirements for segregated initial margin.
23.703 Investment of segregated initial margin.
23.704 Requirements for non-segregated margin.

Subpart L—Segregation of Assets Held as Collateral in Uncleared Swap Transactions

§ 23.700 Definitions.

As used in this subpart:

Initial Margin means money, securities, or property posted by a party to a swap as performance bond to cover potential future exposures arising from changes in the market value of the position.

Segregate means to keep two or more items in separate accounts, and to avoid combining them in the same transfer between two accounts.

Variation Margin means a payment made by or collateral posted by a party to a swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market.

§ 23.701 Notification of right to segregation.

(a) At the beginning of the first swap transaction that provides for the exchange of Initial Margin, a swap dealer or major swap participant must notify the counterparty that the counterparty has the right to require that any Initial Margin the counterparty provides in connection with such transaction be segregated in accordance with §§ 23.702 and 23.703, except in those circumstances where segregation is mandatory pursuant to § 23.157 or rules adopted by the prudential regulators pursuant to section 4s(e)(2)(A) of the Act.

(b) The right referred to in paragraph (a) of this section does not extend to Variation Margin.

(c) If the counterparty elects to segregate Initial Margin, the terms of segregation shall be established by written agreement.

(d) A counterparty's election, if applicable, to require segregation of Initial Margin or not to require such segregation, may be changed at the discretion of the counterparty upon written notice delivered to the swap dealer or major swap participant, which changed election shall be applicable to all swaps entered into between the parties after such delivery.

§ 23.702 Requirements for segregated initial margin.

(a) The custodian of Initial Margin, segregated pursuant to an election under § 23.701, must be a legal entity independent of both the swap dealer or major swap participant and the counterparty.

(b) Initial Margin that is segregated pursuant to an election under § 23.701 must be held in an account segregated for, and on behalf of, the counterparty, and designated as such. Such an account may, if the swap dealer or major swap participant and the counterparty agree, also hold Variation Margin.

(c) Any agreement for the segregation of Initial Margin pursuant to this section shall be in writing, shall include the custodian as a party, and shall provide that any instruction to withdraw Initial Margin shall be in writing and that notification of the withdrawal shall be given immediately to the non-withdrawing party.

§ 23.703 Investment of segregated initial margin.

The swap dealer or major swap participant and the counterparty may enter into any commercial arrangement, in writing, regarding the investment of Initial Margin segregated pursuant to § 23.701 and the related allocation of gains and losses resulting from such investment.

§ 23.704 Requirements for non-segregated margin.

(a) Each swap dealer or major swap participant shall report to each counterparty that does not choose to require segregation of Initial Margin pursuant to § 23.701(a), on a quarterly basis, no later than the fifteenth business day after the end of the quarter, that the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements are in compliance with the agreement of the counterparties.

(b) The obligation specified in paragraph (a) of this section shall apply no earlier than the 90th calendar day after the date on which the first swap is transacted between the counterparty and the swap dealer or major swap participant.

Issued in Washington, DC, on July 24, 2018, by the Commission.

Christopher Kirkpatrick,

Secretary of the Commission.

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

Appendices to Segregation of Assets Held as Collateral in Uncleared Swap Transactions—Commission Voting Summary, Chairman's Statement, and Commissioner's Statement

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman J. Christopher Giancarlo

After more than four years of administering the final rules in subpart L of part 23 (Commission Regulations 23.700–23.704), CFTC staff have observed that the detailed requirements of these regulations have been difficult and burdensome for swap dealers to satisfy. The requirements have also caused some confusion by end user counterparties who rely on our markets to hedge commercial risk. These observations were supported by comments made in response to the Commission's Project KISS initiative.

Congress mandated that counterparties of swap dealers be given a choice regarding whether or not they elect the protections that come from segregation of initial margin collateral, which I support. Part of this important decision is protected by making sure the counterparty clearly, and easily, understands its rights. It appears that very few swap counterparties have exercised their right to make that choice. Part of the reluctance may be because that choice is accompanied by a range of overly complicated regulatory requirements and obligations.

The swaps market is a marketplace of professional market participants. It is closed to retail participation. Public policy is not well served by imposing prescriptive consumer and investor protections in markets that exclusively serve professional market participants.

This proposal looks to reduce the burdens, costs and confusion that have proved counterproductive and discouraged the election of segregation. This proposal will also make it more efficient for counterparties, such as pension funds, insurance companies, and community banks, to be able to elect segregation and receive those protections while hedging their risk in the swaps markets.

As part of the proposal, the Commission would permit more flexibility in custodial arrangements and margin investment. Rather than the current prescriptive requirements of the regulation, it would leave it up to commercial negotiation by professional trading counterparties. Another change is removing the overly prescriptive requirement that initial margin segregation be invested pursuant to Commission Regulation 1.25, in the anticipation that doing so could encourage more segregation elections.

Enabling the election of segregation is a bipartisan goal, starting with a unanimous Commission rulemaking by a previous commission. Now with time and experience, we see that this goal could be more easily met, and changes to the rules are appropriate to better further these important public policy objectives.

I support this proposed rule from the Division of Swap Dealer & Intermediary Oversight. I look forward to hearing comments on the proposal.

Appendix 3—Concurring Statement of Commissioner Rostin Behnam

I respectfully concur with the Commodity Futures Trading Commission's (the ''Commission'' or ''CFTC'') approval of its proposed rule (the ''Proposal'') regarding amendments to subpart L of the Commission's Regulations (''Segregation of Assets Held as Collateral in Uncleared Swap Transactions'' consisting of Regulations 23.700 through 23.704), which implement Section 4s(*l*) of the Commodity Exchange Act (''CEA'' or the ''Act''). While I have strong reservations about the Commission's proposed interpretation of CEA section 4s(*l*) and its slash and burn approach to ''simplify'' requirements for swap dealers (''SDs'') and major swap participants (''MSPs'') absent meaningful consideration of the impact on swap counterparties, I am hopeful that the Proposal's solicitation of comments on these key points will produce a balanced record from which to adopt a final rule that more precisely simplifies the current requirements and provides tailored regulatory relief.

Since joining the Commission, I have emphasized both my strong opposition to any rollbacks of Dodd-Frank initiatives and my belief that, while a more principles-based approach may be suitable in certain situations, any changes must be narrowly targeted to ensure that core reforms remain whole and intact. I am concerned that this Proposal forgoes a surgical approach in favor of a blunt, insensitive strike at the purpose of the statute and implementing regulations.

While the preamble purports that the Proposal is supported by Commission experience, in reality the Commission heavily relies on a few comment letters from a limited segment of the market submitted in response to its ''Project KISS'' initiative. In the absence of corroborative evidence from those most impacted by the Proposal—non-financial end-users and financial end-users without ''material swaps exposure,'' as defined in the CFTC Margin Rule [1]—I am concerned that the Commission's proposed amendments take too much of a shoot first, ask questions later tactic. While I am supportive of the Project KISS initiative, I believe that the exercise requires a more diligent approach to evaluating the potential impact of proposing amendments to existing rules.

My greatest concerns with the Proposal relate to the Commission's proposed interpretation of the notice requirement in CEA section 4s(*l*)(1) and the proposed removal of all limitations on the investment of margin that is segregated pursuant to an election under Regulation 23.701. As I explain below, I am concerned that the Proposal's focus on reducing burdens to SDs and MSPs through amending the rules in subpart L may obscure valid issues regarding implementation—matters which may be resolved through more precise amendments with less chance of negatively impacting market participants.

The Commission previously interpreted the language in CEA section 4s(*l*)(1)(A) ''as a segregation right that can be elected or renounced by the SD's or MSP's counterparty.'' [2] Citing the plain language of the statute, the Commission noted Congress's emphasis on the importance of the ability of a counterparty to elect to have its collateral segregated by describing segregation as a ''right.'' [3] Regarding this ''right,'' the Commission understood that, ''the statute does not merely grant counterparties the legal right to segregation; it specifically requires that the existence of this right be communicated to them.'' [4] At a minimum, the Commission determined that this requirement is met when an SD or MSP provides notification to a counterparty at least once in each calendar year in which the SD or MSP enters a swap with the counterparty.[5] At the time, the Commission recognized that requiring notification on a transaction-by-transaction basis—*e.g.,* ''at the beginning of *a* swap transaction,'' [6] may be overly costly and burdensome, and that annual notification ''ensures that the right to segregation is called to the attention of the counterparties reasonably close in time to the point at which they make decisions regarding the handling of collateral for *particular* swaps transactions.'' [7] While the Commission considered requiring only an initial notification, it rejected that approach, noting the importance of the counterparty's right to elect to have its collateral segregated, and the minimal administrative burden on SDs and MSPs.[8]

The Commission and subpart L are largely silent with regard to content and delivery manner and method of the notice required by CEA section 4s(*l*)(1)(A) other than provisions in Regulation 23.701(a)(1) and (2) requiring the notification to identify one or more creditworthy, independent custodians and to include information regarding the price of segregation for each custodian, to the extent the SD or MSP has such information.[9] Though not specifically required by CEA section 4s(*l*)(1)(A), the Commission determined that this limited set of disclosures represents information material to a counterparty's informed decision making process regarding exercise of the right to segregation and when considering a segregation package offered by an SD or MSP.[10]

The Proposal would amend subpart L, in part, to require a single, one-time notification to a counterparty of their right to require segregation of any initial margin the counterparty provides in connection with all transactions following the first transaction that provides for the exchange of initial margin. The Proposal would also entirely remove Regulations 23.701(a)(2) and (3), generally finding that, since very few counterparties elect to require segregation, the underlying activity of ''confirming which custodians are available'' is ''unnecessarily burdensome'' and that pricing for segregation may vary, is normally subject to negotiation, and can be discussed when the counterparty indicates an interest in segregation. Consistent with CEA section 4s(*l*)(1)(B), the Proposal preserves the ability of a counterparty to change its election upon written notice.

In proposing these amendments, the Commission appears to be taking the view that a counterparty's decision with regard to segregation is made with respect to a trading relationship with a particular SD or MSP at the relationship's inception, and that while these types of counterparties are sophisticated enough to elect segregation and negotiate the terms of segregation arrangements, the annual receipt of a notice reminding them that they may change their election at any time is confusing. It also assumes that evidence of minimal uptake of

[1] 17 CFR 23.150–23.159, 23.161.

[2] Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 78 FR 66621, 66623 (Nov. 6, 2013).

[3] *Id.* at 66623 and 66625.

[4] *Id.* at 66625.

[5] *Id.;* 17 CFR 23.701(e).

[6] 7 U.S.C. 6s(*l*)(1)(A) (emphasis added).

[7] 78 FR at 66635 (emphasis added); *see also* 78 FR at 66633 (adding that annual notice offers this benefit ''without requiring excessive or repetitive notification in cases where a counterparty engages in multiple swaps with a particular SD or MSP over the course of a year.'').

[8] 78 FR at 66633 (''The Commission believes that the cost of requiring SDs and MSPs to deliver one notification per year to each counterparty is not overly burdensome, particularly when one considers the importance of the counterparty's decision to require segregation and the large dollar volume of business that is typically done by SDs and MSPs.'').

[9] 17 CFR 23.701(a)(2) and (3). While Commission Regulation 23.701(d) requires the SD or MSP to obtain confirmation of receipt of the segregation notification, since 2014, the Commission has permitted SDs and MSPs to rely on negative consent for purposes of Regulation 23.701(d), provided that the notice under Regulation 23.701(a) includes a prominent and unambiguous statement to that effect. *See* CFTC Staff Letter No. 14–132 (Oct. 31, 2014) at 7, available at *https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/14-132.pdf; See also* Transcript of the NFA Swap Dealer Examinations Webinar at 6 (Jan. 18, 2018), *available at https://www.nfa.futures.org/members/member-resources/files/transcripts/sdexamswebinar transcriptjan2018.pdf.*

[10] *See* 78 FR at 66624.

the election to segregate indicates that subpart L is largely superfluous.

While it may be true that swap counterparties have not elected segregation in droves, CEA section 4s(*l*) and subpart L are not intended to advance any particular outcome. Rather they concern the rights of counterparties to SDs and MSPs and aim to increase the safety in the market for uncleared swaps by creating a self-effectuating requirement for the segregation of counterparty initial margin in an entity legally separate from the SD or MSP.[11] As previously noted by the Commission in proposing subpart L, a goal of the regulation was to ''increase the likelihood that any lack of use of segregated collateral accounts by uncleared swaps counterparties is the result of genuine choices by counterparties and reduce the likelihood that it is the result of inertia, market power, or other market imperfections.'' [12] Indeed, based on some of the preamble discussion, it may be that we should consider the possibility that swap counterparties are not electing segregation specifically because the current system of annual notification does not provide them adequate notice of their ongoing right to segregation. If that is the case, the appropriate Commission response may be more (or clearer) notification, rather than the reduction in notification proposed today.

I am concerned that the Commission's proposal could undermine the right to segregation as well as Congressional intent by removing the periodic notification and minimal disclosures currently required by subpart L. I believe there are prescriptive elements of subpart L that can be removed with little impact to counterparties.[13] However, I am concerned by the Proposal's reliance on representations by SDs and unverified assumptions regarding counterparty behavior to justify regulatory rollbacks in the absence of further examination of whether and how the manner in which the annual notice requirement is currently implemented has contributed to claims of confusion and burden. I am also concerned that the Proposal may discourage commenters from suggesting alternative means of complying with the current language in Regulation 23.701(a) which may better preserve Congressional intent.[14]

I am similarly concerned that the Proposal's removal of the requirement in Regulation 23.703 that limits the investment of initial margin segregated pursuant to subpart L to be invested consistent with Commission Regulation 1.25 is a knee-jerk response to a single Project KISS comment letter that ignores current practice and presupposes that the rollback will encourage more counterparties to elect to segregate pursuant to subpart L, which, as stated above, is not the goal of the statute or implementing regulation. While I am not opposed to permitting greater flexibility with regard to the investment of initial margin, I would have preferred that the Commission seek additional information regarding whether and how the current limitations in Regulation 23.703 have impacted counterparties and their decision making under subpart L before proposing alternative regulatory language.

I commend the Commission and its staff for engaging through Project KISS in efforts to identify and reduce unnecessary burdens in the Commission regulations. I appreciate staff's consideration and inclusion of several of my suggested edits to this Proposal. To be clear, I believe the Proposal provides for many sound improvements to subpart L that respond to ongoing concerns and confusion created by the finalization of the CFTC and Prudential Regulator Margin Rules and CFTC interpretive guidance.[15] However, where the Proposal aims to strip out regulatory provisions that the Commission previously determined were essential to effectuating the language and purpose of CEA section 4s(*l*), I believe the Commission may be engaging in shortsighted and unnecessary rollbacks to the detriment of the swap counterparties subpart L is intended to protect.

[FR Doc. 2018–16176 Filed 7–27–18; 8:45 am]

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[11] *Id.* at 66621 and 66632.

[12] Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 75 FR 75432, 75437 (proposed Dec. 3, 2010).

[13] I also believe that the Commission can respond to specific burdens identified by SDs and MSPs by, for example, codifying staff interpretive guidance. *See, e.g.* Letter from the Financial Services Roundtable at 56 (Sept. 30, 2017) (urging the Commission to codify its interpretation in CFTC Staff Letter No. 14–132 with respect to SDs' ability to rely on negative consent), *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61427&SearchText=.*

[14] For example, through the use of additional clauses in customer onboarding or relationship documentation as a means to append the required notification and disclosures to each new swap confirmation thereby ensuring and simultaneously documenting that the counterparty is notified of their right to require segregation at least at the beginning of each swap transaction.

[15] *See* CFTC Staff Letter No. 14–132, *supra* note 9.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. OSHA–2013–0023]

RIN 1218–AD17

Tracking of Workplace Injuries and Illnesses

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend OSHA's recordkeeping regulation by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301. These establishments will continue to be required to submit information from their Form 300A summaries. OSHA is amending its recordkeeping regulations to protect sensitive worker information from potential disclosure under the Freedom of Information Act (FOIA). OSHA has preliminarily determined that the risk of disclosure of this information, the costs to OSHA of collecting and using the information, and the reporting burden on employers are unjustified given the uncertain benefits of collecting the information. OSHA believes that this proposal maintains safety and health protections for workers while also reducing the burden to employers of complying with the current rule. OSHA seeks comment on this proposal, particularly on its impact on worker privacy, including the risks posed by exposing workers' sensitive information to possible FOIA disclosure. In addition, OSHA is proposing to require covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission.

DATES: Comments must be submitted by September 28, 2018.

ADDRESSES: You may submit comments, identified by docket number OSHA–2013–0023, or regulatory information number (RIN) 1218–AD17, by any of the following methods:

Electronically: You may submit comments electronically at *https://www.regulations.gov/,* which is the federal e-rulemaking portal. Follow the instructions on the website for making electronic submissions;

Fax: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA docket office at (202) 693–1648;

Regular mail, express mail, hand delivery, or messenger/courier service (hard copy): You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2013–0023, Room N–3653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–2350 (TTY (887) 889–5627). OSHA's Docket Office accepts deliveries (hand deliveries, express mail, and messenger/courier service) from 10 a.m. to 3 p.m. ET, weekdays.

Instructions for submitting comments: All submissions must include the docket number (Docket No. OSHA–2013–0023) or the RIN (RIN 1218–AD17) for this rulemaking. Because of security-related procedures, submission by regular mail may result in significant delay. Please contact the OSHA docket office (telephone: (202) 693–2350; email: *technicaldatacenter@dol.gov*) for

information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service.

All comments, including any personal information you provide, are placed in the public docket without change and will be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security Numbers and birthdates.

Docket: To read or download submissions in response to this **Federal Register** document, go to docket number OSHA–2013–0023, at *https://www.regulations.gov.* All submissions are listed in the *https://www.regulations.gov* index. However, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All submissions, including copyrighted material, are available for inspection at the OSHA docket office.

Electronic copies of this **Federal Register** document are available at *https://www.regulations.gov.* This document, as well as news releases and other relevant information, is available at OSHA's website at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Frank Meilinger, OSHA Office of Communications, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general and technical information on the proposed rule: Amanda Edens, Director, Directorate of Technical Support and Emergency Management, telephone: (202) 693–2300; email: *edens.mandy@dol.gov.*

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In this preamble, OSHA references documents in Docket No. OSHA–2013–0023, the docket for this rulemaking. The docket is available at *https://www.regulations.gov,* the Federal e-rulemaking Portal.

References to documents in this rulemaking docket are given as ''Ex.'' followed by the document number. The document number is the last sequence of numbers in the Document ID Number on *https://www.regulations.gov.*

The exhibits in the docket, including public comments, supporting materials, meeting transcripts, and other documents, are listed on *https://www.regulations.gov.* All exhibits are listed in the docket index on *https://www.regulations.gov.* However, some exhibits (*e.g.,* copyrighted material) are not available to read or download from that web page. All materials in the docket are available for inspection at the OSHA Docket Office, Room N–3653, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone (202) 693–2350.

I. Background

A. Introduction

OSHA's regulation at 29 CFR part 1904 requires employers to collect a variety of information on occupational injuries and illnesses. Much of this information may be sensitive for workers, including descriptions of their injuries and the body parts affected. Under OSHA's regulation, employers with more than 10 employees in most industries must keep those records at their establishments. Employers covered by these rules must record each recordable employee injury and illness on an OSHA Form 300, the ''Log of Work-Related Injuries and Illnesses,'' or equivalent. Covered employers must also prepare a supplementary OSHA Form 301, the ''Injury and Illness Incident Report'' or equivalent, to provide additional details about each case recorded on the OSHA Form 300. OSHA requires employers to provide these records to others under certain circumstances, but imposes limits on the disclosure of personally identifying information.[1] Finally, at the end of each year, these employers are required to prepare a summary report of all injuries and illnesses on the OSHA Form 300A, the ''Summary of Work-Related Injuries and Illnesses,'' and post the form in a visible location in the workplace.

Form 301 in particular requires the collection of much sensitive information about each individual worker's job-linked illness or injury, information an employer must collect with or without the worker's consent. While some of the information is likelier to be regarded as particularly sensitive—namely, descriptions of injuries and the body parts affected—most of the form's questions seek answers that should not be lightly disclosed, including:

- Was employee treated in an emergency room?
- Was employee hospitalized overnight as an in-patient?
- Date of birth.
- Date of injury.
- What was the employee doing just before the incident occurred? Describe the activity, as well as the tools, equipment, or material the employee was using. Be specific. *Examples:* ''climbing a ladder while carrying roofing materials''; ''spraying chlorine from hand sprayer''; ''daily computer key-entry.''
- What happened? Tell us how the injury occurred. *Examples:* ''When ladder slipped on wet floor, worker fell 20 feet''; ''Worker was sprayed with chlorine when gasket broke during replacement''; ''Worker developed soreness in wrist over time.''
- What was the injury or illness? Tell us the part of the body that was affected

[1] OSHA's regulation at 29 CFR 1904.35(b)(2) requires employers to provide employees, former employees, their personal representatives, and their authorized employee representatives access to the OSHA Form 300. Employers must include the names of the employees with recorded cases, except for certain ''privacy concern cases'' as specified in 29 CFR 1904.29(b)(6)–(9). In addition, OSHA's regulation at 29 CFR 1904.29(b)(10) requires employees to remove or hide employee names and other personally identifying information when voluntarily disclosing the Form 300 or 301 to persons other than government representatives, employees, former employees or authorized representatives, except when disclosing the forms to an auditor or consultant hired by the employer to evaluate the safety and health program, or to the extent necessary for processing a claim for workers' compensation or other insurance benefits, or to a public health authority or law enforcement agency per 45 CFR 164.512. Finally, for the Form 301, OSHA's regulation at 29 CFR 1904.35(b)(2)(v) requires employers to provide an employee, former employee, or the employee's personal representative access to the Form 301 Incident Report describing an injury or illness to that employee or former employee; for authorized employee representatives, employers are required to provide the information in ''tell us about the case'' for any incident report and to remove all of the other information.

and how it was affected; be more specific than ''hurt,'' ''pain,'' or ''sore.'' *Examples:* ''strained back''; ''chemical burn, hand''; ''carpal tunnel syndrome.''

• What object or substance directly harmed the employee? *Examples:* ''concrete floor''; ''chlorine''; ''radial arm saw . . . ''

Form 300 requires employers to log much of this individual information—notably, descriptions of injuries and the body parts affected—for each individual worker and incident. Form 300A, by contrast, merely summarizes incident data without any traceable connection to individual workers.

In the May 2016 final rule (81 FR 29624), the recordkeeping regulation was revised to require establishments with 250 or more employees to electronically submit information from the OSHA Forms 300, 300A, and 301 to OSHA annually. Establishments in certain industries with 20–249 employees are required only to electronically submit information from only the OSHA Form 300A—the summary form. This proposed rule would amend OSHA's recordkeeping regulation by rescinding the requirement for establishments with 250 or more employees to electronically submit information from the OSHA Forms 300 and 301—the individual forms.

As discussed below, OSHA proposes this amendment to the 2016 rule to protect worker privacy, having re-evaluated the utility of routinely collecting Form 300 and 301 data. The injury and illness data electronically submitted to OSHA from Form 300A (which submission the 2016 rule requires, and which this proposal would not change) gives OSHA a great deal of information to use in identifying high-hazard establishments for enforcement targeting. To that end, OSHA has designed a targeted enforcement mechanism for industries experiencing higher rates of injuries and illnesses based on the summary data. By contrast, OSHA has provisionally determined that electronic submission of Forms 300 and 301 adds uncertain enforcement benefits, while significantly increasing the risk to worker privacy, considering that those forms, if collected by OSHA, could be found disclosable under FOIA. In addition, to gain (uncertain) enforcement value from the case-specific data, OSHA would need to divert resources from other priorities, such as the utilization of Form 300A data, which OSHA's experience has shown to be useful.

OSHA seeks comment on this proposal. In addition, OSHA asks for public comment on whether to require covered employers to submit their EIN along with their injury and illness data submission.

This proposed rule is expected to be an E.O. 13771 deregulatory action, with annualized net cost savings estimated at $8.2 million. Details on OSHA's cost and cost savings estimates for this proposed rule can be found in the Preliminary Economic Analysis (PEA).

Under the current recordkeeping rule, the initial deadline for electronic submission of information from OSHA Forms 300 and 301 by covered establishments with 250 or more employees was July 1, 2018. However, OSHA will not enforce this deadline without further notice while this rulemaking is underway.

B. Regulatory History

OSHA's regulations on recording and reporting occupational injuries and illnesses (29 CFR part 1904) were first issued in 1971 (36 FR 12612, July 2, 1971). These regulations require the recording of work-related injuries and illnesses that involve death, loss of consciousness, days away from work, restriction of work, transfer to another job, medical treatment other than first aid, or diagnosis of a significant injury or illness by a physician or other licensed health care professional (29 CFR 1904.7).

On July 29, 1977, OSHA amended these regulations to partially exempt businesses having ten or fewer employees during the previous calendar year from the requirement to record occupational injuries and illnesses (42 FR 38568). On December 28, 1982, OSHA amended these regulations to partially exempt establishments in certain lower-hazard industries from the requirement to record occupational injuries and illnesses (47 FR 57699). OSHA also amended the recordkeeping regulations in 1994 (Reporting of Fatality or Multiple Hospitalization Incidents, 59 FR 15594) and 1997 (Reporting Occupational Injury and Illness Data to OSHA, 62 FR 6434). Under the authority in Section 1904.41 added by the 1997 final rule, OSHA began requiring certain employers to submit only their 300A data to OSHA annually through the OSHA Data Initiative (ODI). The purpose of the ODI was to collect data on injuries and acute illnesses attributable to work-related activities in the private sector from approximately 80,000 establishments in selected high-hazard industries. The Agency used these data to calculate establishment-specific injury and illness rates and, in combination with other data sources, to target enforcement and compliance assistance activities.

On January 19, 2001, OSHA issued a final rule amending its requirements for the recording and reporting of occupational injuries and illnesses (29 CFR parts 1904 and 1902), along with the forms employers use to record those injuries and illnesses (66 FR 5916). The final rule also updated the list of industries that were partially exempt from recording occupational injuries and illnesses.

On September 18, 2014, OSHA again amended the regulations to require employers to report work-related fatalities and severe injuries—in-patient hospitalizations, amputations, and losses of an eye—to OSHA and to allow electronic reporting of these events (79 FR 56130). The final rule also revised the list of industries that are partially exempt from recording occupational injuries and illnesses.

On May 12, 2016, OSHA amended the regulations on recording and reporting occupational injuries and illness to require employers to annually submit injury and illness information that employers were already required to keep under part 1904 (81 FR 29624) to OSHA electronically. Establishments with 250 or more employees in industries that are routinely required to keep records are required to electronically submit information from their OSHA Forms 300, 300A, and 301 to OSHA or OSHA's designee once a year, and establishments with 20 to 249 employees in certain designated industries are required to electronically submit information from their OSHA annual summary (Form 300A) to OSHA or OSHA's designee once a year. In addition, that final rule requires employers, upon notification, to electronically submit information from part 1904 recordkeeping forms to OSHA or OSHA's designee. These provisions became effective on January 1, 2017.

On November 24, 2017, OSHA amended the recordkeeping regulation to extend the initial submission deadline for 2016 Form 300A data described in 29 CFR 1904.41(c)(1) from July 1, 2017, to December 15, 2017 (82 FR 55761).

II. Legal Authority

OSHA is issuing this proposed rule pursuant to authority expressly granted by sections 8 and 24 of the Occupational Safety and Health Act (the ''OSH Act'' or ''Act'') (29 U.S.C. 657, 673). Section 8(c)(1) of the Act requires each employer to ''make, keep and preserve, and make available to the Secretary [of Labor] or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary . . . may prescribe by

regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses'' (29 U.S.C. 657(c)(1)). Section 8(c)(2) directs the Secretary to prescribe regulations ''requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job'' (29 U.S.C. 657(c)(2)). Finally, section 8(g)(2) of the OSH Act broadly empowers the Secretary to ''prescribe such rules and regulations as he may deem necessary to carry out [his] responsibilities under this Act'' (29 U.S.C. 657(g)(2)).

Section 24 of the OSH Act (29 U.S.C. 673) contains a similar grant of authority. This section requires the Secretary to ''develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics'' and ''compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses'' (29 U.S.C. 673(a)). Section 24 also requires employers to ''file such reports with the Secretary as he shall prescribe by regulation'' (29 U.S.C. 673(e)). These reports are to be based on ''the records made and kept pursuant to section 8(c) of this Act'' (29 U.S.C. 673(e)).

Further support for the Secretary's authority to require employers to keep and submit records of work-related illnesses and injuries can be found in the Congressional Findings and Purpose at the beginning of the OSH Act (29 U.S.C. 651). In this section, Congress declares the overarching purpose of the Act is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions'' (29 U.S.C. 651(b)). One of the ways in which the Act is meant to achieve this goal is ''by providing for appropriate reporting procedures . . . [that] will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem'' (29 U.S.C. 651(b)(12)). Importantly, the statute does not require this information to be reported to OSHA.

The OSH Act authorizes the Secretary of Labor to issue two types of occupational safety and health rules: Standards and regulations. Standards aim to correct particular identified workplace hazards, while regulations further the general enforcement and detection purposes of the OSH Act (see *Workplace Health & Safety Council* v. *Reich,* 56 F.3d 1465, 1468 (D.C. Cir. 1995) (citing *Louisiana Chemical Ass'n* v. *Bingham,* 657 F.2d 777, 781–82 (5th Cir. 1981)); *United Steelworkers of America* v. *Auchter,* 763 F.2d 728, 735 (3d Cir. 1985)). Recordkeeping requirements promulgated under the Act are characterized as regulations (see 29 U.S.C. 657 (using the term ''regulations'' to describe recordkeeping requirements)). An agency may revise a prior rule if it provides a reasoned explanation for the change. See *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983).

III. Summary and Explanation of the Proposed Rule

OSHA proposes to protect worker privacy by ending the electronic collection of case-specific forms (which OSHA has preliminarily determined adds uncertain enforcement value, but poses a potential privacy risk under FOIA) while continuing the collection of summary forms (which adds significant enforcement value, with little privacy risk). OSHA has reevaluated the utility of the Form 300 and 301 data for OSHA enforcement efforts and preliminarily determined that its (uncertain) enforcement value does not justify the reporting burden on employers, the burden on OSHA to collect, process, analyze, distribute, and programmatically apply the data, and—especially—the risks posed to worker privacy. Specifically, OSHA is proposing to amend its recordkeeping regulations by removing the part 1904 requirement that became effective on January 1, 2017, for the annual electronic submission of injury and illness information contained in OSHA Forms 300 and 301. This amendment would avoid the risks posed by making those forms into government records that could be found disclosable under FOIA.

OSHA is only seeking comment on the proposed changes to § 1904.41, and not on any other aspects of part 1904.

A. Description of Proposed Revisions to Section 1904.41

1. Section 1904.41(a)(1)—Annual Electronic Submission of Part 1904 Records by Establishments With 250 or More Employees

OSHA proposes to amend § 1904.41(a)(1) to remove the requirement for establishments with 250 or more employees that are required to routinely keep injury and illness records to electronically submit information from the OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) to OSHA or OSHA's designee once a year. Under the proposed rule, § 1904.41(a)(1) would only require these establishments to electronically submit information from the OSHA Form 300A (Summary of Work-Related Injuries and Illnesses). As explained below, OSHA believes that this change would better protect worker privacy from the risk of FOIA disclosure, while retaining the lion's share of the enforcement benefits realized by the 2016 rule.

a. Collecting Forms 300 and 301's Individual Injury and Illness Data Risks Worker Privacy

Electronic submission of Forms 300 and 301 puts the federal government in the position of collecting information that workers may deem quite sensitive, including descriptions of their injuries and the body parts affected. OSHA has preliminarily determined that its collection of these individual forms' information poses a non-trivial risk of compelled disclosure—endangering worker privacy—under FOIA.

As records in federal possession, Forms 300, 300A, and 301 could be subject to disclosure under FOIA if a court determines that no exemptions to FOIA apply. Although the Department believes that the information in these forms should be held exempt under FOIA, there remains a meaningful risk that a court may ultimately disagree and require disclosure. That risk remains so long as there is a non-trivial chance that *any* court in *any* of the nation's 94 federal judicial districts might issue a final disclosure order after the exhaustion of all available appeals. In the Department's view, that risk is not a reason to stop collecting Form 300A summaries, because their collection offers significant enforcement value with little privacy risk. However, OSHA has re-evaluated the utility of routinely collecting the Form 300 and 301 data for enforcement purposes, given that it has already designed a targeted enforcement mechanism using the summary data, and given the resources that would be required to collect, process, analyze, distribute, and programmatically apply the case-specific data in a meaningful way. Therefore, OSHA believes that the risk of disclosure under FOIA is a persuasive reason not to collect individual case information from Forms 300 and 301, as that collection offers only uncertain enforcement value while putting workers' privacy at risk.

Nor is that risk speculative. In 2017, an organization invoked FOIA to request

that the Department produce electronically-submitted information from Forms 300, 300A, and 301. The Department explained to the requester that it had not begun collecting Forms 300 and 301, and that Form 300A is exempt from disclosure under FOIA. The requester then sued the Department to compel disclosure of electronic information from Form 300A (and presumably would have demanded production of information from Forms 300 and 301, had the Department started collecting them). Although the Department strongly believes that Form 300A is exempt from disclosure under FOIA, the plaintiff's complaint is non-frivolous (*cf.* Fed. R. Civ. P. 11). It is accordingly possible that the adjudicating court could order disclosure of information in Form 300A. After the exhaustion of any appeals, that order would establish a precedent that other courts may find persuasive in potential future litigation over information in Forms 300 and 301.

That risk of potential compelled disclosure is illustrated by a case in which the Department was ordered to disclose OSHA records collecting its individual inspectors' exposures to beryllium. *Finkel* v. *U.S. Dep't of Labor,* No. 05–5525, 2007 WL 1963163 (D.N.J. June 29, 2007). In that case, the Department produced de-identified test results, but the court ultimately determined that more identifying information needed to be disclosed, despite FOIA's exemption for ''information . . . in personnel, medical or similar files . . . [whose] release would constitute a clearly unwarranted invasion of personal privacy.'' *Arieff* v. *U.S. Dep't of Navy,* 712 F.2d 1462, 1466 (D.C. Cir. 1983), *quoted in Finkel,* 2007 WL 1963163, at *8. While the Department believes that *Finkel* would be distinguishable from any future cases seeking FOIA disclosure of information from individual Forms 300 and 301, it is reasonably foreseeable that a court could find it persuasive nonetheless.

And as the *Finkel* case suggests, it may not be possible to fully redact all identifying information in a way that would eliminate privacy risk. Releasing case-specific data to a member of the public could result in the inadvertent release of personally identifiable information (PII) or re-identification of the data with a particular individual. Although automated systems exist to scrub PII from the data (*see* ''Text De-Identification For Privacy Protection: A Study of its Impact on Clinical Text Information Content,'' Stéphane M. Meystre et al., Journal of Biomedical Informatics 50 (2014) 142–150, Ex. 2061), it is not possible to guarantee the non-release of PII. Simson L. Garfinkel states ''de-identification approaches based on suppressing or generalizing specific fields in a database cannot provide absolute privacy guarantees, because there is always a chance that the remaining data can be re-identified using an auxiliary dataset.'' (see ''De-Identification of Personal Information,'' p. 5, Simson L. Garfinkel, NISTIR 8053, October 2015, Ex. 2060). Similarly, Mehmet Kayaalp observed, ''The de-identification process minimizes the risk of re-identification but has no claim to make it impossible.'' (see ''Modes of De-identification,'' p. 2, Mehmet Kayaalp, MD, Ph.D., U.S. National Library of Medicine, National Institutes of Health, 2017, Ex. 2062). In addition, de-identification is not the same as anonymization. That is, even after all PII has been removed, there is the chance that somebody could re-identify some of the data by linking the fully de-identified data back to the specific person.

Unless the U.S. Supreme Court (or sufficient circuit-court precedent, at least) were to definitively affirm that the information in Forms 300 and 301 is exempt from FOIA disclosure, there remains a real risk that the private, sensitive information from those forms could be disclosed regardless of the Department's attempts to keep it private.[2] In the Department's view, that risk to worker privacy is unacceptable.

b. Collecting Forms 300 and 301 Has Uncertain Enforcement Benefits

As its preamble explains, two of the benefits of the May 2016 final rule are more effective identification and targeting of workplace hazards by OSHA and better evaluations of OSHA interventions. See 81 FR 29685. According to the preamble, establishment-specific injury and illness data would allow for analyses that were not possible with the data available before the 2016 rule took effect. The establishment-specific data, the preamble concluded, would allow OSHA to evaluate different types of programs, initiatives, and interventions in different industries and geographic areas, enabling the agency to become more effective and efficient.

OSHA reaffirms those benefits—as to the collection of information from the summary Form 300A. Collection of the summary data gives OSHA the information it needs to identify and target establishments with high rates of work-related injuries and illnesses. OSHA has collected summary 300A data for 2016 from 214,574 establishments. With those data, OSHA has already designed a targeted enforcement mechanism for industries experiencing higher rates of injuries and illnesses. OSHA plans to further refine this approach by using the greater volume of 2017 summary data OSHA expects to collect, as explained in the margin.[3]

OSHA's use of summary data has a lengthy track record in enforcement, as well. Before the 2016 rule, OSHA had collected these data for 17 years under its OSHA Data Initiative (ODI) and used them to identify and target high-rate establishments through the Site-Specific Targeting (SST) Program. OSHA stopped the ODI in 2013 and the SST in 2014, but those prior programs have still given it considerable experience with using 300A data for targeting.

Conversely, OSHA has no prior experience with using the case-specific Form 300 and 301 data to identify and target establishments. OSHA is unsure as to how much benefit such data would have for targeting, or how much effort would be required to realize those benefits. OSHA estimates[4] that establishments with 250 employees or more would report data from approximately 775,210 Form 301s annually, a total volume three times the number of Form 300As whose data was uploaded for 2016, while also presenting finer-grained information than that captured by Form 300A. To gain (speculative, uncertain) enforcement value from the case-specific data, OSHA would need to divert resources from other priorities,

[2] The gathering of such data also may incentivize cyber-attacks on the Department's IT system. For example, on August 14, 2017, OSHA received an alert from the United States Computer Emergency Readiness Team (US–CERT) in the Department of Homeland Security that indicated a potential compromise of user information for OSHA's Injury Tracking Application (ITA). The ITA was taken off-line as a precaution. A complete scan was conducted by the National Information Technology Center (NITC). The NITC confirmed that there was no breach of the data in the ITA and that no information in the ITA was compromised. Public access to the ITA was restored on August 25, 2017. While this episode showed the security provisions of the ITA to work as designed, it also demonstrated that such a large data collection will inevitably encounter malware.

[3] OSHA expects many more establishments to respond with 2017 summary data this year, for at least two reasons. First, OSHA has analyzed the responses for 2016, has identified thousands of non-responders who were obligated to respond for 2016, and is in the process of informing them of their obligation to respond for 2017. Second, OSHA recently discovered that employers did not receive clear notice of their obligation to respond for 2016, if they were located in state plan states that had not completed adoption of their own state rules. In 2018, OSHA issued a correction clarifying that those employers were indeed obligated to submit Form 300A data for 2017.

[4] See ''PEA calculations,'' Ex. 2067.

such as the utilization of Form 300A data, which OSHA's long experience has shown to be useful.[5]

OSHA's current priority is to assure better compliance with the existing reporting requirements for severe injuries and fatalities and for 300A data, and to develop and assess intervention programs based on these data. OSHA estimates, for example, that over 100,000 establishments failed to submit their 2016 Form 300A data as required by the 2016 rule, and is currently taking steps aimed at reducing the number of non-responders for the 2017 reporting year.[6] Similarly, in the September 18, 2014, final rule that updated the severe injury reporting requirements under 29 CFR part 1904.39, OSHA estimated that more than 100,000 reports of in-patient hospitalizations and amputations would be made to the Agency. In calendar year 2017, fewer than 16,000 incidents were reported.[7] [8] OSHA intends to use available data sources (*e.g.,* workers compensation records) to identify and categorize employers who are non-compliant with the reporting requirements. This information can then be used to focus training and outreach efforts for improving compliance with these reporting requirements. But for the time being, given OSHA's enforcement focus on its readily-usable 300A and severe injury data and its uncertainty about the extent of the benefits from collecting 300 and 301 data, the Department has re-evaluated the utility of the Form 300 and 301 data to OSHA for enforcement purposes and preliminarily determined that its (uncertain) enforcement value does not justify the reporting burden on employers, the burden on OSHA to collect, process, analyze, distribute, and programmatically apply the data, and—especially—the risks posed to worker privacy.

c. Comments

OSHA welcomes comments from the public on the benefits and disadvantages of removing the requirement for employers with 250 or more employees to submit the data from OSHA Forms 300 and 301 to OSHA electronically on an annual basis, including the usefulness of the data for enforcement targeting, the burden on employers of submitting that data, and the risks its collection poses to worker privacy.

2. Section 1904.41, Paragraphs (b)(1)–(8)

Paragraphs (b)(1) through (8) of § 1904.41 currently address implementation of the electronic submission requirements for the information on OSHA Forms 300, 301, and 300A. OSHA is proposing to reconcile these provisions with the removal of the annual electronic submission requirement for the information on OSHA Forms 300 and 301 in proposed § 1904.41(a), as explained above. Therefore, the proposed provisions in paragraphs (b)(1)–(8) would provide for the implementation of electronic submission requirements only for the information on OSHA Form 300A.

OSHA invites public comment on these proposals during the comment period.

3. Employer Identification Number

OSHA limited the proposed data collection in its 2013 NPRM (78 FR 67254) to Improve Tracking of Workplace Injuries and Illnesses to records that employers were already required to collect under part 1904. Accordingly, the May 2016 final rule only required the electronic submission of such records. These records do not include the EIN.

OSHA now seeks comment on this proposal to add a requirement for employers to submit their EIN along with their injury and illness data because the Agency believes such a requirement could reduce or eliminate duplicative reporting. Collecting EINs would increase the likelihood that the Bureau of Labor Statistics (BLS) would be able to match data collected by OSHA under the electronic reporting requirements to data collected by BLS for the Survey of Occupational Injury and Illness (SOII). The BLS records contain the EINs for establishments, and including the EIN in the OSHA collection will increase the accuracy of matching the OSHA-collected data to the BLS-collected data. The ability to accurately match the data is critical for evaluating how BLS might use OSHA-collected data to supplement the SOII, which in turn would enhance the ability of OSHA and other users of the SOII data to identify occupational injury and illness trends and emerging issues. Furthermore, the ability of BLS to match the OSHA-collected data also has the potential to reduce the burden on employers who are required to report injury and illness data both to OSHA (for the electronic recordkeeping requirement) and to BLS (for the SOII). OSHA and BLS are also collaborating to identify technological approaches to reduce respondent burden. This collaboration includes exploring changes to both data collection systems as well as real-time sharing of OSHA data with BLS, with the goal of streamlining the reporting process for respondents covered under both collections.

The SOII is an establishment survey and is a comprehensive source of national estimates of nonfatal injuries and illnesses that occur in the workplace. The SOII collects data on non-fatal injuries and illnesses for each calendar year from a sample of employers based on recordable injuries and illnesses as defined by OSHA in 29 CFR part 1904. Using data from the survey, BLS estimates annual counts

[5] Forms 300 and 301 continue to offer substantial enforcement value in the context of on-site inspections. Compliance officers routinely review them as part of those inspections, and the information recorded in those forms can provide a roadmap for the compliance officer to focus the inspection on the most hazardous aspects of the operation.

[6] In addition to the privacy risks and uncertain enforcement benefits outlined above, electronic collection of the case-specific forms would also cause regulated employers and OSHA to incur financial costs. As explained in the Preliminary Economic Analysis, the annualized cost to employers is estimated at approximately $8.7 million per year. It would also cost OSHA significant sums to make case-specific data ready for enforcement use. In addition to the $450,000 required to add functionality to collect these data through the Injury Tracking Application (ITA), OSHA believes it would require several dedicated full-time employees to collect, process, analyze, distribute, and programmatically apply these data in a meaningful way.

[7] Employers covered by the OSH Act must report certain severe injuries or in-patient hospitalizations within 24 hours, and fatalities within 8 hours, chiefly to ''allow OSHA to carry out timely investigations of these events as appropriate.'' 79 FR 56156. The reported information, which OSHA retains in its records, resembles the information recorded in the case-specific Form 301. But these severe injury/fatality reports constitute a very small percentage of the total universe of Form 301s. In calendar year 2017, fewer than 16,000 incidents were reported. By contrast, OSHA estimates that approximately 775,000 cases would be submitted to OSHA as a result of the existing regulation. (See the Preliminary Economic Analysis.) Requiring electronic submission of Form 301 data would therefore increase almost 48-fold the universe of data potentially susceptible to FOIA.

[8] The Department also collects Form 301 data in two other ways, but neither offers a material precedent for collecting millions of Form 301s' data in a form potentially exposed to FOIA.

First, BLS collects approximately 250,000 Form 301s from private establishments for the annual Survey of Occupational Injury and Illness. But under the Confidential Information Protection and Statistical Efficiency Act, BLS is prohibited from releasing in identifiable form information acquired under a pledge of confidentiality for exclusively statistical purposes.

Second, the forms are occasionally retained in inspection case files, primarily in cases where OSHA issues a recordkeeping citation and the Form 301 is needed as evidence. In fiscal year 2017, OSHA issued 1,472 recordkeeping citations, 769 of which were for failure to report a fatality or severe injury, citations which were unlikely to result in Form 301 being entered into the case file. So in one year, approximately 703 citations represent possible cases where OSHA inspectors were likely to have retained Form 301 for agency records.

and rates by industry and state for workers in private industry and state and local government. In addition, the SOII provides details about the most severe injuries and illnesses (those involving days away from work), including characteristics of the workers involved and details of the circumstances surrounding the incident, using data collected on Forms 300A and 301 from the sampled establishments (see BLS Handbook of Methods: *https://www.bls.gov/opub/hom/soii/home.htm*).

Given the limitations of matching establishments across databases, there is currently no methodological approach to completely match establishments that currently submit data under both OSHA's collection of injury and illness data under § 1904.41 and the BLS data collection for the SOII. BLS cannot provide its collected data to OSHA because the Confidential Information Protection and Statistical Efficiency Act of 2002 (Pub. L. 107–347, 116 Stat. 2899 (2002)) prohibits BLS from releasing establishment-specific data to either OSHA or the general public. Although OSHA can provide the data it collects to BLS, without the EIN it is very difficult to match the establishments in OSHA's data collection to the establishments in BLS's data collection. Not having the EIN increases the resources necessary to produce the match and reduces the accuracy of the match.

Including the EIN in the electronic reporting to OSHA would improve BLS's ability to accurately match the OSHA-collected data with the SOII data. After evaluation of the accuracy of the data matching, it may be possible for BLS to use the OSHA-collected data in the generation of occupational injuries and illnesses estimates, reducing burden on employers. If the EIN is not collected and the data from the two sources cannot be accurately matched, reducing this burden becomes nearly impossible. Collecting the EIN would thus accord with a recommendation in the 2018 National Academy of Sciences, Engineering, and Medicine report on *A Smarter National Surveillance System for Occupational Safety and Health in the 21st Century:* ''To avoid duplicate reporting, OSHA and BLS should integrate data-collection efforts so that employers selected in the annual BLS sample for SOII but reporting electronically to OSHA need not make separate reports to BLS'' (see Ex. 2063).

Including the EIN as part of electronic reporting might also improve the quality and utility of the collected data. For example, OSHA could use the EIN to identify errors such as multiple submissions of data from the same establishment and to link multiple years of data submissions from the same establishment. The EIN could also be used to match against other databases that contain this identifier to add additional characteristics to the data. For example, submissions could be linked to the OSHA Information System (OIS) to identify the previous enforcement history of the establishment when the inspection records contain the EIN.

OSHA notes that EINs do not have the same level of protection as Social Security numbers. For example, any publicly-traded company must put its EIN on public filings with the U.S. Securities and Exchange Commission. Within DOL, the Employee Benefits Security Administration (EBSA) discloses EINs associated with filings of the Annual Returns/Reports of Employee Benefit Plans (Form 5500); EIN is a searchable field on EBSA's ''Form 5500/5000–SF Filing Search'' web page (see *https://www.efast.dol.gov/welcome.html*), and the search results are listed in ascending order by EIN. Other agencies also make EINs public in filings, such as the Federal Communications Commission's Commission Registration System (CORES). Businesses also have to share EINs with contractors and clients for tax reporting, such as filing an IRS Form 1099. As a result, DOL has not generally withheld EINs from disclosure.

OSHA invites public comment on the advantages and disadvantages of requiring employer submission of EINs and on whether employers required to electronically report information to OSHA under part 1904 would consider the EIN to be exempt from disclosure, either as confidential business information or for another reason.

B. Additional Questions

OSHA seeks comments and data from the public regarding the proposed rule to remove the requirement for establishments with 250 or more employees that are required to routinely keep injury and illness records to electronically submit information from the OSHA Form 300 and 301 and to add the requirement for covered establishments to submit their EIN. More specifically, the following questions are relevant to this rulemaking:

1. What risks to worker privacy are posed by the electronic collection of information from Forms 300 and 301 from establishments with 250 or more workers? How likely are these risks to materialize? How could OSHA make them less likely, and what resources would be required? Given the limitations identified above, what are the benefits of electronically collecting this information?

2. Besides the Bureau of Labor Statistics, what other agencies or organizations in the public and private sectors use automated coding (autocoding) systems for text data in data collections?

3. Besides the Department of Health and Human Services, what other agencies and organizations in the public and private sectors use automated de-identification systems to remove PII from text data before making the data available to the public? What challenges have they faced in using those systems to keep PII protected?

4. Would employers required to electronically report information to OSHA under part 1904 consider the EIN to be exempt from disclosure, either as confidential business information or for another reason? Are there any circumstances where the EIN would be considered Personally Identifiable Information (PII)? OSHA also seeks comments on privacy concerns that might arise from employers submitting their EIN.

OSHA is only seeking comment on the proposed changes to § 1904.41 in this NPRM, and not on any other aspects of part 1904.

IV. Preliminary Economic Analysis and Regulatory Flexibility Certification

A. Introduction

E.O. 12866 and E.O. 13563 require that OSHA estimate the benefits, costs, and net benefits of proposed and final regulations. Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501–1571) also require OSHA to estimate the costs, assess the benefits, and analyze the impacts of certain rules that the Agency promulgates. 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, and other effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This proposed rule would protect worker privacy and reduce costs for employers and OSHA by amending OSHA's recordkeeping regulation to remove the requirement for the annual electronic collection of information

from OSHA Forms 300 and 301. OSHA estimates that the rule would have net cost savings of $8.28 million per year at a 3 percent discount rate, including $8.23 million per year for the private sector and $52,754 per year for the government. Annualized at a 7 percent discount rate, the proposed rule would have net cost savings of $8.25 million per year, including $8.18 million per year for the private sector and $64,070 per year for the government. Annualized at a perpetual 7 percent discount rate, the proposed rule would have net cost savings of $8.35 million per year. As explained above, OSHA has preliminarily determined that the electronic collection of information in the OSHA 300 and 301 forms poses risks to worker privacy and additional cost to employers and OSHA that outweigh the uncertain enforcement benefits of collecting it.

The proposed rule is not an ''economically significant regulatory action'' under E.O. 12866 or UMRA (2 U.S.C. 1532(a)), and it is not a ''major rule'' under the Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*). The Agency estimates that the rulemaking imposes far less than $100 million in annual economic costs. In addition, it does not meet any of the other criteria specified by UMRA or CRA for a significant regulatory action or major rule.

B. Cost Savings

For this PEA, OSHA relied on the Final Economic Analysis (FEA) in the May 2016 final rule (81 FR 29624), updated to include more recent data and some modifications in OSHA's methodology. OSHA obtained the estimated cost of electronic data submission by multiplying the compensation per hour of the person expected to perform the task of electronic data submission by the time required to submit the data.

As in the 2016 FEA, OSHA selected an employee in the occupation of Industrial Health and Safety Specialist and Technician as being at the appropriate salary level. The mean hourly wage for Standard Occupational Classification (SOC) code 29–9011, Industrial Health and Safety Specialists, in the May 2016 data from the BLS Occupational Employment Survey (OES), was $34.85.[9] (The mean hourly wage used in the 2016 FEA was $33.88, using May 2014 data from OES.) This was the raw wage and did not include the other fringe benefits that make up full hourly compensation or overhead costs calculated in this document. Through the current electronic collection of 300A data, OSHA is collecting data on the occupations of employees responsible for submitting data. This information is collected as a part of the sign-up process where establishments create their user accounts; one of the fields for a new user is their job title. OSHA may use these data to revise the estimates in the final rule. In addition, OSHA welcomes comment on whether ''Industrial Health and Safety Specialist and Technician'' is the appropriate salary level for the employee performing this task.

The June 2017 data from the BLS National Compensation Survey[10] reported a mean fringe benefit factor of 1.44 for workers in private industry. (The mean fringe benefit factor used in the 2016 FEA was the same, using December 2014 data from the BLS National Compensation Survey.) OSHA multiplied the mean hourly wage by the mean fringe benefit factor to obtain an estimated total compensation (wages and benefits) for Industrial Health and Safety Specialists of $50.18 per hour ($34.85 × 1.44). The estimated total compensation (wages and benefits) used in the 2016 FEA was $48.78 per hour, so this estimate in this PEA represents an increase of 3 percent, due to the increase in the mean hourly wage.

OSHA recognizes that not all firms assign the responsibility for recordkeeping to an Industrial Health and Safety Specialist. For example, a smaller firm may use a bookkeeper or a plant manager, while a larger firm may use a higher-level specialist. However, OSHA believes that the calculated cost of $50.18 per hour is a reasonable estimated total hourly compensation for a typical record keeper.

Additionally, after publishing the May 2016 final rule, the Department of Labor determined that it is appropriate in some circumstances to account for overhead expenses as part of the methodology used to estimate the costs and economic impacts of OSHA regulations. Therefore, for this PEA, OSHA is updating the projected costs of the requirement for establishments with 250 or more employees to submit the information from OSHA Forms 300 and 301 to OSHA, as reflected in the 2016 FEA, by adding an overhead rate equivalent to 17 percent of base wages. For this PEA, OSHA included an overhead rate when estimating the marginal cost of labor in its primary cost calculation. Overhead costs are indirect expenses that cannot be tied to producing a specific product or service. Common examples include rent, utilities, and office equipment. Unfortunately, there is no general consensus on the cost elements that fit this definition. The lack of a common definition has led to a wide range of overhead estimates. Consequently, the treatment of overhead costs needs to be case-specific. OSHA adopted an overhead rate of 17 percent of base wages. This is consistent with the overhead rate used for sensitivity analyses in the FEA in support of the 2017 final rule delaying the deadline for submission of 300A data (82 FR 55761) and the FEA in support of OSHA's 2016 final standard on Occupational Exposure to Respirable Crystalline Silica.[11] For example, to calculate the total labor cost for an Industrial Health and Safety Specialist, Standard Occupational Classification (SOC) code 29–9011, three components are added together: base wage ($34.85) + fringe benefits ($15.33, derived as 44% of $34.85) + applicable overhead costs ($5.92, derived as 17% of $34.85). This increases the labor cost of the fully-loaded hourly wage for an Industrial Health and Safety Specialist to $56.10.

For time required for the data submission in this PEA, OSHA uses the same estimated unit time requirements as reported by BLS in its paperwork burden analysis for the Survey of Occupational Injuries and Illnesses (SOII) (OMB Control Number 1220–0045, expires December 31, 2018). BLS estimated 10 minutes per recordable injury/illness case for electronic submission of the information on Form 300 (Log of Work-Related Injuries and Illnesses) and Form 301 (Injury and Illness Incident Report). In addition, in the 2016 FEA, OSHA estimated 2 minutes more time than the BLS paperwork burden, for a total of 12 minutes per recordable case (10 minutes per case for Form 301 entries plus 2 minutes per case for entry of Form 300 log entries), to account for the

[9] See *https://www.bls.gov/oes/current/oes299011.htm.*

[10] See *https://www.bls.gov/web/ecec/ececqrtn.txt.*

[11] See the sensitivity analyses in the Improved Tracking FEA (*https://www.gpo.gov/fdsys/pkg/FR-2017-11-24/pdf/2017-25392.pdf,* page 55765) and the FEA in support of OSHA's 2016 final standard on Occupational Exposure to Respirable Crystalline Silica (81 FR 16285) (*https://www.gpo.gov/fdsys/pkg/FR-2016-03-25/pdf/2016-04800.pdf pp.16488-16492.*). The methodology was modeled after an approach used by the Environmental Protection Agency. More information on this approach can be found at: U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002 (Ex. 2066). This analysis itself was based on a survey of several large chemical manufacturing plants: Heiden Associates, *Final Report: A Study of Industry Compliance Costs Under the Final Comprehensive Assessment Information Rule,* Prepared for the Chemical Manufacturers Association, December 14, 1989, Ex. 2065.

differences between BLS and OSHA submission requirements.

The proposed rule would remove the requirement for establishments with 250 or more employees to report information from OSHA Forms 300 and 301. To estimate the number of injuries and illnesses that would be reported by covered establishments with 250 or more employees under the current rule, OSHA assumed that the total number of recordable cases in establishments with 250 or more employees is proportional to the establishments' share of employment within each industry.[12] OSHA then used the most recent SOII data to estimate that, without the proposed rule, covered establishments with 250 or more employees would report 775,210 injury and illness cases per year.[13] The cost per case is estimated at $11.22 (12/60 × $56.10), and the total cost is $8,699,173 ($11.22 per case × 775,210 cases).[14] Therefore, the proposal to remove the requirement to submit the information from OSHA Form 300 and 301 to OSHA electronically would result in a total cost savings to the private sector of $8,699,173.[15]

The 2016 FEA also included government costs for the rule because creating a reporting and data collection system was a significant fraction of the total costs of the regulation. Not collecting the case-specific data from OSHA Form 300 and 301 would generate a small additional cost savings for the government because that portion of the reporting and data collection system has not yet been created and would not have to be created under the proposed rule. OSHA estimates a lump sum savings from not creating the software to collect the 300 and 301 data to be $450,000. Annualized at 3 percent over 10 years, this would represent a savings to the government of $52,754 per year. OSHA also annualized the cost savings at 7 percent over 10 years, and using this discount rate, the cost savings would be slightly higher: $64,070.

C. New Costs (From the EIN Collection)

Establishments would be newly required to submit the employer's EIN along with the employer's electronic data submission. Some employees given this task would already know their employer's EIN from their other duties, but others would need to spend some time finding out this information. OSHA estimates an average of 5 minutes for an employee to find out his or her employer's EIN and to enter it on the submission form. Hence the unit cost for a submission would be the wage of the employee who submitted the information multiplied by his or her time plus overhead, or $4.68 [(5/60) × $56.10].

The electronic reporting system is designed to retain information about each establishment based on the login information, including the EIN. Therefore, employers would only have to provide OSHA their EIN once, so this would not be a recurring cost. However, it would be an additional one-time cost for employers who are newly reporting data because, for example, the establishment is new or the employer newly reached the reporting threshold for employment size. OSHA has estimated that each year there will be about 10.15 percent more establishments that will be required to report their EIN. This 10.15 percent figure is derived from the U.S. Census Bureau Statistics of U.S. Businesses (SUSB), specifically the employment change data set[16] which show the increase in U.S. business establishments from 2014 to 2015. In 2015 there were 689,819 new establishments, out of a total 6,795,201 establishments. Dividing the first figure by the second gives a change of about 10.15 percent.

To calculate the total estimated costs for covered establishments to provide their EINs, OSHA used establishment and employment data from the U.S. Census County Business Patterns (CBP).[17] The three categories of included establishments are (1) all establishments with 250 or more employees in industries that are required to routinely keep OSHA injury and illness records, (2) establishments with 20–249 employees in certain high-hazard industries, as defined in the Appendix to the May 2016 final rule, and (3) farms and ranches with 20 or more employees. CBP data do not include numbers of farms and ranches with 20 or more employees, so in the May 2016 final rule, OSHA used data from the 2012 Census of Agriculture. Updated data from the 2017 Census of Agriculture are not available at this time, so OSHA will continue to use a count of 20,623 farms with 20 or more employees. CBP data show that there are 36,903 establishments with 250 or more employees in industries required to routinely keep records and 405,666 establishments with 20–249 employees in the designated high-hazard industries. Combining these figures with 20,623 farms and ranches results in a total of 463,192 establishments that would be required to submit an EIN under the proposed rule. With a cost per establishment of $4.68, the total first year cost of providing EINs would be $2,165,751 (463,192 × $4.68).[18] When this cost is annualized over ten years, the annualized cost at a 3 percent discount rate is $253,892 and at a 7 percent discount rate the cost is $308,354.

There are 463,192 establishments (including establishments with more than 250 employees, those with 20–249 employees in certain NAICS codes, and farms with more than 20 employees) that would be subject to reporting their EIN in the first year under this proposal. With 10.15 percent new establishments each year, there will be an additional 47,012 establishments each year. The cost for those establishments will be $4.68 × 47,012 or $219,858. This cost does not occur in the first year. OSHA annualized 9 years of new establishment costs over ten years, which results in annualized costs of $213,262 at a discount rate of 3 percent and $204,468 at a 7 percent discount rate.

The EIN data field is already included in the reporting system design, so there would be no additional government costs associated with submittal of the EIN.

D. Net Cost Savings

The cost savings of the proposed rule, the new costs associated with collecting the EIN, and the net total cost savings are shown in Table 1. Combining the cost savings to the private sector and to the government, the estimated total annual cost savings from the proposed rule would be $8,751,927 at a 3 percent discount rate and $8,763,243 at 7 percent discount rate. The additional costs to the private sector from

[12] OSHA welcomes comments on this assumption.

[13] The 2016 FEA estimated 713,397 injury and illness cases per year using the same methodology and the most recent SOII data then available (see ''PEA calculations,'' Ex. 2067).

[14] In addition, note that the totals in tables in this chapter, as well as totals summarized in the text, may not precisely sum from underlying elements due to rounding. The precise calculation of the numbers in the PEA appears in the spreadsheet (see ''PEA calculations,'' Ex. 2067).

[15] Overall, the estimated cost savings of this proposal to remove the provision for electronic reporting of case data is 25 percent greater than the 2016 estimated cost of promulgating the provision ($6,948,487). There are three reasons for this 25 percent increase: The number of establishments with more than 250 employees has grown, the mean hourly wage has increased, and OSHA is now including a 17 percent overhead estimate in the cost estimates.

[16] Source: *https://www2.census.gov/programssurveys/susb/datasets/2015/us_state_emplchange_2014-2015.txt.*

[17] For the CBP see: *https://www.census.gov/programs-surveys/cbp.html.*

[18] In addition, note that the totals in tables in this chapter, as well as totals summarized in the text, may not precisely sum from underlying elements due to rounding. The precise calculation of the numbers in the PEA appears in the spreadsheet (see ''PEA calculations,'' Ex. 2067).

collection of the EIN are estimated to be $467,194 at a 3 percent discount rate and $512,822 at 7 percent discount rate. The net cost savings for this proposal are estimated to be $8,284,733 at a 3 percent discount rate and $8,250,421 at 7 percent discount rate.

TABLE I—TOTAL COST SAVINGS AND TOTAL ADDITIONAL COSTS OF THE PROPOSED RULE

Cost savings element	Annual cost savings
Cost savings for eliminating electronic submission of part 1904 records by establishments with 250 or more employees (Total Private Sector Savings)	$8,699,173
Total Government Cost Savings, 3 percent discount rate over ten years	52,754
Total Government Cost Savings, 7 percent discount rate over ten years	64,070
Total Cost Savings per year, 3 percent discount rate over ten years	8,751,927
Total Cost Savings per year, 7 percent discount rate over ten years	8,763,243
New costs from EIN collection	**Cost**
First Year EIN Cost	$2,165,751
Annualized First Year Costs, 3 percent discount rate over ten years	253,892
Annualized First Year Costs, 7 percent discount rate over ten years	308,354
Subsequent Annual EIN Costs (from new establishments), starting in second year	219,858
Subsequent annual EIN Cost Annualized at a 3 percent discount rate over ten years	213,262
Subsequent annual EIN Cost Annualized at a 7 percent discount rate over ten years	204,468
Annualized Total EIN Cost, 3 percent discount rate over ten years	467,194
Annualized Total EIN Cost, 7 percent discount rate over ten years	512,822
Net Cost Savings, 3 percent discount rate over ten years	8,284,733
Net Cost Savings, 7 percent discount rate over ten years	8,250,421

There could be substantial cost savings from requiring covered employers to include the EIN in their reporting. There is roughly a 40% overlap between the BLS SOII sample and private sector establishments required to report to OSHA. If OSHA collected Form 300A from all covered private sector units and BLS were able to fully match these units and use them in generating SOII estimates, the reduction in duplication would represent approximately 15,000 hours of respondent burden. In its SOII paperwork burden analysis, BLS estimates the total cost of submitting this form for private sector establishments to be $891,000. The potential cost savings for avoiding duplication is 40 percent of this value—$356,000. Considering that the cost savings for avoiding duplication is perpetual, the total net savings for adding the EIN is estimated to be $2,648,850 at a 3 percent discount rate and $126,294 at 7 percent discount rate in a perpetual time horizon.

E. Benefits

The value of worker privacy is impossible to quantify, but no less significant because of that fact. This proposed rule would protect worker privacy by preventing routine government collection of information that may be quite sensitive, including descriptions of workers' injuries and the body parts affected, and thereby avoiding the risk that such information might be publicly disclosed under FOIA.

OSHA further believes that the collection of individual information from Forms 300 and 301 could add enforcement benefits, but those benefits are uncertain and difficult to quantify. As noted above, these benefits are uncertain because OSHA lacks experience with the use of that information and is not sure about how many resources it would take to make meaningful use of that information. The loss of these uncertain benefits is also impossible to quantify.

OSHA has preliminarily determined that the (substantial) benefits to worker privacy outweigh the (uncertain) foregone benefits to enforcement. It welcomes public comment on this determination, including on its preliminary conclusions that neither worker privacy nor enforcement benefits can be meaningfully quantified.

F. Economic Feasibility

Removing the requirement for establishments with 250 or more employees to submit the information from OSHA Forms 300 and 301 to OSHA annually would reduce costs and so would have no negative feasibility effects. The EIN requirement would cost an estimated $4.68 per establishment, still leaving a large overall reduction in costs, and so would be economically feasible. Hence, OSHA concludes that the proposed rule is economically feasible.

G. Regulatory Flexibility Certification

The current requirement for annual electronic submission of information from OSHA Forms 300 and 301 affects only a very small minority of small firms. In many industry sectors, there are no small firms with at least 250 employees. Even in those industry sectors where the definition of small firm includes some firms with at least 250 employees, the overwhelming majority of small firms have fewer than 250 employees. However, there will be some small firms affected in some industries. Removing this requirement as proposed would result in a cost savings of, on average, $236 per establishment for each establishment with 250 or more employees affected by the 2016 Final Rule. This number is derived by dividing the total cost savings of $8,699,173 by 36,903 affected establishments with 250 or more employees. Such a small amount of cost savings would not have a significant impact on a firm with 250 or more employees.

As above, removing the requirement for establishments with 250 or more employees to submit the information from OSHA Forms 300 and 301 annually to OSHA would reduce costs, and the estimated cost of the EIN requirement is $4.68 per establishment, a negligible amount. Hence, per § 605 of the Regulatory Flexibility Act, OSHA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

V. OMB Review Under the Paperwork Reduction Act of 1995

This proposed rule would revise an existing collection of information, as

defined and covered by the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, that is subject to review by OMB under the PRA (44 U.S.C. 3501–3521) and OMB regulations (5 CFR part 1320). The PRA requires that agencies obtain approval from OMB before conducting any collection of information (44 U.S.C. 3507). The PRA defines a ''collection of information'' as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format'' (44 U.S.C. 3502(3)(A)).

OSHA's existing recordkeeping forms consist of the OSHA 300 Log, the 300A Summary, and the 301 Incident Report. These forms are contained in the Information Collection Request (ICR) (paperwork package) titled 29 CFR part 1904 Recording and Reporting Occupational Injuries and Illnesses, which OMB approved under OMB Control Number 1218–0176.

The proposed rule would affect the ICR estimates as follows:

1. Establishments that are subject to the part 1904 requirements and have 250 or more employees would no longer be required to electronically submit information recorded on their OSHA Forms 300 and 301 to OSHA once a year.

2. Establishments subject to the data collection would provide one additional data element, the EIN.

The burden hours for the electronic reporting requirements under § 1904.41 if revised as proposed are estimated to be 136,641 per year. There are no capital costs for this collection of information.

More specifically, this action proposes to amend the recordkeeping regulation to remove the requirement for establishments that are required to keep injury and illness records under part 1904, and that had 250 or more employees in the previous year, to electronically submit to OSHA or OSHA's designee case characteristic information from the OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) once a year. Under the proposed rule, these establishments would only be required to submit summary information from the OSHA Form 300A. There are approximately 37,000 establishments that would no longer be subject to a requirement to submit the information on OSHA Forms 300 and 301 for approximately 775,000 injury and illness cases under the proposed rule. OSHA used 2015 SOII data (*https://www.bls.gov/iif/oshwc/osh/os/ostb4734.pdf*) to estimate that, without the proposed rule, covered establishments with 250 or more employees would report 775,210 injury and illness cases per year.) Also, OSHA requests comment on requiring 463,000 employers to submit their EIN to OSHA.

The table below presents the components of the collection that comprise the ICR estimates.

	Estimated burden under current reporting requirements			Estimated burden under proposed reporting requirements		
	Number of cases	Unit hours per case	Total burden hours	Number of cases	Unit hours per case	Total burden hours
§ 1904.41(a)(1)—Create a new account	3,690	0.167	616	3,690	0.167	616
§ 1904.41(a)(1)—provide EIN	0	0.083	0	36,903	0.083	3,063
§ 1904.41(a)(1)—electronic submission of OSHA Form 300A data by establishments with 250 or more employees	36,903	0.167	6,163	36,903	0.167	6,163
§ 1904.41(a)(1)—electronic submission of injury and illness case data by establishments with 250 or more employees	775,210	0.2	155,042	0	0.2	0
§ 1904.41(a)(2)—Create a new account	40,567	0.167	6,775	40,567	0.167	6,775
§ 1904.41(a)(2)—provide EIN	0	0.083	0	426,285	0.083	35,382
§ 1904.41(a)(2)—electronic submission of OSHA Form 300A data by establishments with 20 or more employees but fewer than 250 employees in designated industries	385,383	0.167	64,359	385,383	0.167	64,359
§ 1904.41(a)(2)—electronic submission of OSHA Form 300A data by establishments with 20 or more employees but fewer than 250 employees in designated industries—with no internet connection	20,283	1	20,283	20,283	1	20,283
§ 1904.41(a)(3)—Electronic submission of part 1904 records upon notification	0	0	0	0	0	0
Total burden hours			253,238			136,641

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about this ICR.

1. *Title:* Recording and Reporting Occupational Injuries and Illnesses (29 CFR part 1904).

2. *Number of respondents:* 1,002,912.

3. *Frequency of responses:* Annually.

4. *Number of responses:* 5,839,692.

5. *Average time per response:* 22 minutes.

6. *Estimated total burden hours:* 2,136,953 hours.

7. *Estimated costs (capital-operation and maintenance):* $0.

Members of the public may comment on the paperwork requirements in this proposed regulation by sending their written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, OSHA (Regulation Identifier Number (RIN) 1218–AD17), Office of Management and Budget, Room 10235, Washington, DC 20503; telephone: 202–395–6929; fax: 202–395–6881 (these are not toll-free numbers); email: *OIRA_submission@omb.eop.gov.* Please limit the comments to only the proposed changed provisions of the recordkeeping rule related to information collection (*i.e.,* proposed § 1904.41).

OSHA also encourages commenters to submit their comments on these paperwork requirements to the rulemaking docket (OSHA–2013–0023), along with their comments on other parts of the proposed regulation. For instructions on submitting these comments to the docket, see the sections of this **Federal Register** document titled **DATES** and **ADDRESSES**.

Comments submitted in response to this document are public records; therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and dates of birth. To access the docket to read or download comments and other materials related to this paperwork determination, including the complete ICR, use the procedures described under

the section of this document titled **ADDRESSES**. You may obtain an electronic copy of the complete ICR by going to the website at *http://www.reginfo.gov/public/do/PRAMain,* then selecting ''Department of Labor'' under ''Currently Under Review,'' then clicking on ''submit.'' This will show all of the Department's ICRs currently under review, including the ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Mr. Charles McCormick, Directorate of Standards and Guidance, OSHA, telephone: (202) 693–1740; email: *mccormick.charles@dol.gov.*

OSHA and OMB are 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.

OSHA notes that a federal agency cannot conduct or sponsor a collection of information unless OMB approves it under the PRA, and the information collection displays a currently-valid OMB control number. Also, notwithstanding any other provision of law, no party shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently-valid OMB control number. OSHA will publish a notice of OMB's action when it publishes the final regulation, or, if not approved by then, when OMB authorizes the information collection requirements under the PRA.

VI. Unfunded Mandates

For purposes of the UMRA (2 U.S.C. 1501–1571), as well as E.O. 13132 (64 FR 43255 (Aug. 4, 1999)), this rule does not include any federal mandate that may result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

VII. Federalism

The proposed rule has been reviewed in accordance with Executive Order 13132, regarding federalism. Because this rulemaking involves a ''regulation'' issued under Sections 8 and 24 of the OSH Act, and is not an ''occupational safety and health standard'' issued under Section 6 of the OSH Act, the rule will not preempt state law (29 U.S.C. 667(a)). The effect of the proposed rule on states is discussed in Section VIII, State Plan States.

VIII. State Plan States

Pursuant to section 18 of the OSH Act (29 U.S.C. 667) and the requirements of 29 CFR 1904.37 and 1902.7, within 6 months after publication of the final OSHA rule, state-plan states must promulgate occupational injury and illness recording and reporting requirements that are substantially identical to those in 29 CFR part 1904 ''Recording and Reporting Occupational Injuries and Illnesses.'' All other injury and illness recording and reporting requirements (for example, industry exemptions, reporting of fatalities and hospitalizations, record retention, or employee involvement) that are promulgated by state-plan states may be more stringent than, or supplemental to, the federal requirements, but, because of the unique nature of the national recordkeeping program, states must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives (29 CFR 1904.37(b)(2), 29 CFR 1902.7). Also because of the need for a consistent national data system, employers in state-plan states must comply with federal requirements for the submission of data under part 1904 whether or not the state plan has implemented a substantially identical requirement by the time the federal requirement goes into effect. Therefore, although states will need to update their plans to match the Federal plan, there is no discretion involved, so this change should be relatively simple to make.

There are 28 state plan states and territories. The states and territories that cover private sector employers are Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands have OSHA-approved state plans that apply to state and local government employees only.

IX. Public Participation

Because this rulemaking involves a regulation rather than a standard, it is governed by the notice and comment requirements in the Administrative Procedure Act (APA) (5 U.S.C. 553) rather than section 6 of the OSH Act (29 U.S.C. 655) and 29 CFR part 1911 (both of which only apply to ''promulgating, modifying or revoking occupational safety or health standards'' (29 CFR 1911.1)). Therefore, the OSH Act requirement to hold an informal public hearing (29 U.S.C. 655(b)(3)) on a proposed standard, when requested, does not apply to this rulemaking.

A. Public Submissions

OSHA invites comment on all aspects of the proposed rule. OSHA specifically encourages comment on the issues raised in the questions subsection. OSHA is not seeking comment on any other aspects of part 1904. Interested persons must submit comments by September 28, 2018. The Agency will carefully review and evaluate all comments, information, and data, as well as all other information in the rulemaking record, to determine how to proceed.

You may submit comments in response to this document (1) electronically at *https://www.regulations.gov,* which is the federal e-rulemaking portal; (2) by fax; or (3) by hard copy. All submissions must identify the agency name and the OSHA docket number (Docket No. OSHA–2013–0023) or RIN (RIN 1218–AD17) for this rulemaking. You may supplement electronic submissions by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA docket office (see **ADDRESSES** section). The additional materials must clearly identify your electronic comments by name, date, and docket number, so that OSHA can attach them to your comments.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA docket office at (202) 693–2350 (TTY (877) 889–5627).

B. Access to Docket

Comments in response to this **Federal Register** document are posted at *https://*

www.regulations.gov, the federal e-rulemaking portal. Therefore, OSHA cautions individuals about submitting personal information such as Social Security numbers and birthdates. Although submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that website. All comments and exhibits, including copyrighted material, are available for inspection at the OSHA docket office. Information on using *https://www.regulations.gov* to submit comments and access dockets is available on that website. Contact the OSHA docket office for information about materials not available through the website and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *https://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available at OSHA's web page at *http://www.osha.gov.* For specific information about OSHA's Recordkeeping rule, go to the Recordkeeping page on OSHA's web page.

List of Subjects in 29 CFR Part 1904

Health statistics, Occupational safety and health, Reporting and recordkeeping requirements, State plans.

Signed at Washington, DC, on July 23, 2018.

Loren E. Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Regulations

For the reasons stated in the preamble, OSHA proposes to amend part 1904 of chapter XVII of title 29 as follows:

PART 1904—[AMENDED]

Subpart E—Reporting Fatality, Injury and Illness Information to the Government

■ 1. The authority citation for subpart E of 29 CFR part 1904 continues to read as follows:

Authority: 29 U.S.C. 657, 673, 5 U.S.C. 553, and Secretary of Labor's Order 1–2012 (77 FR 3912, Jan. 25, 2012).

■ 2. In § 1904.41, revise the section heading and paragraph (a)(1), add paragraph (a)(4), and revise paragraph (b) to read as follows:

§ 1904.41 Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA.

(a) * * *

(1) *Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 250 or more employees.* If your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form).

* * * * *

(4) *Electronic submission of the Employer Identification Number (EIN).* For each establishment that is subject to these reporting requirements, you must provide the EIN used by the establishment.

* * * * *

(b) *Implementation—(1) Does every employer have to routinely submit this information to OSHA?* No, only two categories of employers must routinely submit this information. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must submit the required information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to subpart E of this part, then you must submit the required information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form). If you are not in either of these two categories, then you must submit the information to OSHA only if OSHA notifies you to do so for an individual data collection.

(2) *Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (a) of this section?* Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

(3) *How will OSHA notify me that I must submit information as part of an individual data collection under paragraph (a)(3) of this section?* OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (a)(3). OSHA will also announce individual data collections through publication in the **Federal Register** and the OSHA newsletter, and announcements on the OSHA website. If you are an employer who must routinely submit the information, then OSHA will not notify you about routine submittal.

(4) *When do I have to submit the information?* If you are required to submit information under paragraph (a)(1) or (2) of this section, then you must submit the information once a year, by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2018 form). If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (a)(3) of this section, then you must submit the information as specified in the notification.

(5) *How do I submit the information?* You must submit the information electronically. OSHA will provide a secure website for the electronic submission of information. For individual data collections under paragraph (a)(3) of this section, OSHA will include the website's location in the notification for the data collection.

(6) *Do I have to submit information if my establishment is partially exempt from keeping OSHA injury and illness records?* If you are partially exempt from keeping injury and illness records under §§ 1904.1 and/or 1904.2, then you do not have to routinely submit information under paragraphs (a)(1) and (2) of this section. You will have to submit information under paragraph (a)(3) of this section if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, then you must keep the injury and illness records required by this part and submit information as directed.

(7) *Do I have to submit information if I am located in a State Plan State?* Yes, the requirements apply to employers located in State Plan States.

(8) *May an enterprise or corporate office electronically submit information for its establishment(s)?* Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (a) of this

section, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

* * * * *

[FR Doc. 2018–16059 Filed 7–27–18; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket ID–OSHA–2018–0009]

RIN 1218–AC96

Information Collection Request; Cranes and Derricks in Construction: Operator Qualification

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule, limited reopening of comment period.

SUMMARY: OSHA is providing the public an additional 30 days to comment on only the information collection requirements contained in the proposed updates to its standard for cranes and derricks in construction published on May 21, 2018.

DATES: The comment period for only the information collection requirements published on May 21, 2018 at 83 FR 23534, is reopened. Comments must be submitted (postmarked, sent, or received) by August 29, 2018.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Regular mail, express delivery, hand delivery, and messenger (courier) service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2018–0009, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the OSHA Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name, the title of this document ''Information Collection Request; Cranes and Derricks in Construction: Operator Qualification,'' and the OSHA docket number for this document (OSHA–2018–0009). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this document titled **SUPPLEMENTARY INFORMATION**. Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350; TTY (877) 889–5627.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** document) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Mr. Vernon Preston, Directorate of Construction; telephone: (202) 693–2020; fax: (202) 693–1689; email: *preston.vernon@dol.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

OSHA published a notice of proposed rulemaking ''Cranes and Derricks in Construction: Operator Qualification'' (the NPRM or the proposed rule) on May 21, 2018, in the **Federal Register** (83 FR 23534) proposing regulations to update the standard for cranes and derricks in construction. In the NPRM, OSHA proposes to amend 29 CFR 1926, subpart CC to revise sections that address crane operator training, certification/licensing,[1] and competency. The purpose of these amendments are to: Require comprehensive training of operators; remove certification by *capacity* from certification requirements; clarify and permanently extend the employer duty to evaluate potential operators for their ability to safely operate equipment covered by subpart CC; and require documentation of that evaluation.

The proposed rule provided the public 30 days to comment on the proposed regulations including the information collection requirements contained in the proposed rule. Under the Paperwork Reduction Act (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed information collection requirement and to allow 60 days for public comment on those requirements (44 U.S.C. 3506(c)(2)(A); see also 5 CFR 1320.8(d)(1)). Accordingly this document allows the public an additional 30 days, as required by the PRA, to comment on the information collection requirements contained in the proposed rule.

Concurrent with publication of the proposed rule, OSHA submitted the new Cranes and Derricks in Construction Standard (29 CFR part 1926, subpart CC): Operator Qualification Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review with a request for a new control number (ICR Reference Number 201710–1218–002). If a final rule is published, OSHA will submit the final ICR for the final Cranes and Derricks in Construction Standard: Operator Qualification to OMB for approval. If the final ICR is approved, OSHA will request to amend the comprehensive Cranes and Derricks in Construction Information Collection (OMB control number 1218–0261) to incorporate the ICR analysis associated with the final Cranes and Derricks in Construction Standard: Operator Qualification and to discontinue the new control number.

The purpose of the PRA, 44 U.S.C. 3501 *et seq.,* includes enhancing the quality and utility of information the Federal government requires and minimizing the paperwork and reporting burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information requirement (also referred to as a ''paperwork'' or ''information collection'' requirement), including publishing a summary of the information collection requirements and a brief description of the need for, and proposed use of, the information. The PRA defines ''collection of information'' as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format.'' (44 U.S.C. 3502(3)(A)). Under the PRA, a Federal agency may not conduct or sponsor a

[1] The term ''certification/licensing'' covers each of the certification options in the proposed rule (third-party certification or an audited employer certification program) as well as state or local operator licensing requirements.

collection of information, and the public is not required to respond to a collection of information, unless it is approved by OMB and displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

B. Desired Focus of Comments

The ''Cranes and Derricks in Construction: Operator Qualification'' proposed rule would establish new information collection requirements. The NPRM would also modify a small number of information collection requirements in the existing Cranes and Derricks in Construction Standard (29 CFR part 1926, subpart CC) Information Collection (IC) approved by OMB. OSHA submitted a new ICR (that modifies the existing Cranes and Derricks in Construction package) to OMB to reflect the NPRM's new or revised information collection requirements.

Some of these revisions, if adopted, would result in changes to the existing burden hour and/or cost estimates associated with the current, OMB-approved information collection requirements contained in the Cranes and Derricks in Construction Standard Information Collection. Other revisions would not change burden hour or cost estimates, but would substantively modify language contained in the currently OMB-approved ICR. Still others would revise existing standard provisions that are not information collection requirements, will not change burden hour or cost estimates, and will not modify any language in the ICR. This document summarizes the first two categories to ensure that the ICR reflects the updated regulatory text, but does not summarize or seek comment on the last category of revisions that are not related to information collections. In addition, this document does not address the proposed provisions that are substantively unchanged from the current, OMB-approved information collection requirements. Discussion and justification of these provisions can be found in the preamble to the final crane standard (75 FR 48017) and also in the Supporting Statements for the proposed rule (83 FR 23534) as well as the approved Information Collection.

The agency solicits comments on the Cranes and Derricks Standard information collection requirements as they would be revised by the proposed rule. Particularly, comments are sought by OSHA to:

- Evaluate whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information will have practical utility;
- Evaluate the accuracy of OSHA's estimate of the time and cost burden of the proposed information collection requirements, 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 information collection requirements 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.

A copy of the ICR for the proposed rule, with applicable supporting documentation, including a description of the likely respondents, estimated frequency of response, and estimated total burden, may be obtained free of charge from the *RegInfo.gov* website at: *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201710-1218-002* or contact Vernon Preston at (202) 693–2020 to obtain a copy of the ICR.

C. Proposed Revisions to the Information Collection Requirements

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(1), OSHA is providing the following summary information about the information collection requirements identified in the NPRM. The proposed rule creates new information collection requirements and modifies approved information collection requirements in the existing ''Cranes and Derricks in Construction Standard'' Information Collection. The major differences in the information collection requirements contained in the proposed rule from the information collection requirements currently approved in the Information Collection are discussed below and in more specific detail in Section III: Summary and Explanation of the Proposed Amendments to Subpart CC of the NPRM.

Proposed Section 1926.1427(a)—Operator Training, Certification, and Evaluation

The introductory text in proposed paragraph (a) sets out the employer's responsibility to ensure that each operator is certified/licensed in accordance with subpart CC, and is evaluated on his or her competence to safely operate the equipment that will be used, before the employer permits an individual to operate equipment covered by subpart CC without continuous monitoring. The proposed new approach provides a clearer structure than the existing standard, which was not designed to accommodate both certification and evaluation.

Proposed Section 1926.1427(c)—Certification and Licensing

Under paragraph (c), the employer must ensure that each operator is certified or licensed to operate the equipment. Proposed paragraph (c) retains the certification and licensing structure of the existing standard with only a few minor modifications intended to improve comprehension of certification/licensing requirements. For example, OSHA proposes to remove the somewhat misleading reference to an ''option'' with respect to mandatory compliance with existing state and local licensing requirements that meet the minimum requirements under federal law.

Proposed Section 1926.1427(d)—Certification by an Accredited Crane Operator Testing Organization

Proposed paragraph (d) retains the requirements of existing § 1926.1427(b), except that the proposed rule removes the requirement for certification by capacity of crane, as required in existing paragraph (b)(1)(ii)(B) and (b)(2). The need for this change is explained in the ''Need for a Rule'' section of the NPRM. The proposed rule also makes some non-substantive language clarifications. Compliance with the requirements of proposed paragraph (d) is the option that OSHA expects the vast majority of employers to use.

Proposed Section 1926.1427(f)—Evaluation

Proposed paragraph (f) sets out new specific requirements that employers must follow to conduct an operator evaluation and reevaluation, including documentation requirements. Proposed paragraph (f)(4) requires the employer to document the evaluation of each operator and to ensure that the documentation is available at the worksite. This paragraph also specifies the information that the documentation would need to include: The operator's name, the evaluator's name, the date of the evaluation, and the make, model and configuration of the equipment on which the operator was evaluated. However, the documentation would not need to be in any particular format.

Under the NPRM, not all operators exempted from certification requirements would also be exempted from the evaluation requirements. Proposed § 1926.1427(a)(2) continues the existing exemption from the training and certification requirements in that section for operators of three types of equipment: Derricks, sideboom cranes, and equipment with a maximum manufacturer-rated hoisting/lifting capacity of 2,000 pounds or less. In the current crane standard, these three types of equipment are exempt from all of the requirements in § 1926.1427 as the result of language in § 1926.1427(a) and specific exemptions in §§ 1926.1436(q), 1440(a), and 1441(a). The proposed rule would not, however, exempt employers from the requirements in § 1926.1427(f) to evaluate the potential operators of those types of equipment to ensure that they have sufficient knowledge and skills to perform the assigned tasks with the assigned equipment. Accordingly, OSHA proposes to preserve the evaluation requirements through the revision of the language in § 1926.1427(a) and corresponding edits to narrow the exemptions in §§ 1926.1436(q), 1440(a), and 1441(a).

Proposed Section 1926.1427(h)—Language and Literacy

Existing § 1926.1427(h) allows operators to be certified in a language other than English, provided that the operator understands that language. Proposed paragraph (h) is nearly identical to existing paragraph (h) with the exception that it removes the reference to the existing qualification language in paragraph (b)(2), which has been replaced.

Proposed Sections 1926.1436(q)—Derricks, 1926.1440(a)—Sideboom Cranes, and 1926.1441(a)—Equipment With a Rated Hoisting/Lifting Capacity of 2,000 Pounds or Less

As discussed earlier, OSHA proposed to amend paragraphs §§ 1926.1436(q), 1926.1440(a), and 1926.1441(a) to ensure that the evaluation requirements in § 1926.1427(f) apply to employers using derricks, sideboom cranes, and equipment with a rated capacity of 2,000 pounds or less.

Type of Review: New.

Agency: DOL–OSHA.

Title: Cranes and Derricks in Construction: Operator Qualification.

ICR Reference Number: 201710–1218–002.

Total Estimated Number of Annualized Respondents: 117,130.

Total Estimated Number of Annualized Responses: 75,591.

Total Estimated Number of Annual Burden Hours: 4,773.

Response Frequency: Various.

Total Number of Annual Other Costs Burden: $71.

D. Public Participation—Submission of Comments on This Document and Internet Access to Comments and Submissions

The agency encourages commenters to submit their comments related to the agency's clarification of the information collection requirements to the docket for this document (Docket Number OSHA–2018–0009). For instructions on submitting these comments to the docket for this document, see the sections of this **Federal Register** document titled **DATES** and **ADDRESSES**. Please note that comments on the information collection requirements already submitted to the agency in response to the NPRM will be considered; the public need not resubmit those comments in response to this solicitation. (See: *https://www.regulations.gov/document?D=OSHA-2007-0066-0679.*) Please also note that the docket for this document, Docket Number OSHA–2018–0009, exists solely to collect comments on the information collection requirements in the NPRM. The NPRM and the other relevant documents for that rulemaking are in Docket Number OSHA–2007–0066, available on *http://www.regulations.gov.*

E. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this document. The authority for this document is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on July 17, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018–15687 Filed 7–27–18; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 387

[Docket No. 15–CRB–0010–CA–S]

Adjustment of Cable Statutory License Royalty Rates

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Proposed rule; modified.

SUMMARY: The Copyright Royalty Judges (Judges) publish for comment modified proposed regulations to require affected cable systems to pay a separate per-telecast royalty (a Sports Surcharge) in addition to the other royalties that those cable systems must pay under Section 111 of the Copyright Act.

DATES: Comments and objections are due no later than August 29, 2018.

ADDRESSES: You may submit comments and objections, identified by docket number 17–CRB–0001–BER (2019–2023), by any of the following methods:

CRB's electronic filing application: Submit comments online in eCRB at *https://app.crb.gov/.*

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE, Washington, DC 20559–6000.

Instructions: Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 15–CRB–0010–CA–S.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On July 2, 2018, the Copyright Royalty Judges (Judges) received a motion from the Joint Sports Claimants (JSC),[1] the

[1] The Joint Sports Claimants are the Office of the Commissioner of Baseball, the National Football League, the National Basketball Association, the Women's National Basketball Association, the

Continued

NCTA—The internet and Television Association, and the American Cable Association, notifying the Judges that they reached agreement on a modified sports surcharge rule and requesting the Judges adopt the rule. *Joint Motion of the Participating Parties to Suspend Procedural Schedule and to Adopt Modified Settlement* at 1 (Jul. 2, 2018) (Joint Motion). The Judges had published an earlier version of the proposed rule in the **Federal Register** at 82 FR 24611 (May 30, 2017) and a request for reply and surreply comments regarding that version at 82 FR 44368 (Sept. 22, 2017).

The moving parties also requested that the Judges suspend, pending resolution of the Joint Motion, the procedural schedule set forth in the *Order Reinstating Case Schedule* dated January 18, 2018, and that the Judges publish the modified proposed rule expeditiously. On July 20, 2018, the Judges issued an order suspending the proceeding schedule, pending their review of the moving parties' agreement and publication of the modified proposed rule for public comment. The Judges stated that they would defer decision on adoption of the settlement agreement and termination of the proceeding until after they consider comments, if any, filed in response to publication of the modified proposed rule.

A. Background

Section 111(d)(1)(B) of the Copyright Act (the Act), 17 U.S.C. 111(d)(1)(B), sets forth the royalty rates that ''Form 3'' cable systems must pay to retransmit broadcast signals pursuant to the Section 111(c) statutory license. Form 3 systems are those with semi-annual ''gross receipts'' greater than $527,600. *See id.* §§ 111(d)(1)(B), (E) & (F); 37 CFR 201.17(d). Section 801(b)(2)(C) of the Act provides:

> In the event of any change in the rules and regulations of the Federal Communications Commission [''FCC''] with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

17 U.S.C. 801(b)(2)(C).

Section 804(b)(1)(B) of the Copyright Act states that, in ''order to initiate proceedings under section [801(b)(2)(C)],'' an interested party must file a petition with the Judges requesting a rate change within twelve months of the FCC's action. 17 U.S.C. 804(b)(1)(B); *see* H.R. Rep. No. 94–1476 at 178 (1976) (right to seek review ''exercisable for a 12 month period following the date such changes are finally effective''). The FCC adopted sports exclusivity rules for cable systems in 1975. *See Report and Order in Doc. No. 19417,* 54 F.C.C.2d 265 (1975) (''Sports Rules''). The FCC repealed the Sports Rules effective November 24, 2014. *See Sports Blackout Rules,* 79 FR 63547 (Oct. 24, 2014) (Sports Rule Repeal). At the time of the Sports Rule Repeal, the Sports Rules were codified at 47 CFR 76.111 (2014).

On November 23, 2015, JSC filed a rate adjustment petition pursuant to Section 801(b)(2)(C) of the Copyright Act. In June 2016 the Judges established a procedural schedule for ruling on the JSC petition. *Order of Bifurcation . . . and Scheduling Order* (June 2016 Order). While the moving parties were unable to settle this matter during the voluntary negotiation period established by the June 2016 Order, they continued negotiations and agreed that this proceeding should be terminated with the adoption of a proposed rule.

Upon motion of the Participants in January 2017, the Judges published the proposed rule and received comments. *See* 82 FR 24611 (May 30, 2017). The Judges then published, in September 2017, a request for further comments on the proposed rule. *See* 82 FR 44368. After reviewing reply and surreply comments, they declined to adopt the proposed rates and reinstated a case schedule. *Order Reinstating Case Schedule* (Jan. 12, 2018).

In declining to adopt the proposed settlement the Judges noted that

> The applicable license in this proceeding is the license to retransmit by cable beyond the local service area the works of ''any . . . owner whose work was included in a secondary transmission made by a cable system . . . in whole or in part. . . .'' 17 U.S.C. 111 (d)(3). [Major League Soccer (MLS)] and potentially other professional sports leagues are owners of, or represent owners of, copyrights to televised professional team sports events. The regulations proposed by the JSC define an ''eligible professional sports event'' to include *only* professional baseball, basketball (men and women), football, and hockey. By definition, MLS and any other professional league scheduling team sports events for telecast (and retransmission by those affected cable systems) would be ineligible to receive any portion of the sports programming surcharge negotiated by the JSC and cable providers. This proposed regulatory configuration provides for licensing royalties from Form 3 cable systems for some sports leagues to the express exclusion of other leagues that own or represent owners of protected works.
>
> As proposed, the regulation for the exclusive benefit of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, and the Women's National Basketball Association is contrary to the applicable section 111 license. The Judges decline to adopt the proposed settlement as a basis for regulations that would bind non-participants to a zero rate.

Order Reinstating Case Schedule at 2.

In April 2018, MLS filed a late Petition to Participate (PTP) and accompanying motion for the Judges to accept it. The Judges granted the motion and accepted the PTP on July 20, 2018.

In July 2018, the participants filed a modified proposed rule that addressed the Judges' concerns regarding the proposed rule. Joint Motion at 4, 8. MLS does not object to the modified proposed rule. *Id.* at 2. The Judges hereby publish it for comment.

B. Scope of the Modified Proposed Rule

According to the moving parties, the modified proposed Sports Surcharge differs from the January 2017 proposal in two key respects: A cable operator's obligation to pay a Sports Surcharge royalty is not limited to retransmissions of sports events affiliated with specific JSC members;[2] and the modified Sports Surcharge includes language expressly stating that no copyright owner of a retransmitted telecast of a sports event is precluded from seeking Sports Surcharge royalties if the retransmission would have been subject to deletion under the former FCC Sports Blackout Rule. Joint Motion at 2.

The moving parties also state that ''nothing in the proposed rule would require the Judges to distribute the Sports Surcharge royalties'' only to sports organizations whose telecasts trigger the ''pay-in'' obligation. Rather, ''[t]he determination of the recipients of those royalties (and the amount of royalties those recipients should receive) would be addressed by the Judges in future allocation and distribution proceedings'' absent a settlement. *Id.* at 4. As modified, the rule draws a bright line between the ''pay-in'' methodology by which affected cable systems will compute their surcharge royalty payment obligations and the ''pay out'' process by which those royalty payments are distributed. *Id.* at 5.

According to the moving parties, the modified Sports Surcharge does not

National Hockey League, and the National Collegiate Athletic Association.

[2] Under the January 2017 proposal the cable operator's obligation to pay Sports Surcharge royalties was limited to retransmissions of telecasts of sports events affiliated with specific JSC members. Joint Motion at 5.

change the previously agreed upon per event royalty rate of 0.025 percent of an affected cable system's gross receipts. Moreover, the definition of which cable systems may have to pay the surcharge has not changed (*i.e.,* systems that would have been subject to the FCC Sports Blackout Rule prior to its repeal).

Under the modified rule, a cable system's retransmission of a sports event telecast that would have been subject to deletion under the FCC Sports Blackout Rule triggers a Sports Surcharge pay-in by the system's operator—as long as the holder of the broadcast rights in the event (or its agent) provides the affected system: (1) Written notice containing information comparable to that required to invoke the former FCC Sports Blackout Rule; and (2) documentary evidence that the sports entity giving the notice required to trigger the Sports Surcharge pay-in provision previously invoked the FCC Sports Blackout Rule between January 1, 2012 and November 23, 2014 (the day before the repeal of the rule took effect). Joint Motion at 6.

With respect to certain collegiate events, the pay-in rule caps the maximum number of events involving a specific team that can trigger an affected cable system's surcharge payment obligation in a particular accounting period based on the largest number of events as to which the FCC Sports Blackout Rule was invoked by that specific sports entity during any of the accounting periods occurring during the January 1, 2012 through November 23, 2014 period. *Id.* at n.12.

In addition, the Joint Motion proposes a new effective date in 2019 and points out that the rule proposal can be reconsidered in 2020 pursuant to statute. *Id.* at 2 n.6; *see* 17 U.S.C. 804(b)(1)(B).

According to the moving parties, the royalty rate reflected in the modified proposed rule represents a negotiated compromise regarding adoption of a royalty surcharge and limiting when licensors must pay it, but not regulating the method of determining how the funds should be distributed. *Id.* at 6–7.

The moving parties state that they do not intend for the agreed-upon methodology for calculating a cable system's pay-in obligation to be accorded any precedential effect or to be regarded as representing any agreement as to the fair market value, now or in the future, of the secondary transmission of any sports event or of the economic or other impact of the repeal of the FCC Sports Blackout Rule. Joint Motion at 6. The moving parties state that if the Judges do not adopt the proposed rule, each of the moving parties reserves the right to seek to demonstrate that the Sports Surcharge originally proposed is not contrary to law and/or that the Judges should adopt a different rate adjustment to account for the repeal of the FCC Sports Blackout Rule. *Id.* at 8 n.13.

C. The Judges' Authority To Adopt the Proposed Rule

According to the moving parties, ''a key Congressional objective underlying the Judges' rate-setting authority is the promotion of voluntary settlements rather than litigation.'' *Id.* at 7, citing H.R. Rep. No. 108–408 at 24 (2004) (referring to the legislative policy of ''facilitating and encouraging settlement agreements for determining royalty rates''). Consistent with that objective, the Judges may accept a settlement reached by ''some or all of the participants'' in a rate proceeding ''at any time during the proceeding.'' 17 U.S.C. 801(b)(7)(A).

The Act requires that the Judges afford those who ''would be bound by the terms, rates or other determination'' in a settlement agreement ''an opportunity to comment on the agreement.'' 17 U.S.C. 801(b)(7)(A)(i). The Copyright Royalty Board rules also require that the Judges ''publish the settlement in the **Federal Register** for notice and comment from those bound by the terms, rates, or other determination set by the agreement.'' 37 CFR 351.2(b)(2).

D. Solicitation of Comments

The Judges seek comments on the moving parties' proposal. In particular, the Judges seek comment on whether the proposal is consistent with Section 111 of the Copyright Act which provides that the applicable license granted in that section is the license to retransmit by cable beyond the local service area the works of ''any . . . owner whose work was included in a secondary transmission made by a cable system . . . in whole or in part. . . .'' 17 U.S.C. 111(d)(3), and consistent with the Judges' interpretation of that section as elaborated in the Order Reinstating Case Schedule.

In addition to general comments for or against the proposal, the Judges seek comment on whether the proposed provision in section 387.2(e)(9) (''Nothing herein shall preclude any copyright owner of a live television broadcast, the secondary transmission of which would have been subject to deletion under the FCC Sports Blackout Rule, from receiving a share of royalties paid pursuant to this paragraph.'') could apply to the secondary transmissions of the live television broadcasts of any entity *other than* a current member of the JSC.[3] In other words, would the phrase ''the secondary transmission of which would have been subject to deletion under the FCC Sports Blackout Rule'' enable any entity beyond the current members of the JSC to qualify for a share of royalties from the Sports Surcharge? If the answer is yes, which entities' transmissions would qualify for a share? If the answer is no (*i.e.,* only JSC members could qualify), then is the current proposal nevertheless still consistent with the Section 111 license? If so, why?

Interested parties may comment and object to the modified proposed regulations contained in this notice. Such comments and objections must be submitted no later than August 29, 2018.

List of Subjects in 37 CFR Part 387

Copyright, Cable television, Royalties.

Modified Proposed Regulations

For the reasons set forth in the preamble, and under the authority of chapter 8, title 17, United States Code, the Copyright Royalty Judges proposes to amend 37 CFR chapter III as follows:

PART 387—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE

■ 1. The authority citation for part 387 continues to read as follows:

Authority: 17 U.S.C. 801(b)(2), 803(b)(6).

■ 2. Amend § 387.2 by:

■ a. Redesignating paragraph (e) as paragraph (f) and

■ b. Adding a new paragraph (e) to read as follows:

§ 387.2 Royalty fee for compulsory license for secondary transmission by cable systems.

* * * * *

(e) *Sports programming surcharge.* Commencing with the first semiannual accounting period of 2019 and for each semiannual accounting period thereafter, in the case of an affected cable system filing Form SA3 as referenced in 37 CFR 201.17(d)(2)(ii) (2014), the royalty rate shall be, in addition to the amounts specified in paragraphs (a), (c) and (d) of this section, a surcharge of 0.025 percent of the affected cable system's gross receipts for the secondary transmission to subscribers of each live television broadcast of a sports event where the secondary transmission of such broadcast would have been subject to

[3] *See* note 1, *supra.*

deletion under the FCC Sports Blackout Rule. For purposes of this paragraph,

(1) The term ''cable system'' shall have the same meaning as in 17 U.S.C. 111(f)(3);

(2) An ''affected cable system'' (i) is a ''community unit,'' as the comparable term is defined or interpreted in accordance with § 76.5(dd) of the rules and regulations of the Federal Communications Commission in effect as of November 23, 2014, 47 CFR 76.5(dd) (2014);

(ii) that is located in whole or in part within the 35-mile specified zone of a television broadcast station licensed to a community in which a sports event is taking place, provided that if there is no television broadcast station licensed to the community in which a sports event is taking place, the applicable specified zone shall be that of the television broadcast station licensed to the community with which the sports event or team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed; and

(iii) whose royalty fee is specified by 17 U.S.C. 111(d)(1)(B);

(3) A ''television broadcast'' of a sports event must qualify as a ''non-network television program'' within the meaning of 17 U.S.C. 111(d)(3)(A);

(4) The term ''specified zone'' shall be defined as the comparable term is defined or interpreted in accordance with § 76.5(e) of the rules and regulations of the Federal Communications Commission in effect as of November 23, 2014, 47 CFR 76.5(e) (2014);

(5) The term ''gross receipts'' shall have the same meaning as in 17 U.S.C. 111(d)(1)(B) and shall include all gross receipts of the affected cable system during the semiannual accounting period except those from the affected cable system's subscribers who reside in (i) the local service area of the primary transmitter, as defined in 17 U.S.C. 111(f)(4);

(ii) any community where the cable system has fewer than 1,000 subscribers;

(iii) any community located wholly outside the specified zone referenced in paragraph (e)(4) above; and

(iv) any community where the primary transmitter was lawfully carried prior to March 31, 1972;

(6) The term ''FCC Sports Blackout Rule'' refers to § 76.111 of the rules and regulations of the Federal Communications Commission in effect as of November 23, 2014, 47 CFR 76.111 (2014);

(7) Subject to paragraph (e)(8) of this section, the surcharge will apply to the secondary transmission of a primary transmission of a live television broadcast of a sports event only where the holder of the broadcast rights to the sports event or its agent has provided the affected cable system

(i) Advance written notice regarding such secondary transmission as required by § 76.111(b) and (c) of the FCC Sports Blackout Rule and

(ii) documentary evidence that the specific team on whose behalf the notice is given had invoked the protection afforded by the FCC Sports Blackout Rule during the period from January 1, 2012, through November 23, 2014;

(8) In the case of collegiate sports events, the number of events involving a specific team as to which an affected cable system must pay the surcharge will be no greater than the largest number of events as to which the FCC Sports Blackout Rule was invoked in a particular geographic area by such team during any one of the accounting periods occurring between January 1, 2012, and November 23, 2014;

(9) Nothing herein shall preclude any copyright owner of a live television broadcast, the secondary transmission of which would have been subject to deletion under the FCC Sports Blackout Rule, from receiving a share of royalties paid pursuant to this paragraph.

* * * * *

Dated: July 24, 2018.

Jesse M. Feder,

Copyright Royalty Judge.

[FR Doc. 2018–16175 Filed 7–27–18; 8:45 am]

BILLING CODE 1410–72–P

Notices

Federal Register

Vol. 83, No. 146

Monday, July 30, 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

Submission for OMB Review; Comment Request

July 25, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 29, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Food and Nutrition Service

Title: Contact Information of Schools That Participate in the National School Lunch Program and Organizations That Participate in the USDA's Child and Adult Care Food Program.

OMB Control Number: 0584–NEW.

Summary of Collection: The purpose of this collection is to support the mission of the United States Department of Agriculture's (USDA's) Team Nutrition Initiative, which supports national efforts to promote lifelong healthy food choices and physical activity by improving the nutrition practices of the Child Nutrition Programs. The Team Nutrition Initiative is covered under Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788). By collecting contact information from schools and organizations that participate in the National School Lunch Program (NSLP) and the Child and Adult Care Food Program (CACFP), the Food and Nutrition Service (FNS) can establish and maintain a database that will enable schools and organizations to network, coordinate, and collaborate with each other to identify and share innovative programs that will help children maintain healthy eating and lifestyle habits. Through this database, FNS also seeks to provide assistance to States in the development of comprehensive and integrated nutrition education and active living programs in schools and facilities that participate in NSLP and CACFP, to assist States in establishing systems to promote the nutritional health and encourage regular physical activity of school children in the United States, and to provide training and technical assistance to the States.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect contact and other information on a voluntary basis from schools and organizations that participate in NSLP and CACFP in order to enter these schools and organizations into the team nutrition database. The schools and organizations can use the team nutrition database to develop peer collaboration and to keep up-to-date on the available resources developed under the Team Nutrition Initiative. FNS will also use the contact information to send electronic notifications to schools and organizations concerning the availability of new and updated Team Nutrition materials and to provide technical assistance. The collected information will be publicly available and upon request, Team Nutrition will share information with stakeholders.

Description of Respondents: Businesses or Other for Profit; Not-for profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 122,664.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 35,914.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–16193 Filed 7–27–18; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2018–0022]

Availability of Guideline for Minimizing the Risk of Campylobacter and Salmonella Illnesses Associated With Chicken Liver

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of and requesting comments on a guideline to assist FSIS-regulated establishments, retail food outlets, and foodservice entities in minimizing public health risks associated with raw or partially-cooked chicken liver. FSIS developed the guideline because there have been several recent *Campylobacter* and *Salmonella* illness outbreaks linked to chicken liver dishes like pâté. The guideline represents FSIS's current thinking on this topic and FSIS encourages all affected operations to use it. This document does not present or describe any new regulatory requirements.

DATES: Submit Comments on or before September 28, 2018.

ADDRESSES: A downloadable version of the guideline is available to view and print at *https://www.fsis.usda.gov/wps/portal/fsis/topics/regulatory-compliance/compliance-guides-index*

once copies of the guideline have been published.

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2018–0022. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202)720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT:

Roberta Wagner, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

FSIS is responsible for verifying that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and properly labeled and packaged.

Salmonella and *Campylobacter* bacteria are among the most frequent causes of human foodborne illness in the United States. Currently, contamination of raw poultry carcasses and parts cannot be eliminated through the commercial production and slaughter practices employed by U.S. industry. Contamination can be minimized, however, with the use of proper sanitary dressing procedures and by the application of interventions during slaughter and subsequent fabrication.

Salmonella and *Campylobacter* present on raw poultry carcasses and parts will survive if the contaminated products are not subjected to a full lethality treatment, such as thorough cooking. In addition, cross contamination will occur during preparation when the bacteria are spread from the contaminated poultry to food handlers, other foods, or objects in the environment.

There have been several recent *Salmonella* and *Campylobacter* illness outbreaks linked to chicken liver. From 2000 to 2015, 22 chicken liver-associated illness outbreaks, with 331 total illnesses, were reported to public health authorities in the United States [1] [2] [3] [4]. Over half of these outbreaks occurred from 2014 to 2015, and represented 21 to 34 percent of chicken-related outbreaks.[5] [6] Commonly reported illness outbreak features included:

(1) Consumption of a blended chicken liver dish (*e.g.,* pâté);

(2) Inadequate cooking of a chicken liver dish; and/or

(3) Consumption of a chicken liver dish outside the home (*e.g.,* in a restaurant).

FSIS is announcing the availability of a guideline to assist FSIS-regulated establishments, retail food outlets, and foodservice entities in minimizing public health risks associated with raw or partially-cooked chicken livers and products made from them. The guideline represents best practice recommendations by FSIS, based on available scientific evidence and practical considerations. FSIS will update the guideline as necessary to reflect comments received and any additional information that becomes available.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400

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[1] *See* FSIS Recall 090–2011 available on FSIS's website at *https://www.fsis.usda.gov/wps/wcm/connect/fsis-archives-content/internet/main/topics/recalls-and-public-health-alerts/recall-case-archive/archives/ct_index211a.*

[2] Centers for Disease Control and Prevention (CDC). 2013. Multistate outbreak of *Campylobacter jejuni* infections associated with undercooked chicken livers—northeastern United States, 2012. MMWR Morb Mortal Wkly Rep 62(44):874–6. Available at: *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6244a2.htm.*

[3] Centers for Disease Control and Prevention (CDC). 2015. Notes from the field: campylobacteriosis outbreak associated with consuming undercooked chicken liver pâté — Ohio and Oregon, December 2013–January 2014. MMWR Morb Mortal Wkly Rep 64(14):399. Available at: *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a7.htm.*

[4] Centers for Disease Control and Prevention. 2017. Notes from the field: outbreak of *Campylobacter jejuni* associated with consuming undercooked chicken liver mousse—Clark County, Washington, 2016. MMWR Morb Mortal Wkly Rep. 2017 Sep 29;66(38):1027. DOI PubMed.

[5] Centers for Disease Control and Prevention (CDC). 2016. Surveillance for foodborne disease outbreaks United States, 2014, Annual Report. Available at: *https://www.cdc.gov/foodsafety/pdfs/foodborne-outbreaks-annual-report-2014-508.pdf.*

[6] Centers for Disease Control and Prevention (CDC). 2017. Surveillance for foodborne disease outbreaks United States, 2015, Annual Report. Available at: *https://www.cdc.gov/foodsafety/pdfs/2015FoodBorneOutbreaks_508.pdf.*

Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC.

Paul Kiecker,

Acting Administrator.

[FR Doc. 2018–16197 Filed 7–27–18; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Evaluation of Technology Modernization for SNAP Benefit Redemption Through Online Transactions for the USDA Food and Nutrition Service

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection to test the feasibility of online purchasing for SNAP through Evaluation of Technology Modernization for SNAP Benefit Redemption through Online Transactions for the USDA. The final report will synthesize findings across pilots and detailed appendix chapters will integrate implementation and integrity evaluation findings for each pilot. This collection includes in-depth interviews with key informants, including SNAP online retailers and their web service providers, the designated third-party processor for the pilots, EBT processors, and State Agency EBT coordinators; and preparation and transmission of data from retailers and their web service providers, EBT processors, the third-party processor, and state SNAP agencies.

DATES: Written comments must be received on or before September 28, 2018.

ADDRESSES: Comments may be sent to: Eric Williams, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Eric Williams at 703–305–2576 or via email to *Eric.Williams@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Eric Williams at 703–305–2576.

SUPPLEMENTARY INFORMATION: 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 of the proposed collection of information, including the validity of the methodology and assumptions that were 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Evaluation of Technology Modernization for SNAP Benefit Redemption through Online Transactions for the USDA Food and Nutrition Service.

OMB Number: Not Yet Assigned.

Expiration Date: Not Yet Determined.

Type of Request: New collection.

Abstract: The Supplemental Nutrition Assistance Program (SNAP) offers nutrition assistance to low-income individuals and families and provides economic benefits to communities. The Agricultural Act of 2014 (Farm Bill) mandated the Online Purchasing Pilots to test the feasibility and implications of allowing retail food stores to accept SNAP benefits through online transactions. Prior to the pilots, SNAP benefits could only be redeemed in person. The Farm Bill provided FNS and its stakeholders an opportunity to begin modernizing benefit redemption through online purchasing for SNAP. For customers using SNAP, online shopping may increase access to healthy and affordable foods, save time, and reduce other barriers to better nutrition. Current participating retailers can offer online shopping, and online merchants can gain the opportunity to serve SNAP customers. For program integrity, online shopping represents opportunities to identify suspicious behavior, but also new ways that benefit misuse and fraud may occur.

To test the feasibility of online purchasing for SNAP, FNS established eight online purchasing pilots and requested volunteers on September 15, 2016 (OMB Control No.: 0584–0606, expiration date 3/31/2019) for the Evaluation of Technology Modernization for SNAP Benefit Redemption through Online Transactions (Evaluation of Online Purchasing Pilots). Through this evaluation, FNS seeks to learn how the pilots operate, the implementation challenges and lessons learned, the characteristics of SNAP online customers, the risks and benefits of online purchasing for the integrity of SNAP, and the requirements for expansion.

Through the Evaluation of Online Purchasing Pilots, the research team will address FNS' two interrelated objectives: the analyses of the pilots' (1) implementation and (2) integrity. Implementation study questions relate to: The SNAP online transaction approaches; the process, challenges, and lessons of implementation; the characteristics of SNAP households that shop online; and the level of effort for stakeholders (*e.g.,* retailers, states, EBT processors). Integrity study questions focus on: Delivery patterns and their relationship to customer addresses and retailer locations; customer profiles and their relationship to EBT cards and SNAP households; customer shopping patterns; and problems such as refunds and cart abandonment. To meet these two overarching objectives, the research team will collect and analyze qualitative data from key informants and quantitative administrative data about online transactions, retailers, and SNAP households that will be provided by FNS, retailers, and state SNAP agencies. The implementation and integrity analyses will inform FNS' decisions about whether and how to make SNAP online purchases more widely available, and how to ensure that protections against abuse remain strong or grow stronger. Eight retailers in eight states are participating in the pilot, we anticipate 100 percent participation.

Affected Public: State, Local and Tribal Agencies; Business-for-profit.

Respondent Types: The study includes in-depth interviews with a total of four respondent groups. Three are business respondents: (1) Personnel from online retailers, including project managers, customer service managers,

staff who handle fulfillment of orders, IT personnel or third-party web service providers; (2) EBT processor staff; and (3) third-party processor staff. The fourth state SNAP agency staff, including State Agency EBT coordinators. Staff from two of these respondent groups (retailers or their third-party web service providers and state SNAP agencies) will also provide data files for the quantitative analysis.

Estimated Number of Respondents: The total estimated number of respondents is 177. This includes: 24 retailer staff who handle the fulfillment, shipping, and delivery of EBT customer orders; 24 retailer customer service managers; 16 retailer IT personnel or third-party web service providers; 32 retailer project managers; 16 retailer personnel who completed the pilot application; 8 retailer/web provider data managers; 8 retailer/web provider staff who will prepare and transfer the detailed transaction file; 8 retailer/web provider staff who will prepare and transfer the aggregated file; 6 EBT processor managers; 3 third-party processor personnel; 16 State agency EBT coordinators; 8 State Agency SNAP program or data staff.

Estimated Number of Responses per Respondent: The total estimated number of responses is 2.232 responses per respondent. Retailer personnel (personnel who handle the fulfillment, shipping, and delivery of EBT customer orders, customer service managers, IT personnel or third-party web service providers, project managers, and personnel who completed the pilot application) will respond to one in-person interview or one telephone interview. Managers for two EBT processors will respond to one in-person interview and two telephone interviews for a total of three responses each. Third-party processor managers will respond to one in-person interview and two telephone interviews. State EBT coordinators will respond to one in-person interview. Retailer or web provider data managers will participate in three meetings to discuss the format and transfer of each of two types of files (detailed transaction file and aggregated file). These respondents will transmit detailed and aggregated data files nine times. State agency SNAP program or data staff will each participate in discussion and initial programming of the SNAP case record file data transfer once and provide eight update files.

Estimated Total Annual Responses: 395.

Estimated Time per Response: 1.6 hours is the average estimated time per participant. However, response times varies from 1 hour to 21 hours per response and depending on respondent group, as shown in the table below.

Estimated Total Annual Burden on Respondents: 37,800 minutes (630 hours). See the table below for estimated total annual burden for each type of respondent.

Respondent	Estimated number respondent	Responses annually per respondent	Total annual responses	Estimated average number of hours per response	Estimated total hours
Retailer personnel who handle the fulfillment, shipping, and delivery of EBT customer orders	24	1.00	24.00	1.00000	24.000
Retailer customer service managers	24	1.00	24.00	1.00000	24.000
Retailer IT personnel or third-party web service provider personnel	16	1.00	16.00	1.00000	16.000
Retailer project managers	32	1.00	32.00	1.50000	48.000
Retailer personnel who completed the pilot application	16	1.00	16.00	1.00000	16.000
Retailer/web provider data managers who will participate in file transfer discussion	8	3.00	24.00	2.00000	48.000
Retailer/web provider staff who will prepare and transfer the detailed transaction file	8	9.00	72.00	1.00000	72.000
Retailer/web provider staff who will prepare and transfer the aggregated file	8	9.00	72.00	1.00000	72.000
Third-Party processor personnel	3	3.00	9.00	2.00000	18.000
EBT processor managers	6	3.00	18.00	2.00000	36.000
State agency EBT coordinators	16	1.00	16.00	1.00000	16.000
State agency SNAP program/data staff who will participate in file transfer discussion and initial programming	8	1.00	8.00	21.00000	168.000
State agency SNAP program/data staff	8	8.00	64.00	1.00000	64.000
Total Reporting Burden	177	.....	395	.....	622

Dated: July 19, 2018.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2018–16220 Filed 7–27–18; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Request for Information: State Administrative Expense Allocation Formula for Child Nutrition Programs

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

ACTION: Notice; request for information.

SUMMARY: This is a request for information from State agencies administering Child Nutrition programs and State distributing agencies to learn about the successes, challenges, and needs for the State Administrative Expense (hereafter referred to as ''SAE'') allocation formula. It is not a request for proposal and does not commit the Government to issue a solicitation, make an award, or pay any costs associated with responding to this announcement. All submitted information shall remain with the Government and will not be returned. All responses will become part of the public record and will not be held confidential.

The Food and Nutrition Service (FNS) is seeking information on the SAE allocation formula for the Department's oversight and management of Child Nutrition Programs (CNP), specifically the National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), Special Milk Program (SMP) and the Food Distribution Program for schools (FDP). To better understand the availability and use of SAE funds, FNS is requesting information from CNP State administering agencies, State distributing agencies, and CNP affiliate associations about SAE allocation, reallocation, fund uses, and fund restrictions at the State level.

The objectives of this request for information are to:

1. Identify ways that the formula meets or fails to meet State spending needs.

2. Identify if additional flexibilities in SAE funding levels and rules could improve program administration.

FNS will use the comments in response to this Request for Information to inform a larger study on the SAE formula entitled, *Assessing the Child Nutrition State Administrative Expense (SAE) Allocation Formula.* This study will assess the effectiveness of the current formula used for SAE allocations, identify and examine factors that influence State spending, and develop and test a range of possible alternatives to improve the SAE allocation formula.

DATES: (if applicable): To be assured of consideration, written comments must be submitted or postmarked on or before September 28, 2018.

ADDRESSES: The Food and Nutrition Service, USDA, invites the submission of the requested information through one of the following methods:

- *Preferred method:* Submit information through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submissions.
- *Mail:* Submissions should be addressed to Jinee Burdg, Social Science Policy Analyst, Office of Policy Support, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be emailed to *jinee.burdg@fns.usda.gov.*

All information properly and timely submitted, using one of the three methods described above, in response to this request for information will be included in the record and will be made available to the public on the internet at *http://www.regulations.gov.* Please be advised that the substance of the information provided and the identity of the individuals or entities submitting it will be subject to public disclosure.

All written comments will be open for public inspection at the FNS office located at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 1014, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday). All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this request for information should be directed to Jinee Burdg at *Jinee.Burdg@fns.usda.gov.*

SUPPLEMENTARY INFORMATION: CNPs are operated by a wide variety of local public and private providers that enter into agreements with State agencies, which are responsible for oversight and administration, including monitoring program operations and distributing federal cash reimbursements and USDA Foods. The number of agreements the State has with local CNP entities contributes significantly to the level of effort needed in State administration. Local organizations that have agreements with the State to operate NSLP, SBP, and SMP are referred to as school food authorities (SFAs). SFAs are public and private nonprofit local educational agencies (including charter schools) that operate the programs in schools under their jurisdiction, as well as residential child care institutions. The number of SFAs across States varies widely, often depending on the educational structure of local educational agencies in the State (*i.e.,* county-based programs vs. single-site SFAs).

Under the FDP for schools, USDA accepts food orders from States and then purchases food for States to provide to SFAs for use in their meal service (USDA Foods). States are responsible for the ordering, storage and distribution of the USDA Foods to the local ''recipient agencies'' (*i.e.,* SFAs).

In CACFP, States enter into agreements with ''institutions,'' which include independent (*i.e.,* single-site) child care centers, adult care centers, and sponsoring organizations of family day care homes and/or centers. Similar to the NSLP, SBP, and SMP, the number of CACFP institutions across States varies widely, based on a variety of factors such as the popularity of family day care homes vs. centers and the number of afterschool care programs. The adult care component of CACFP is very small, with the majority of meals served in a small number of States.

The State agencies that administer these CNPs include Education, Health, Human/Social Services, and Agriculture departments. In total, there are 85 State agencies in 54 States and territories that administer the programs and receive SAE from FNS. In 31 States, there is one agency (either Education or Agriculture) administering School Programs, FDP, and CACFP; 16 States have two agencies; and the remaining 7 States have three agencies.

In fiscal year 2017, State agencies received over $282 million in federal grants to administer certain CNPs. The amount of funding allocated to each State agency is based on the SAE allocation formula, which was last revised in the 1990s. FNS is interested in learning in what ways the formula meets or fails to meet State spending needs; some State Agencies return excess funds year after year whereas other States request additional funds year after year. The *Assessing the Child Nutrition State Administrative Expense (SAE) Allocation Formula* study will evaluate the effectiveness of the current formula used for SAE allocations, examine factors that influence State spending, and develop and test a range of possible alternatives for the SAE allocation formula and for reallocation.

The current SAE allocation formula consists of nondiscretionary funds (*i.e.,* those funds required to be allocated as prescribed by statute) and discretionary funds (*i.e.,* funds remaining after the nondiscretionary allocations are made). The first step in the allocation process is to determine the total amount of SAE funds available for allocation to State agencies. This amount, prescribed in Section 7(a)(1) of the Child Nutrition Act, is an amount equal to not less than 1½ percent of program expenditures for the second preceding fiscal year for the NSLP, SBP, SMP, and CACFP. Once the amount of funds available is determined, the nondiscretionary funds are allocated among state agencies based on a formula using the percentage of the second preceding fiscal year's program expenditures, in accordance with 7 CFR 235.4(a). Discretionary funds are partially distributed in equal shares to states that administer specific programs and partially prorated based on number of program participants per state under 7 CFR 235.4(b). Residual funds are prorated among state agencies administering CACFP and FDP. In addition, FNS uses funds returned to it to provide funds to SAs through reallocations (7 CFR 235.5(d)) and to provide for start-up costs to SAs assuming administration of program currently administered by FNS.

FNS requests that CNP State administering agencies, State distributing agencies, CNP affiliate associations, and other interested parties respond in detail to any or all of the items below. Please provide any material that addresses the information requested or any other information that may be pertinent. FNS will consider comments that may require regulatory or statutory changes. Additional references or links to materials are welcome.

1. What challenges, if any, does your State have with SAE? Please discuss processes, timing, Federally-imposed requirements/restrictions, State-imposed requirements/restrictions, the Maintenance of Effort requirement or other requirements, issues around

reallocation, changes in the indirect cost rate, and other challenges/barriers. If your State has successfully overcome these challenges, can you please share any best practices that may be helpful for other States?

2. What aspects of SAE work well for your State? Please identify the aspect that works well and why it works well for your particular State.

3. Does the current SAE funding methodology and regulations provide you with levels of funding and flexibility commensurate with your program administration needs (including NSLP/SBP, CACFP, and FDP)?

4. Please identify whether your State transfers funds among State agencies, receives reallocations, or neither. Please discuss why your funding levels are or are not appropriate.

5. What funding level (*e.g.,* percentage increase or decrease) or basis for funding level would be appropriate?

6. Please discuss how the availability of other program-specific funds such as the Summer Food Service Program State Administrative Fund and CACFP Audit Funds affect your State's ability to support the overall administration of CNPs.

7. Please provide any other comments applicable to the SAE requirements and processes.[1]

Dated: July 23, 2018.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2018–16196 Filed 7–27–18; 8:45 am]

BILLING CODE 3410–30–P

[1] See 42 U.S.C. 1776. *https://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap13A-sec1776.pdf*

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee (Committee) will hold a meeting via teleconference on Thursday August 9, 2018, from 12–1 p.m. EDT for the purpose of continuing planning for their upcoming hearing on education funding in the State.

DATES: The meeting will be held on Thursday August 9, 2018, at 12:00 p.m. EDT.

Public Call Information: Dial: 877–604–9673, Conference ID: 1551373.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link (*http://www.facadatabase.gov/committee/meetings.aspx?cid=268*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Education Funding in Ohio
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of this Committee preparing for a forthcoming hearing, September 2018.

Dated: July 25, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–16181 Filed 7–27–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a roundtable meeting of the Rhode Island Advisory Committee to the Commission will convene at 10:00 a.m. (EDT) on Tueday, August 7, 2018, in Room 222 at the Rhode Island State House, 82 Smith Street, Providence, RI 02903. The purpose of the roundtable will be to hear from experts about varied civil rights topics.

DATES: Tuesday, August 7, 2018 (EDT).

Time: 10:00 a.m.—Roundtable Meeting and Public Session.

ADDRESSES: Room 222 at the Rhode Island State House, 82 Smith Street, Providence, RI 02903.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov*, or 202–376–7533.

SUPPLEMENTARY INFORMATION: The purpose of the roundtable meeting is to examine topical civil rights issues in Rhode Island. The Committee will hear from elected officials, advocates and experts. The public is invited to the meeting and encouraged to address the committee following the presentations.

If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the briefing so that members of the

public may address the Committee after the formal presentations have been completed. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Friday, September 7, 2018. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://facadatabase.gov/committee/meetings.aspx?cid=272* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda

Welcome and Introductions
  Jennifer Steinfeld, Chair, Rhode Island Advisory Committee
Opening Statement
  Jennifer Steinfeld, Chair, Rhode Island Advisory Committee
Roundtable Meeting
  Invited Experts to Present Topical Civil Rights Issues
Open Comment

Dated: July 25, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–16179 Filed 7–27–18; 8:45 am]

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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: Manufacturers' Unfilled Orders Survey.

OMB Control Number: 0607–0561.

Form Number(s): MA–3000.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 6,000.

Average Hours per Response: 30 minutes.

Burden Hours: 3,000.

Needs and Uses: The data collected in the Manufacturers' Unfilled Orders (M3UFO) Survey will be used to benchmark the new and unfilled orders information published in the monthly Manufacturers' Shipments, Inventories, and Orders (M3) Survey. The M3 Survey collects monthly data on the value of shipments, inventories, and new and unfilled orders from manufacturing companies. The data are used by the Bureau of Economic Analysis, the Council of Economic Advisers, the Federal Reserve Board, the Conference Board, and members of the business community such as trade associations and the media to analyze business conditions in the manufacturing sector.

The associated monthly M3 Survey estimates are based on a panel of approximately 5,000 reporting units that represent approximately 3,100 companies and provide an indication of month-to-month change for the Manufacturing Sector. These reporting units may be divisions of diversified large companies, large homogenous companies, or single-unit manufacturers. The M3 estimates are periodically benchmarked to comprehensive data on the manufacturing sector from the Annual Survey of Manufactures (ASM), the Economic Census (shipments and inventories) and the M3UFO Survey, which is the subject of this notice. Unfilled orders data are not collected in the ASM or the Economic Census. To obtain more accurate M3 estimates of unfilled orders, which are also used in deriving M3 estimates of new orders, we conduct the M3UFO Survey annually to be used as the source for benchmarking M3 unfilled orders data. Industries that maintain unfilled orders cannot fulfill the order in the same month in which the order is received. This is not true for each industry, and occurs mainly in industries where production takes longer than one month. In order to reduce burden from our respondents, the M3UFO data are used to determine which North American Industry Classification System (NAICS) industries continue to maintain unfilled orders. We then utilize that information to only request unfilled orders on the monthly M3 survey from the NAICS industries that actually have unfilled orders which cannot be completed within the same month that the order was placed.

There are no changes to the MA–3000 form, which is used to conduct the M3UFO survey.

The Census Bureau will use mail out/mail back survey forms to collect the data with online reporting encouraged. Online response for the survey is typically 70 percent. Companies are asked to respond to the survey within 30 days of receipt. The Census Bureau mails letters encouraging participation to companies that have not responded within 30 days and later uses telephone follow-up to seek response from delinquent companies.

Affected Public: Businesses or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

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. 2018–16182 Filed 7–27–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–863]

Forged Steel Fittings From Taiwan: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of forged steel fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2016, through September 30, 2017. The final margins of sales at LTFV are listed below in the ''Final Determination'' section of this notice.

DATES: Applicable July 30, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Palmer (202) 482–9068 or Suzanne Lam at (202) 482–0783, AD/CVD Operations, Enforcement and Compliance, International Trade

Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 17, 2018, Commerce published in the **Federal Register** the *Preliminary Determination* of sales at LTFV of forged steel fittings from Taiwan and invited interested parties to comment.[1] The only comment received was from Bonney Forge Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) (collectively, the petitioners) agreeing with our affirmative preliminary determination to apply total adverse facts available (AFA) to the non-responsive companies.[2] Accordingly, we made no changes to the *Preliminary Determination.*

Scope of the Investigation

The products covered by this investigation are forged steel fittings from Taiwan. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' at the Appendix to this notice.

Scope Comments

During the course of this investigation and the concurrent investigations of forged steel fittings from the People's Republic of China (China) and Italy, Commerce received numerous scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum [3] and a Second Preliminary Scope Decision Memorandum [4] to address these comments. In the Second Preliminary Scope Decision Memorandum, Commerce preliminarily found that outlets are fittings and are included in the scope of the investigations and that butt weld outlets are butt weld fittings and are excluded from the scope of the investigations. Following the *Preliminary Determination,* Commerce received scope case and rebuttal briefs from the petitioners and M.E.G.A S.p.A. (MEGA) concerning outlets and butt weld outlets as specified in the scope.[5] Based on these parties' comments and our analysis of them, we made no changes to the scope of the investigations, as it appeared in the *Preliminary Determination.* Further, we continued to find that outlets are fittings and are therefore covered by the scope of this investigation and the concurrent investigation of forged steel fittings from China and Italy, while butt weld outlets are butt weld fittings and are excluded from the scope of the investigation. For a summary of the product coverage comments and rebuttals submitted to the records of this investigation and the concurrent investigations of forged steel fittings from China and Italy, and our accompanying discussion and analysis of them, see the Final Scope Decision Memorandum.[6]

Verification

As stated in the *Preliminary Determination,* Kopex Industrial Co. (Kopex), a mandatory respondent in this investigation, claimed that it did not produce or export forged steel fittings from Taiwan during the POI.[7] As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), on May 30, 2018, we conducted verification of Kopex's claim using standard verification procedures, including an examination of relevant accounting records and original source documents provided by Kopex. As a result of the verification, we confirmed that Kopex did not produce or sell forged steel fittings from Taiwan during the POI.[8] Because the other mandatory respondents, Both Well Steel Fittings Co., Ltd. (Bothwell) and Luchu Shin Yee Works Co., Ltd. (Luchu), failed to participate in the investigation, there was no information to verify with respect to either company.[9]

Use of Adverse Facts Available

The mandatory respondents Bothwell and Luchu failed to participate in this investigation.[10] Therefore, in the *Preliminary Determination,* pursuant to sections 776(a)(1), 776(a)(2)(A)–(C), and 776(b) of the Act, we assigned Bothwell and Luchu a dumping rate based on AFA. No parties filed comments in opposition to our *Preliminary Determination* with respect to Bothwell and Luchu and there is no new information on the record that would cause us to revisit our preliminary AFA determination. Accordingly, we continue to find that the application of AFA pursuant to section 776(a) and (b) of the Act is warranted with respect to Bothwell and Luchu. In applying total AFA, we assigned to Bothwell's and Luchu's exports of the subject merchandise a rate of 116.17 percent, which is the only rate calculated in the Petition Amendment [11] and which has been corroborated to the extent practicable within the meaning of section 776(c) of the Act.[12]

All-Others Rate

As discussed in the *Preliminary Determination,* Commerce based the ''All-Others'' rate on the, as noted above, only dumping margin alleged in the Petition Amendment,[13] in accordance with section 735(c)(5)(B) of the Act. We made no changes to the selection of this rate for this final determination.

Final Determination

The final estimated weighted-average dumping margins are as follows:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Both Well Steel Fittings Co., Ltd	116.17
Luchu Shin Yee Works Co., Ltd	116.17
All-Others	116.17

[1] *See Forged Steel Fittings from Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value,* 83 FR 22957 (May 17, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

[2] *See* letter from the petitioners re: Petitioners' Case Brief, dated June 15, 2018.

[3] *See* Memorandum to the File, ''Scope Comments Decision Memorandum for the Preliminary Determinations,'' dated March 7, 2018 (Preliminary Scope Decision Memorandum).

[4] *See* Memorandum to the File, ''Second Preliminary Scope Decision Memorandum,'' dated May 7, 2018 (Second Preliminary Scope Decision Memorandum).

[5] *See* letter from MEGA re: Brief of MEGA in Response to Scope Issues Raised by the Preliminary Determination Regarding the Expansion of the Scope of the Investigations to Include Outlets, dated May 29, 2018; letter from the petitioners re: Case Brief on Scope, dated May 29, 2018; letter from MEGA re: Rebuttal Brief of MEGA in Response to Scope Issues Raised by the Preliminary Determination Regarding the Expansion of the Scope of the Investigations to Include Outlets, dated June 4, 2018; and letter from the petitioners re: Scope Rebuttal Brief, dated June 4, 2018.

[6] *See* Memorandum to the File, ''Forged Steel Fittings from China, Italy and Taiwan: Final Scope Determination Decision Memorandum,'' dated concurrently with this notice (Final Scope Decision Memorandum).

[7] *See* Preliminary Determination Memorandum at 3–4.

[8] *See* Memorandum to the File, ''Verification of Kopex Industrial Co., Ltd.,'' dated June 8, 2018.

[9] *See Preliminary Determination,* 83 FR at 22958.

[10] *See* Preliminary Determination Memorandum at 4–8.

[11] *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Forged Steel Fittings from the People's Republic of China, Italy, and Taiwan, Volume V, dated October 5, 2017 (the Petition); *see also* letter from the petitioners' re: Response to Supplemental Questionnaire, dated October 11, 2017 at 1–2 (Petition Amendment).

[12] *See* Preliminary Determination Memorandum at 6–8.

[13] *See* Petition and Petition Amendment; *see also* Preliminary Determination Memorandum at 8–9.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, for this final determination, we will direct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of forged steel fittings from Taiwan, as described in the Appendix to this notice, which are entered, or withdrawn from warehouse, for consumption on or after May 17, 2018, the date of publication in the **Federal Register** of the affirmative *Preliminary Determination.*

Pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), Commerce will instruct CBP to require a cash deposit for such entries of merchandise equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the respondent-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not a respondent identified above but the producer is, then the cash deposit rate will be equal to the respondent-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Disclosure

The estimated weighted-average dumping margins assigned to the mandatory respondents in this investigation in the *Preliminary Determination* were based on AFA. As these margins are based on the rate calculated in the Petition Amendment, and because we made no changes to these margins since the *Preliminary Determination,* no disclosure of calculations is necessary for this final determination.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because Commerce's final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of forged steel fittings, no later than 45 days after this final determination. If the ITC determines that such injury does not exist, this proceeding will be terminated and all cash deposits posted will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of propriety information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act and 19 CFR 351.210(c).

Dated: July 23, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350, and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable specifications, subject fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure/PSI, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, butt weld outlets, nipples, and all fittings that have a maximum pressure rating of 300 pounds of pressure/PSI or less.

Also excluded are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350, and ASTM A182:

- American Petroleum Institute (API) API 5CT, API 5L, or API 11B
- Society of Automotive Engineering (SAE) SAE J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411
- Underwriter's Laboratories (UL) certified electrical conduit fittings
- ASTM A153, A536, A576, or A865
- Casing Conductor Connectors 16–42 inches in diameter made to proprietary specifications
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541
- International Organization for Standardization (ISO) ISO6150–B

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2018–16194 Filed 7–27–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG107

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Parallel Thimble Shoal Tunnel Project in Virginia Beach, Virginia

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Chesapeake Tunnel Joint Venture (CTJV) to incidentally take, by Level A and/or Level B harassment, four species of marine mammals during the Parallel Thimble Shoal Tunnel Project (PTST) in Virginia Beach, Virginia.

DATES: This Authorization is effective from August 1, 2018, through July 31, 2019.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-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 United States 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).

Summary of Request

On January 11, 2018, NMFS received a request from the CTJV for an IHA to take marine mammals incidental to pile driving at the Chesapeake Bay Bridge and Tunnel (CBBT) near Virginia Beach, Virginia. CTJV's request is for take of small numbers of harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), bottlenose dolphin (*Tursiops* spp.), harbor porpoise (*Phocoena phocoena*), and humpback whale (*Megaptera novaeangliae*) by Level A and Level B harassment. Neither the CTJV nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS has issued an IHA to CTJV authorizing the take of five species by Level A and Level B harassment. Pile driving and removal will take up to 202 days. The IHA is effective from August 1, 2018 through July 31, 2019.

Description of Planned Activity

The PTST project consists of the construction of a two-lane parallel tunnel to the west of the existing Thimble Shoal Tunnel, connecting Portal Island Nos. 1 and 2 (Figure 1 in application). Upon completion, the new tunnel will carry two lanes of southbound traffic and the existing tunnel will remain in operation and carry two lanes of northbound traffic. The PTST project will address existing constraints to regional mobility based on current traffic volume along the Chesapeake Bay Bridge-Tunnel (CBBT) facility; improve safety by minimizing one lane, two-way traffic in the tunnel; improve the ability to conduct necessary maintenance with minimal impact to traffic flow; and ensure a reliable southwest hurricane evacuation route for residents of the eastern shore and/or a northern evacuation route for residents of the eastern shore, Norfolk, and Virginia Beach. The CBBT is a 23 mile fixed link crossing the mouth of the Chesapeake Bay which connects Northampton County on the Delmarva Peninsula with Virginia Beach, which is part of the Hampton Roads metropolitan area.

The new parallel tunnel will be bored under the Thimble Shoal Channel. The 6,525 linear feet (ft) of new tunnel will be constructed with a top of tunnel depth/elevation of 100 ft below Mean Low Water (MLW) within the width of the 1,000-ft-wide navigation channel. Impact pile driving will be used to install steel piles and vibratory pile driving will be utilized to install sheet piles. This issued IHA would cover one year of a larger project for which will run through 2022. The larger project, which does not employ pile driving and does not require additional IHAs, involves tunnel excavation with a tunnel boring machine and construction of a roadway within the tunnel. The type and numbers of piles to be installed, as well as those that will be removed during the effective period are summarized in Table 1.

TABLE 1—ANTICIPATED PILE INSTALLATION SCHEDULE

Pile location	Pile function	Pile type	Number of piles (upland/ In-water)	Anticipated installation date
Portal Island Nos. 1 and 2	Mooring dolphins (in-water)	36-inch diameter hollow steel	30	15 July to 15 August 2018.

TABLE 1—ANTICIPATED PILE INSTALLATION SCHEDULE—Continued

Pile location	Pile function	Pile type	Number of piles (upland/ In-water)	Anticipated installation date
West of Portal Island No. 1	Berm construction trestle (in-water)	36-inch diameter hollow steel	80	15 July 2018 through 1 January 2019.
West of Portal Island No. 2	Berm construction trestle (in-water)	36-inch diameter hollow steel	80	15 July 2018 through 1 January 2019.
Portal Island No. 1	Temporary docks (upland)	36-inch diameter hollow steel	50	1 May 2018 through 30 June 2018.
Portal Island No. 1	Temporary docks (in- water)	36-inch diameter hollow steel	82	15 July 2018 to 30 August 2018.
Portal Island No. 2 (above MHW)	Temporary roadway trestle (upland).	36-inch diameter hollow steel	12	1 May to 31 May 2018.
Portal Island No. 1 (above MHW)	Excavated TBM material containment holding (muck) bin (upland).	28 and 18-inch steel sheet	1,110	1 May 2018 to 30 September 2018.
Portal Island Nos. 1 and 2 (above and below MHW).	Settlement mitigation and flowable fill containment.	28-inch steel sheet	2,554	1 August 2018 to 30 March 2019.
Portal Island Nos. 1 and 2 (above MHW).	Portal excavation	Steel sheet	1,401	1 June 2018 to 30 September 2018, 1 January to 30 March 2019.
Portal Island Nos. 1 and 2 (above MHW).	Excavation Support	Steel sheet	240	1 April 2018 to 30 August 2019 to 1 January 2019 to 30 March 2019.
Total (above and below water)			5,305 Sheet Piles 334 Round Piles	

CTJV will install up to 272 in-water 36-in steel pipe piles by impact driving and 1,936 in-water sheet piles by vibratory installation and expects activities to take up to 202 days. These actions could produce underwater sound at levels that could result in the injury or behavioral harassment of marine mammal species. A detailed description of CTJV's planned project is provided in the **Federal Register** notice for the proposed IHA (83 FR 18777; April 30, 2018). Since that time, the project start date has been delayed by approximately one month. No additional changes have been made to the planned project activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to CTJV was published in the **Federal Register** on April 30, 2018 (83 FR 18777). That notice described, in detail, CTJV's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, proposed amount and manner of take, and proposed mitigation, monitoring and reporting measures. During the 30-day public comment period, NMFS received one comment letter from the Marine Mammal Commission (Commission); the Commission's recommendations and our responses are provided here, and the comments have been posted online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Comment 1: The Commission recommended that NMFS review more thoroughly both the applications prior to deeming them complete and its notices prior to submitting them for publication in the **Federal Register** and that NMFS better evaluate the proposed exclusion/shut-down zones that are to be implemented for each proposed incidental take authorization. Further, the Commission references several specific minor errors that were in the proposed notice (for example, incorrect numbers in Tables).

Response: NMFS thanks the Commission for its recommendation. NMFS makes every effort to read the notices thoroughly prior to publication and will continue this effort to publish the best possible product for public comment. NMFS will be diligent when considering the appropriateness of proposed exclusion and shutdown zones for future IHAs. Further, NMFS has corrected the errors the Commission noted.

Comment 2: The Commission noted that NMFS used the lower reported source level for estimating the various Level A and B harassment zones during vibratory pile driving, which resulted in underestimating the Level A and B harassment zones, associated ensonified areas, and number of takes of bottlenose dolphins.

Response: Note that in the **Federal Register** notice of proposed IHA (83 FR 18777; April 30, 2018) a source value of 154 dB RMS SPL was applied for vibratory installation of 28-inch sheet. NMFS used a higher source level of 155 dB RMS SPL in this notice. The vibratory source levels based on root-mean-square sound pressure levels (SPLrms) and sound exposure levels metrics were not the same value according to NAVFAC 2017 which was cited as the reference for these values. Furthermore, the source levels based on 1-sec averages (155 dB RMS SPL) and 10-sec averages (154 dB RMS SPL) were not identical when they should be represented by the same value. When a difference is reported, it likely is due to the operator averaging decibels rather than taking the linear average of the pressures/intensities and then converting to dB. Therefore, the higher source level (155 dB RMS SPL) has been adopted in this notice.

Comment 3: The Commission noted that NMFS used incorrect assumptions for estimating the various Level A and B harassment zones when multiple hammers are used.

Response: NMFS used a source value of 186 dB RMS SPL to estimate the extent of the Level A harassment zone during simultaneous impact driving of two piles. NMFS incorrectly added 3 dB to the source levels after employing the rules for decibal addition as described in WSDOT 2017. However, the rules of decibal addition do not apply to simultaneous impact driving scenarios since hammer strikes will not be synchronized. Therefore, NMFS has reverted to using the original proxy source level of 183 dB when estimating the extent of the Level A harassment zone during simultaneous impact

driving of two piles with bubble curtains.

Comment 4: The Commission commented that NMFS did not not account for the possibility that the proposed in-water activities would not be finished by March 31 which is the deadline established by CTJV. Therefore, the numbers of harbor seal Level A and B harassment takes is underestimated.

Response: Even with the delay in project schedule, CTJV is confident that in-water activities will be concluded by March 31, 2019. To minimize the risk that the number of harbor seal takes may be exceeded, for this notice NMFS used the maximum haul-out count from on-site surveys (40) multiplied by the number of days of proposed activities (202) to estimate the number of harbor seal takes. In the **Federal Register** notice of proposed IHA (83 FR 18777; April 30, 2018), NMFS had multiplied monthly sighting rates by months of activities with an end date of March 31.

Comment 5: The Commission noted NMFS used inconsistent assumptions regarding estimating Level A harassment takes. NMFS assumed that 40 percent of the total number of harbor porpoise takes would equate to total Level A harassment takes based on the large size of the Level A harassment zones. However, NMFS did not make this assumption when estimated Level A jarassment take of harbor and gray seals.

Response: In this notice, NMFS has assumed that Level A harassment takes of harbor seals and gray seals represent 40 percent of total takes for each species.

Comment 6: The Commission noted that NMFS was requiring two protected species observers (PSOs) only during simultaneous pile driving. The Commission felt that two PSOs should be employed during all pile driving activities.

Response: NMFS had proposed that only a single PSO would be required during non-simultaneous pile driving. The PSO would be stationed on the portal island where non-simultaneous pile driving was underway. However, given the large sizes of the monitoring zones, NMFS will require two PSO's during all pile driving operations to ensure adequate visual coverage of the monitoring zones.

Comment 7: The Commission felt that the proposed 50-m exclusion zone for phocids was unnecessarily large for vibratory pile driving which could put CTJV in a situation in which it is implementing numerous unnecessary delays or shut downs for pinnipeds.

Response: NMFS agrees with this assessment and has reduced the size of the exclusion zone for phocids from 50 m to 15 m during vibratory pile driving.

Comment 8: The Commission feels there are some shortcomings that need to be addressed regarding the methodology for determining the extent of the Level A harassment zones based on the associated PTS cumulative sound exposure level (SEL_{cum}) thresholds for the various types of sound sources. Specifically, the Commission believes that the Level A and B harassment zones do not make sense biologically or acoustically in the context of one another (when the Level A harassment zone is larger than the Level B harassment zone) due to NMFS's unrealistic assumption that the animals remain stationary throughout the entire day of the activity. The Commission believes that it would be prudent for NMFS to consult with scientists and acousticians to determine the appropriate accumulation time that action proponents should use to determine the extent of the Level A harassment zones based on the associated PTS SEL_{cum} thresholds in such situations.

Response: During the 2016 Technical Guidance's recent review, in accordance with E.O. 13795, NMFS received comments from multiple Federal agencies, including the Commission, recommending the establishment of a working group to investigate more realistic means of approximating the accumulation period associated with sound exposure beyond the default 24-h accumulation period. Based on these comments, NMFS will be convening a working group to re-evaluate implementation of the default 24-h accumulation period and investigate means for deriving more realistic accumulation periods. Nonetheless, although NMFS Level A harassment zones include conservative assumptions and may overestimate the likelihood of injury somewhat, the take estimates are appropriate given the available information and support a robust negligible impact analysis and support the small numbers finding.

Comment 9: The Commission noted that NMFS has been inconsistently applying presumed source level reductions when bubble curtains are used during impact pile driving. The Commission recommended that NMFS refrain from using a source level reduction factor for sound attenuation device implementation (*i.e.,* bubble curtains) during impact pile driving for all relevant incidental take authorizations. If and when NMFS determines the appropriate accumulation time associated with its SELcum thresholds, it could consider using a source level reduction to estimate the ranges to Level A harassment. NMFS should then review the related literature on bubble curtain efficacy in concert with estimated ranges to the SEL_{cum} thresholds based on the revised accumulation time to determine what, if any, source level reduction would be appropriate. The Commission further recommended that NMFS refrain from using a source level reduction factor for sound attenuation device implementation during impact pile driving for all relevant incidental take authorizations and that source levels should not be reduced when determining the range to Level B harassment.

Response: NMFS believes it reasonable to use a source level reduction factor for sound attenuation device implementation during impact pile driving. NMFS understands that previous study results have been inconsistent and that noise level reductions measured at different received ranges may vary, given that both Level A and Level B estimation using geometric modeling is based on noise levels measured at near-source distances (~10 m). NMFS is working on guidance to increase consistency in the application of source level deductions from bubble curtain use, but in the meanwhile continues to evaluate proposals on a case by case basis. In this case we used a 10-dB reduction factor based on data from Caltrans 2015. We understand that there are other reported reduction levels that also could have been selected. However, we were unable to identify studies of bubble curtain efficacy that would have been any more applicable to the CTJV project than Caltrans 2015.

The Commission is opposed to the use of noise reduction factors during impact driving as well as application of reductions to Level B harassment. The Commission feels that bubble curtains have not consistently achieved reduced sound levels in the far field because sound resonates through the ground into the far field. Bubble curtains are not designed to, nor can they, attenuate ground-borne sound. While NMFS agrees that some energy is transmitted through the ground into the farfield, it is also likely that most of the energy is transmitted through the water column. Given that most studies of bubble curtain effectiveness have demonstrated at least some decrease in energy transmitted through the water column, NMFS will continue to permit appropriate source level reductions during impact driving for both Level A

and Level B harassment. Furthermore, if there are no reductions permitted when using bubble curtains, applicants would have less incentive to employ them at all. Without bubble curtains, more energy will likely be transmitted into both the near field and far field, potentially increasing the risk of animal's exposure to sound at Level A and Level B harassment levels.

Comment 10: The Commission commented that the method NMFS used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS' 24-hour reset policy. The Commission also recommends that NMFS develop and share guidance on this issue.

Response: NMFS has shared our internal guidance on rounding and the consideration of qualitative factors in take estimation with the Commission and further, as noted, disagrees with the assertion that the method described is at odds with what the Commission terms NMFS' ''24-hour reset policy.''

Comment 11: The Commission requested clarification of certain issues associated with NMFS's notice that one-year renewals could be issued in certain limited circumstances and expressed concern that the renewal process, as proposed, would bypass the public notice and comment requirements. The Commission recommended that instead of bypassing comment, NMFS utilize abbreviated **Federal Register** notices, as have been used recently to solicit comment on actions that meet the renewal criteria. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

Response: The proposed process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Additional reference to this solicitation of public comment has recently been added at the beginning of FR notices that consider renewals. NMFS appreciates the streamlining achieved by the use of abbreviated FR notices and intends to continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy the renewal requirements. However, we believe our proposed method for issuing renewals meets statutory requirements and maximizes efficiency. Note that such renewals would be limited to where the activities are identical or nearly identical to those analyzed in the proposed IHA, monitoring does not indicate impacts that were not previously analyzed and authorized, and the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as are all IHAs. Last, NMFS will publish on our website a description of the renewal process before any renewal is issued utilizing the new process.

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; *www.nmfs.noaa.gov/pr/sars/*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*www.nmfs.noaa.gov/pr/species/mammals/*).

Table 2 lists all species with expected potential for occurrence near the PTST project location 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 United States waters. All managed stocks in this region are assessed in NMFS's United States Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Hayes *et al.,* 2017a,b). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2016 Stock Assessment Report (Hayes *et al.,* 2017a) and draft 2017 stock assessment report (Hayes *et al.* 2017b) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA

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 Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic Right whale	*Eubalaena glacialis*	Western North Atlantic (WNA)	E/D; Y	458 (0; 455; 2017)	1.4	36

TABLE 2—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE PROJECT AREA—Continued

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]
Family Balaenopteridae (rorquals):						
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	–; N	335 (0.42; 239; 2012)	3.7	8.5
Fin whale	*Balaenoptera physalus*	WNA	E/D; Y	1,618 (0.33; 1,234; 2011)	2.5	2.65
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose dolphin	*Tursiops spp.*	WNA Coastal, Northern Migratory.	D; Y	11,548 (0.36; 8,620; 2010–11).	86	1.0–7.5
		WNA Coastal, Southern Migratory.	D; Y	9,173 (0.46; 6,326; 2010–11).	63	0–12
		Northern North Carolina Estuarine System.	D; S	823 (0.06; 782; 2013)	7.8	1.0–16.7
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-; N	79,833 (0.32; 61,415; 2011).	706	307 (0.16)
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	WNA	-; N	75,834 (0.1; 66,884, 2012).	2,006	368
Gray seal	*Halichoerus grypus*	WNA	–; N	27,131 (.1, 25,908, 2016)	1,554	5,207

[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; N_{min} is the minimum estimate of stock abundance.

[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.

Note: Italicized species are not expected to be taken or authorized for take.

All species that could potentially occur in the planned project areas are included in Table 2. However, the occurrence of endangered North Atlantic right whales and endangered fin whales is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Between 1998 and 2013, there were no reports of North Atlantic right whale strandings within the Chesapeake Bay and only four reported standings along the coast of Virginia. During this same period, only six fin whale strandings were recorded within the Chesapeake Bay (Barco and Swingle 2014). In 2016, there were no reports of fin whale strandings (Barco *et al.,* 2017). Due to the low occurrence of North Atlantic right whales and fin whales, NMFS is not authorizing take of these species.

A detailed description of the of the species likely to be affected by the planned project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (83 FR 18777; April 30, 2018); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*www.nmfs.noaa.gov/pr/species/mammals/*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from pile driving and removal activities for the planned project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (83 FR 18777; April 30, 2018) included a discussion of the effects of anthropogenic noise on marine mammals. The project would not result in permanent impacts to habitats used directly by marine mammals, such as haulout sites, but may have potential short-term impacts to food sources such as forage fish and minor impacts to the immediate substrate during installation and removal of piles. These potential effects are discussed in detail in the **Federal Register** notice for the proposed IHA (83 FR 18777; April 30, 2018) therefore that information is not repeated here; please refer to that **Federal Register** notice for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which informs both NMFS' consideration of small numbers 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, in the form of disruption of behavioral patterns for individual

marine mammals resulting from exposure to acoustic sources including impact and vibratory pile driving equipment. There is also potential for auditory injury (Level A harassment) to result, due to larger predicted auditory injury zones. The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) and the number of days of activities. Below, we describe these components in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* impact pile driving, seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

CTJV's planned activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). CTJV's tunnel project includes the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in Table 3 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Pile driving will generate underwater noise that potentially could result in disturbance to marine mammals swimming by the project area. Transmission loss (TL) underwater is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source until the source becomes indistinguishable from ambient sound. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. A standard sound propagation model, the Practical Spreading Loss model, was used to estimate the range from pile driving activity to various expected SPLs at potential project structures. This model follows a geometric propagation loss based on the distance from the driven pile, resulting in a 4.5 dB reduction in level for each doubling of distance from the source. In this model, the SPL at some distance away from the source (*e.g.,* driven pile) is governed by a measured source level, minus the TL of the energy as it dissipates with distance. The TL equation is:

$TL = 15\log10(R_1/R_2)$

Where:

TL is the transmission loss in dB,

R_1 is the distance of the modeled SPL from the driven pile, and

R_2 is the distance from the driven pile of the initial measurement.

The degree to which underwater noise propagates away from a noise source is dependent on a variety of factors, most notably by the water bathymetry and presence or absence of reflective or absorptive conditions including the sea surface and sediment type. The TL model described above was used to calculate the expected noise propagation from both impact and vibratory pile driving, using representative source levels to estimate the harassment zone or area exceeding specified noise criteria.

Sound source levels from the PTST project site were not available. Therefore, literature values published for projects similar to the PTST project were used to estimate the amount of sound (RMS SPL) that could potentially be produced. The PTST Project will use round, 36-inch-diameter, hollow steel piles and 28-inch wide sheet piles. Data reported in the Compendium of Pile Driving Sound Data (Caltrans 2015) for similar piles size and types are shown in Table 4. The use of an encased bubble curtain is expected to reduce sound levels by 10 decibels (dB) (NAVFAC 2014, ICF Jones and Stokes 2009). Using data from previous projects (Caltrans 2015) and the amount of sound reduction expected from each of the sound mitigation methods, we estimated the peak noise level (SPLpeak), the root mean squared sound pressure level (RMS SPL), and the single strike sound exposure level (sSEL) for each pile driving scenario of the PTST project (Table 4).

TABLE 4—THE SOUND LEVELS (dB PEAK, dB RMS, AND dB SSEL) EXPECTED TO BE GENERATED BY EACH HAMMER TYPE/MITIGATION

Type of pile	Hammer type	Estimated peak noise level (dB peak)	Estimated cumulative sound exposure level (dB cSEL)	Estimated pressure level (dB RMS)	Estimated single strike sound exposure level (dB sSEL)	Relevant piles at the PTST project	Pile function
36-inch Steel Pipe	Impact [a]	210	NA	193	183	Battered	Mooring dolphins.
36-inch Steel Pipe	Impact with Bubble Curtain [b].	200	NA	183	173	Plumb	Mooring dolphins and Temporary Pier.
24-inch AZ Sheet	Vibratory [c]	182	NA	155	155	Sheet	Containment Structure.
36-inch Steel Pipe and 36-inch Steel Pipe.	Impact w/Bubble Curtain at PI 1 and PI 2.	200	NA	183	183	Plumb	Mooring Dolphins, Temporary Pier.
36-inch Steel Pipe and 24-inch AZ Sheet Pile.	Impact w/Bubble Curtain at PI 1 and Vibratory at PI 2.	200	NA	183	183	Plumb and Sheet.	Mooring Dolphins, Containment Structure.
36-inch Steel Pipe and 24-inch AZ Sheet Pile.	Vibratory at PI 1 and Impact w/Bubble Curtain at PI 2.	200	NA	183	183	Plumb and Sheet.	Mooring Dolphins and Containment Structure.

[a] Examples from Caltrans 2015. These examples were the loudest provided in the Caltrans 2015 compendium for 36-inch-diameter hollow steel piles and in the Proxy Source Sound Levels and Potential Bubble Curtain Attenuation for Acoustic Modeling of nearshore marine Pile Driving at Navy Installations in Puget Sound (NAVFAC 2014).

[b] Estimates of sound produced from impact that use sound mitigation measures were developed by subtracting 10 dB for an encased bubble curtain (ICF Jones and Stokes 2009, NAVFAC 2014). A 10-dB reduction in sound for this sound mitigation method is the minimum that may be expected and, therefore, represents a conservative estimate in sound reduction.

[c] Example from NAVFAC 2017. Average 1-second and 10-second Broadband RMS SPL (dB re 1 μPa) for Vibratory Pile-Driving normalized to 10 meters at JEB Little Creek.

When NMFS's Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources, NMFS's User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

The Impact Pile Driving (Stationary Source: Impulsive, Intermittent) (Sheet E.1) spreadsheet provided by NOAA Fisheries requires inputs for assorted variables which are shown in Table 4. RMS SPL's for simultaneous pile driving were determined using the rules for decibel addition (WSDOT 2017). The expected number of steel piles driven during a 24-hour period would be a maximum of eight for plumb piles and three for battered piles for each portal island. Practical spreading was assumed (15logR) and a pulse duration of 0.1 seconds utilized. The distance from the source where the literature based RMS SPL was 10 meters while the number of strikes per pile was 1,000. Model outputs delineating PTS isopleths are provided in Table 6 assuming impact installation of three battered round steel piles per day and eight plumb round steel piles per day as well as vibratory installation of up to eight sheets per day over eight hours.

The Optional User Spreadsheet for vibratory pile driving (non-impulsive, stationary, continuous) (Sheet A) requires inputs for the sound pressure level of the source (dB RMS SPL), the expected activity duration in hours during per 24-hour period, the propagation of the sound and the distance from the source at which the sound pressure level was measured. Calculations also assumed that the expected activity level duration would be eight hours per Portal Island per 24-hour period. Practical spreading was assumed and the measured distance from the sound source was 10 meters.

The inputs from Table 5 determined isopleths where PTS from underwater sound during impact and vibratory driving as shown in Table 6. Note that

in the **Federal Register** notice of proposed IHA (83 FR 18777; April 30, 2018) a source value of 154 dB RMS SPL was used for vibratory installation of 28-inch sheet piles and a value of 186 dB RMS SPL was used for simultaneous impact installation of 36-inch steel piles employing bubble curtains. NMFS opted to use a higher source level of 155 dB RMS SPL. Since the vibratory source levels based on root-mean-square sound pressure levels (SPLrms) and sound exposure levels metrics were not the same value in NAVFAC 2017, neither were the source levels based on 1-sec and 10-sec averages. These metrics should be represented by the same value. When a difference is reported, it likely is due to the operator averaging decibels rather than taking the linear average of the pressures/intensities and then converting to dB. Therefore, the higher source level has been adopted in this notice.

A source value of 186 dB RMS SPL was used to estimate the extents of the Level A harassment zone during simultaneous impact driving of two piles. NMFS incorrectly added 3 dB to the impact driving source levels rather than assuming the proxy source level (186 vs. 183 dB). NMFS has reverted to using a proxy source level of 183 dB re 1 μPa when estimating the extent of the Level A harassment zone during simultaneous impact driving of two piles with bubble curtains. These revisions have been included in Table 4 and Table 5. Table 6 shows user spreadsheet outputs of the radial distance from piles driven from Portal Island 1 and Portal Island 2 to PTS isopleths.

TABLE 5—USER SPREADSHEET INPUTS

Spreadsheet tab used	E.1: Impact pile driving (stationary source: impulsive, intermittent)	A: Stationary source: non-impulsive, continuous	E.1: Impact pile driving (stationary source: impulsive, intermittent)	E.1: Impact pile driving (stationary source: impulsive, intermittent)
Pile Type and Hammer Type	36-in steel impact (battered pile).	28-in sheet vibratory	36-in steel impact w/bubble curtain at P1 and P2 (plumb piles).	36-in steel impact w/bubble curtain at P1 (plumb pile) and sheet pile vibratory at P2.
Source Level (RMS SPL)	193	155	183	183.
Weighting Factor Adjustment (kHz)	2	2.5	2	2.
Number of strikes in 1 h OR number of strikes per pile.	1,000	NA	1,000	1,000.
Activity Duration (h) within 24-h period OR number of piles per day.	3 steel piles	8 hours/8 sheets	8 steel piles per portal island (16 total).	8 steel piles.
Propagation (xLogR)	15	15	15	15.
Distance of source level measurement (meters).	10	10	10	10.
Pulse Duration (seconds)	0.1	NA	0.1	0.1.

TABLE 6—RADIAL DISTANCE (METERS) FROM PILE DRIVEN FROM PORTAL ISLAND 1 (PI 1) AND PORTAL ISLAND 2 (PI 2) TO PTS ISOPLETHS *

Hammer type	Low-frequency cetaceans		Mid-frequency cetaceans		High-frequency cetaceans		Phocid pinnipeds		Applicable piles in the PTST project
	Island 1	Island 2	Island 1	Island 2	Island 1	Island 2	Island 1	Island 2	
Impact (battered) at PI 1 OR PI 2.	2,077.2	2,077.2	73.9	73.9	2,474.3	2,474.3	1,111.6	1,111.6	Battered Piles for Mooring Dolphins.
Vibratory	10.9	10.9	1.0	1.0	16.1	16.1	6.6	6.6	Sheet Piles for Containment.
Impact w/Bubble Curtain (plumb) simultaneous at PI 1 and PI 2.	1,366.1	1,366.1	48.6	48.6	1,627.2	1,627.2	731.1	731.1	Plumb Piles for temporary pier.
Impact w/Bubble Curtain (plumb) simultaneous at PI 1 and Vibratory at PI 2.	860.6	10.9	30.6	1.0	1,025.1	16.1	460.5	6.6	Plumb Piles for Temporary Pier and Mooring Dolphins; Sheet Pile for Containment.
Vibratory at PI 1 and Impact w/Bubble Curtain (plumb) at PI 2 Simultaneous.	10.9	860.6	1.0	30.6	16.18	1,025.1	6.6	460.5	Plumb Piles for temporary pier and Mooring Dolphins; Sheet Pile for Containment.

* Distances based on up to 3 battered round steel piles per day, 8 plumb round steel piles per day, and up to 8 sheets per day over 8 hours.

Table 7 shows the radial distance to Level B isopleths and Table 8 shows the areas of ensonified Level B zones associated with each of the planned driving scenarios.

TABLE 7—RADIAL DISTANCE (METERS) FROM DRIVEN PILE(S) TO LEVEL B ISOPLETHS [1] FOR CETACEANS AND PINNIPEDS

Hammer type driving scenario	Radial distance (m)		Applicable piles in the PTST project
	Island 1	Island 2	
Impact (battered)	1,584.9	1,584.9	Battered Piles for Mooring Dolphins.
Vibratory	2,154.4	2,154.4	Sheet Piles for Containment.
Impact w/Bubble Curtain (plumb) at PI 1 and PI 2 simultaneous.	341.5	341.5	Plumb Piles for temporary pier.

TABLE 7—RADIAL DISTANCE (METERS) FROM DRIVEN PILE(S) TO LEVEL B ISOPLETHS [1] FOR CETACEANS AND PINNIPEDS—Continued

Hammer type driving scenario	Radial distance (m)		Applicable piles in the PTST project
	Island 1	Island 2	
Impact w/Bubble Curtain (plumb) at PI 1 and Vibratory at PI 2 simultaneous.	341.5	2,154.4	Plumb Piles for Temporary Pier and Mooring Dolphins; Sheet Pile for Containment.
Vibratory at PI 1 and Impact w/Bubble Curtain (plumb) at PI 2 simultaneous.	2,154.4	341.5	Plumb Piles for temporary pier and Mooring Dolphins; Sheet Pile for Containment.

[1] Level B harassment thresholds—160 dB for impact driving/120 dB for vibratory driving.

TABLE 8—LEVEL B AREAS (km^2) FOR ALL PILE DRIVING SCENARIOS PLANNED FOR USE DURING PTST PROJECT

Scenario	Zone size (km^2)
Impact Simultaneous Plumb	0.88
Impact Battered	8.27
Vibratory Sheet	[1] 16.49
Simultaneous Vibratory Sheet and Impact Plumb	16.49

[1] Level B ensonified area at Portal Island 1 = 16.37 km^2 and at Portal Island 2 = 16.49 km^2. For the purposes of this IHA, NMFS will conservatively assume that the ensonified area at both Portal Islands = 16.49 km^2.

To calculate level B disturbance zones for airborne noise from pile driving, the spherical spreading loss equation (20LogR) was used to determine the Level B zones. The airborne noise threshold for behavioral harassment for all pinnipeds, except harbor seals, is 100 dB RMS re 20 μPa (unweighted) and for harbor seals is 90 dB RMS re 20 μPa (unweighted).

Literature estimates were used to estimate the amount of in-air sound produced from driving a pile above the MHW line (Laughlin 2010a,b). Hollow steel piles that were 30 inches in diameter were used as a close proxy to the 36-inch-diameter hollow steel piles that will be driven at the PTST project. AZ 24-inch sheet pile was used as a proxy for the sheet pile to be driven during the PTST Project (Table 9). Using the spherical spreading loss model with these estimates, Level B isopleths were estimated as shown below in Table 9. Note that the take estimates for pinnipeds were based on surveys which included counts of hauled out animals. Therefore, to avoid double counting, airborne exposures are not evaluated further for purposes of estimating take under the issued IHA. During any upland pile driving before issuance of the IHA, however, shutdown will occur whenever pinnipeds enter into the Level B zones as depicted below to avoid unauthorized take.

TABLE 9—RADIAL DISTANCE (METERS) from PILE DRIVEN ABOVE MHW TO LEVEL B SOUND THRESHOLDS FOR HARBOR SEALS AND GRAY SEALS

Source	Sound level	Level A harassment zone (m)	Level B harassment zone (m)	
			Harbor seals	Gray seals
Impact Hammer 36- inch Pile	110 dB_{L5SEQ} at 15m[a]	N/A	150	47
Vibratory Hammer Assumed equivalent to 24-in sheet.	92 dB_{L5SEQ} at 15m	N/A	19	6

[a]Laughlin 2010a,b as cited in City of Unalaska 2016 IHA for Unalaska Marine Center.

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.

Humpback whales are relatively rare in the Chesapeake Bay but may be found within or near the Chesapeake Bay at any time of the year. Between 1998 and 2014, 11 humpback whale strandings were reported within the Chesapeake Bay (Barco and Swingle 2014). Strandings occurred in all seasons, but were most common in the spring. There is no existing density data for this species within or near the Chesapeake Bay. Populations in the mid-Atlantic have been estimated for humpback whales off the coast of New Jersey with a density of 0.00013 per square kilometer (Whitt *et al.,* 2015). A similar density may be expected off the coast of Virginia.

Bottlenose dolphins are abundant along the Virginia coast and within the Chesapeake Bay and can be seen seen annually in Virginia from May through October. Approximately 65 strandings are reported each year (Barco and Swingle 2014). Stranded bottlenose dolphins have been recorded as far north as the Potomac River in the Chesapeake Bay (Blaylock 1985). A 2016 Navy report on the occurrence, distribution, and density of marine mammals near Naval Station Norfolk and Virginia Beach, Virginia provides seasonal densities of bottlenose dolphins for inshore areas in the vicinity of the project area (Engelhaupt *et al.,* 2016) (Table 10).

There is little data on the occurrence of harbor porpoises in the Chesapeake Bay. Harbor porpoises are the second most common marine mammal to strand in Virginia waters with 58 reported strandings between 2007 through 2016. Unlike bottlenose dolphins, harbor porpoises are found in Virginia in the cooler months, primarily late winter and early spring, and they strand primarily on ocean facing beaches (Barco *et al.,* 2017). Given the lack of abundance data, NMFS assumed that a limited number of harbor porpoises (2) would be taken during each month of planned construction in order to generate a take estimate for this species.

Harbor seals are the most common seal in Virginia (Barco and Swingle 2014). They can be seen resting on the rocks around the portal islands of the CBBT from December through April. They are unlikely to occur in the project area in the summer and early fall.

Survey data for in-water and hauled out harbor seals was collected by the United States Navy at the CBBT portal islands from 2014 through 2016 (Rees *et al.,* 2016) (Table 12). Surveys reported 112 harbor seals in the 2014/2015 season, 185 harbor seals during the 2015/2016 season, and 307 during the 2016/2017 season. (Rees *et al.,* 2016; Rees *et al.* 2017).

Gray seals are uncommon in Virginia and the Chesapeake Bay with only 15 gray seal strandings documented in Virginia from 1988–2013 (Barco and Swingle 2014). They are rarely found resting on the rocks around the portal islands of the CBBT from December through April alongside harbor seals. Observation surveys conducted by the Navy at the CBBT portal islands recorded one gray seal in the 2014/2015, two gray seals in 2015/2016, and two gray seals in 2016/2017 seasons (Rees *et al.,* 2016; Rees *et al.* 2017).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

The following assumptions are made when estimating potential incidences of take:

- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-h period;
- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

Humpback Whale

As noted previously, humpback whales are rare in the Chesapeake Bay, although they do occur. Density off of the coast of New Jersey, and presumably Virginia and Maryland, is extremely low (0.00013 animals/km^2). Because density is extremely low, CTJV has requested and NMFS is authorizing one Level B take every two months for the duration of in-water pile driving activities. Pile driving activities are expected to occur over a 10-month period. Therefore, a total of 5 Level B takes of humpback whales is authorized by NMFS.

Bottlenose Dolphin

Total number of takes for bottlenose dolphin were calculated using the seasonal density described above (individuals/km^2/day) of animals within the inshore study area at the mouth of the Chesapeake Bay (Englehaupt *et al.,* 2016). Project specific dolphin densities were calculated within the respective Level B harassment zone and season. Densities were then used to calculate the seasonal takes based on the number and type of pile driving days per season. For example, the density of dolphins in summer months is assumed to be 3.55 dolphins/km^2 * 0.88 km^2 (harassment zone for Simultaneous Plumb Pile driving as shown in Table 8) = 3.12 dolphins/km^2 per day in summer as shown in Table 11. This density was then multiplied by number of simultaneous plumb pile driving days to provide takes for that season (*e.g.* 3.12 dolphins/km^2 * 24 days = 74.88 estimated summer exposures from simultaneous plumb pile driving). The sum of the anticipated number of seasonal takes resulted in 4,740 estimated exposures as shown in Table 10 split among three stocks. There is insufficient information to apportion the takes precisely to the three stocks present in the area. Given that members of the NNCES stock are thought to occur in or near the Bay in very small numbers, and only during July and August, we will conservatively assume that no more than 100 of the takes will be from this stock. Most animals from this stock spend the summer months in Pamlico Sound and the range of species extends as far south as Beaufort, NC. In colder months, animals are thought to go no farther north than Pamlico Sound. Since members of the southern migratory coastal and northern migratory coastal stocks are known to occur in or near the Bay in greater numbers, we will conservatively assume that no more than half of the remaining animals (2,320) will accrue to either of these stocks. The largest level B zone for mid-frequency cetaceans occurs during vibratory driving and extends out 2,154.4 meters. The largest Level A isopleth is 73.9 meters and would occur during installation of three battered piles on a single day. NMFS proposes a shutdown zone that extends 200 m, so no Level A take is authorized.

TABLE 10—SUMMARY OF INFORMATION USED TO CALCULATE BOTTLENOSE DOLPHIN EXPOSURES

Season	Density (individuals per km^2)	Estimated number of pile driving days	Total number of requested takes
Summer 2018	3.55	45	866.37
Fall 2018	3.88	77	2745.94
Winter 2019	0.63	70	962.62
Spring 2019	1.00	10	194.9
Total			4,740

TABLE 11—SEASONAL DAILY TAKE BY DRIVING SCENARIO (SEASONAL DENSITY * SCENARIO ZONE SIZE) AND ESTIMATED NUMBER OF DRIVING DAYS PER SEASON

Season	Impact simultaneous plumb daily take (days/season)	Impact batter daily take (days/season)	Vibratory sheet daily take (days/season)	Simultaneous vibratory sheet and impact plumb daily take (days/season)	Number of pile driving days
Summer	3.12 (24)	29.35 (15)	58.54 (6)	58.54 (0)	45
Fall	3.41 (36)	32.10 (0)	63.98 (41)	63.98 (0)	77
Winter	0.55 (12)	5.21 (0)	10.39 (34)	10.39 (24)	70
Spring	0.88 (0)	8.27 (0)	16.49 (9)	16.49 (1)	10

Harbor Porpoise

Little is known about the abundance of harbor porpoises in the Chesapeake Bay. A recent survey of the Maryland Wind Energy Area found that porpoises occur frequently offshore January to May (Wingfield *et al.,* 2017). This finding reflects the pattern of winter and spring strandings in the mid-Atlantic. NMFS will assume that there is a porpoise sighting once during every two months of operations. That would equate to five sightings over ten months. Assuming an average group size of two results in a total estimated take of 10 porpoises. Harbor porpoises are members of the high-frequency hearing group which would have Level A isopleths as large of 2,474 meters during impact installation of three battered piles per day. Given the relatively large Level A zones during impact driving, NMFS will assume that 40 precent of porpoises are taken by Level A harassment. Therefore, NMFS authorizes the take of 4 porpoises by Level A take and 6 porpoises by Level B take.

Harbor Seal

The number of harbor seals expected to be present in the PTST project area was estimated using survey data for in-water and hauled out seals collected by the United States Navy at the portal islands in 2016 and 2017 (Rees *et al.,* 2017). The survey data revealed a maximum of 40 animals observed per day. The maximum number of seals per day (40) was multiplied by the total number of driving days (202) resulting in an estimated 8,080 harbor seal takes. The largest level B zone would occur during vibratory driving and extends out 2,154.4 meters from the sound source. The largest Level A isopleth is 1,111.6 meters which would occur during impact installation of three battered piles. The smallest Level A zone during impact driving is 6.6 meters meters which would occur when a single steel pile is impact driven at the same time that vibratory driving of sheet piles is occurring. NMFS authorized a shutdown zone for harbor seals of 15 meters since seals are common in the project area and are known to approach the shoreline. A larger shutdown zone would likely result in multiple shutdowns and impede the project schedule. NMFS will assume that 40 percent of the exposed seals will occur within the Level A zone specified for a given scenario. Therefore, NMFS authorizes the Level A take of 3,232 and Level B take of 4,848 harbor seals.

Gray Seals

The number of gray seals potentially exposed to Level B harassment in the project area was calculated using survey data recording gray seal observations was collected by the U.S. Navy at the portal islands from 2014 through 2016 (Rees *et al.,* 2016). Potential gray seal exposures were calculated as the number of potential seals per pile driving day (8 hours) multiplied by the number of pile driving days per month. The anticipated numbers of monthly exposures as shown in Table 13 were summed. Therefore, NMFS has authorized the take of 67 gray seals by Level B harassment. The Level A isopleths for gray seals are identical to those for harbor seals. With a shutdown zone of 15 meters, NMFS recommended the Level A take of 40 percent of gray seals. Therefore, NMFS authorizes the Level A take of 27 and Level B take of 40 gray seals.

TABLE 13—CALCULATION FOR THE NUMBER OF GRAY SEAL EXPOSURES

Month	Estimated seals per work day	Total pile driving days per month (includes upland driving)	Gray seal takes
June 2018	Seals not expected to be present.		
July 2018	Seals not expected to be present.		
August 2018	Seals not expected to be present.		
September 2018	Seals not expected to be present.		
October 2018	Seals not expected to be present.		
November 2018	0	27	0
December 2018	0	24	0
January 2019	0	42	0
February 2019	1.6	42	67
March 2019	0	11	0

Table 14 provides a summary of authorized Level B takes as well as the percentage of a stock or population authorized for take.

TABLE 14—AUTHORIZED TAKE AND PERCENTAGE OF STOCK OR POPULATION

Species	Stock	Authorized Level A takes	Authorized Level B takes	Percent population
Humpback whale	Gulf of Maine		5	1.5
Bottlenose dolphin	WNA Coastal, Northern Migratory		2,320	20.1
	WNA Coastal, Southern Migratory		2,320	25.2
	NNCES		100	12.1
Harbor porpoise	Gulf of Maine/Bay of Fundy	4	6	<0.01
Harbor seal	Western North Atlantic	3,232	4,848	10.6
Gray seal	Western North Atlantic	27	40	0.25

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.

The following mitigation measures are contained in the IHA:

• *Pile Driving Delay/Shutdown Zone*—For in-water heavy machinery work (using, *e.g.,* standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), a minimum 10 meters shutdown zone shall be implemented. If a marine mammal comes within 10 meters of such operations, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include (but is not limited to) the following activities: (1) Vibratory pile driving; (2) movement of the barge to the pile location; (3) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile); or (4) removal of the pile from the water column/substrate via a crane (*i.e.,* deadpull).

• *Non-authorized Take Prohibited*—If a species for which authorization has not been granted (*e.g.,* North Atlantic right whale, fin whale) or a species for which authorization has been granted but the authorized takes are met, is observed approaching or within the Level B Isopleth, pile driving and removal activities must shut down immediately using delay and shut-down procedures. Activities must not resume until the animal has been confirmed to have left the area or an observation time period of 15 minutes has elapsed.

• *Use of Impact Installation*—During pile installation of hollow steel piles, an impact hammer rather than a vibratory hammer will be used to reduce the duration of pile driving decrease the ZOI for marine mammals.

• *Cushion Blocks*—Use of cushion blocks will be required during impact installation. Cushion blocks reduce source levels and, by association, received levels, although exact decreases in sound levels are unknown.

• *Use of Bubble Curtain*—An encased bubble curtain will be used for impact installation of plumb round piles at water depths greater than 3 m (10 ft). Bubble curtains will not function effectively in shallower depths. shall employ a bubble curtain during impact pile driving of steel piles. CTJV shall implement the following performance standards: (1) The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column; (2) the lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact; and (3) CTJV will require that construction contractors train personnel in the proper balancing of air flow to the bubblers, and shall require that construction contractors submit an inspection/performance report for approval by the CTJV within 72 hours following the performance test. Corrections to the attenuation device to meet the performance standards shall occur prior to impact driving.

• *Soft-Start*—The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. A soft-start procedure will be used for impact pile driving at the beginning of each day's in-water pile driving or any time impact pile driving has ceased for more than 30 minutes. The CTJV will start the bubble curtain prior to the initiation of impact pile driving. The contractor will provide an initial set of strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent sets.

• *Establishment of Additional Shutdown Zones and Monitoring Zones*—For all impact and vibratory pile driving shutdown and monitoring zones will be established and monitored.

• CTJV will establish a shutdown zone of 200 meters for common dolphins and harbor porpoises and 15 meters for harbor and gray seals. The shutdown zones for humpback whales are depicted in Table 16.

• For all impact and vibratory pile driving shutdown and monitoring zones will be established and monitored. Level B zones are shown in Table 15.

TABLE 15—RADIAL DISTANCE (METERS) FROM PILE DRIVEN TO LEVEL B ISOPLETHS FOR CETACEANS AND PINNIPEDS

Hammer type driving scenario	Radial distance (m)	
	Island 1	Island 2
Impact (battered)	1,585	1,585
Vibratory	2,155	2,155
Impact w/Bubble Curtain (plumb) at PI 1 and PI 2 simultaneous	345	345
Impact w/Bubble Curtain (plumb) at PI 1 and Vibratory at PI 2 simultaneous	345	2,155

TABLE 15—RADIAL DISTANCE (METERS) FROM PILE DRIVEN TO LEVEL B ISOPLETHS FOR CETACEANS AND PINNIPEDS—Continued

Hammer type driving scenario	Radial distance (m)	
	Island 1	Island 2
Vibratory at PI 1 and Impact w/Bubble Curtain (plumb) at PI 2 simultaneous	2,155	345

• The Level A zones will depend on the number of piles driven and the presence of marine mammals per 24-hour period. Up to 3 battered piles or 8 plumb steel piles will be driven per 24-hour period using the following adaptive monitoring approach. Monitoring will begin each day using the three-pile Level A zone for battered piles (or eight-pile zone for plumb piles). If after the first pile is driven, no marine mammals have been observed in the Level A zone, then the Level A zone will reduce to the two-pile zone. If no marine mammals are observed within the two-pile shutdown zone during the driving of the second pile, then the Level A zone will reduce to the one-pile zone. However, if a mammal is observed approaching or entering the three-pile Level A zone during the driving of the first pile, then the three-pile Level A zone will be monitored for the remainder of pile driving activities for that day. Likewise, if a marine mammal is observed within the two-pile but not the three-pile Level A zone, then the two-pile Level A zone will be monitored for the remainder of pile driving activities for that day. The same protocol will be followed for installation of up to 8 plumb piles per day.

The Level A isopleths for all authorized species are shown in Table 16. Isopeths associated with low-frequency cetaceans will signify shutdown zones for humpback whales.

TABLE 16—RADIAL DISTANCE (METERS) FROM DRIVEN PILE TO PTS ZONES FOR CETACEANS AND PHOCID PINNIPEDS FOR SCENARIOS INVOLVING IMPACT HAMMER

Class of marine mammals	Piles per day	Impact hammer (battered pile)	Impact hammer with bubble curtain simultaneous (plumb pile) **	Simultaneous Driving—Vibratory hammer and impact hammer with bubble curtain (plumb pile)
Low-Frequency Cetaceans *	8	N/A	1,366	860.6
	7	N.A	1,249.1	787.3
	6	N/A	1,127.7	710.4
	5	N/A	998.6	629.1
	4	N/A	860.6	542.1
	3	2,077.2	710.4	447.5
	2	1,585.2	542.1	341.5
	1	998.6	341.5	215.1
Mid-Frequency Cetaceans	8	N/A	48	30.6
	7	N/A	44.4	28.0
	6	N/A	40.1	25.3
	5	N/A	35.5	22.4
	4	N/A	30.6	19.3
	3	73.9	25.3	15.9
	2	56.4	19.3	12.1
	1	35.5	12.1	7.7
High Frequency Cetaceans	8	N/A	1,627	1,025.1
	7	N/A	1,488.6	937.8
	6	N/A	1,343.3	846.2
	5	N/A	1,189.5	749.4
	4	N/A	1,025.1	645.8
	3	2,474.3	846.2	533.1
	2	1,888.3	645.8	406.8
	1	1,189.5	406.8	256.3
Phocid Pinnipeds	8	N/A	731	460.5
	7	N/A	68.8	412.3
	6	N/A	603.5	380.2
	5	N/A	534.4	336.7
	4	N/A	460.5	290.1
	3	1,111.6	380.2	239.5
	2	848.3	290.1	182.8
	1	534.4	182.8	115.1

* These isopleths serve as shutdown zones for all large whales, including humpback and fin whales.
** Assumes 1 pile installed at each island per day ranging from maximum of 16 piles to minimum of 2 piles.

Based on our evaluation of the applicant's suggested measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned 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).
- Mitigation and monitoring effectiveness.

Visual Monitoring

The following visual monitoring measures are contained in the IHA:

- Pre-activity monitoring shall take place from 30 minutes prior to initiation of pile driving activity and post-activity monitoring shall continue through 30 minutes post-completion of pile driving activity. Pile driving may commence at the end of the 30-minute pre-activity monitoring period, provided observers have determined that the shutdown zone is clear of marine mammals, which includes delaying start of pile driving activities if a marine mammal is sighted in the zone.
- If a marine mammal approaches or enters the shutdown zone during activities or pre-activity monitoring, all pile driving activities at that location shall be halted or delayed, respectively. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone and 15 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.
- Monitoring distances, in accordance with the identified shutdown zones, Level A zones and Level B zones, will be determined by using a range finder, scope, hand-held global positioning system (GPS) device or landmarks with known distances from the monitoring positions.
- A minimum of two PSOs will be required during all pile driving activities. Monitoring locations shall be based on land both at Portal Island No. 1 and Portal Island No. 2 during simultaneous driving or on the Portal Island with active driving during non-simultaneous driving.
- Monitoring will be continuous unless the contractor takes a break longer than 2 hours from active pile and sheet pile driving, in which case, monitoring will be required 30 minutes prior to restarting pile installation.
- If marine mammals are observed, their location within the zones, and their reaction (if any) to pile activities will be documented.
- If weather or sea conditions restrict the observer's ability to observe, or become unsafe, pile installation will be suspended until conditions allow for monitoring to resume.
- For in-water pile driving, under conditions of fog or poor visibility that might obscure the presence of a marine mammal within the shutdown zone, the pile in progress will be completed and then pile driving suspended until visibility conditions improve.
- Monitoring of pile driving shall be conducted by qualified PSOs (see below), who shall have no other assigned tasks during monitoring periods. CVTJV shall adhere to the following conditions when selecting observers:

(1) Independent PSOs shall be used (*i.e.,* not construction personnel).

(2) At least one PSO must have prior experience working as a marine mammal observer during construction activities.

(3) Other PSOs may substitute education (degree in biological science or related field) or training for experience.

(4) CTJV shall submit PSO CVs for approval by NMFS.

- CTJV will ensure that observers have the following additional qualifications:

(1) Ability to conduct field observations and collect data according to assigned protocols.

(2) Experience or training in the field identification of marine mammals, including the identification of behaviors.

(3) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.

(4) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior.

(5) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;

• Deviation from initial proposal in pile numbers, pile types, average driving times, etc.;
• Weather parameters (*e.g.,* percent cover, visibility); and
• Water conditions (*e.g.,* sea state, tide state).
• For each marine mammal sighting:
(1) Species, numbers, and, if possible, sex and age class of marine mammals;
(2) Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
(3) Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
(4) Estimated amount of time that the animals remained in the Level A Level B zone;
• Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay); and
• Other human activity in the area.
• A summary of the following:
(1) Total number of individuals of each species detected within the Level A and Level B Zone, and estimated as taken if correction factor is applied.
(2) Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level A and Level B Zone, and estimated as taken, if correction factor is applied.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, CTJV would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Greater Atlantic Region New England/Mid-Atlantic Regional Stranding Coordinator. The report would include the following information:
• Description of the incident;
• Environmental conditions (*e.g.,* Beaufort sea state, 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).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with CTJV to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. CTJV would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that CTJV discovers an injured or dead marine mammal, and the lead PSO 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 as described in the next paragraph), CTJV would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Greater Atlantic Region New England/Mid-Atlantic Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with CTJV to determine whether modifications in the activities are appropriate.

In the event that CTJV discovers an injured or dead marine mammal and the lead PSO 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), CTJV would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Greater Atlantic Region New England/Mid-Atlantic Regional Stranding Coordinator, within 24 hours of the discovery. CTJV would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

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).

CTJV's planned pile driving activities are highly localized. Only a relatively small portion of the Chesapeake Bay may be affected. The project is not expected to have significant adverse effects on marine mammal habitat. No important feeding and/or reproductive areas for marine mammals are known to be near the project area. Project-related activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of their foraging range, but because of the relatively small impacted area of the habitat range utilized by each species that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

A limited number of animals could experience Level A harassment in the form of PTS if they remain within the Level A harassment zone during certain impact driving scenarios. The sizes of the Level A zones are dependent on the number of steel piles driven in a 24-hour period. Up to 8 steel plumb piles or 3 steel battered piles could be driven in a single day, which would result in a relatively large Level A zones. (If fewer piles are driven per day then the Level A zones would be smaller). However, an animal would have to be within the Level A zones during the driving of all 8 plumb or 3 battered piles. This is unlikely, as marine mammals tend to move away from sound sources. Furthermore, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments occurs, most likely the affected animal

would lose a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment.

Exposures to elevated sound levels produced during pile driving activities may cause behavioral responses by an animal, but they are expected to be mild and temporary. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. These reactions and behavioral changes are expected to subside quickly when the exposures cease. The pile driving activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in numerous other locations on the east coast, which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of sound that may cause Level B harassment are unlikely to result in permanent hearing impairment or to significantly disrupt foraging behavior. Furthermore, Level B harassment will be reduced through use of mitigation measures described herein.

CTJV will employ noise attenuating devices (*i.e.,* bubble curtains, pile caps) during impact driving of plumb steel piles. During impact driving of both plumb and battered piles, implementation of soft start procedures and monitoring of established shutdown zones will be required, significantly reduces any possibility of injury. Given sufficient notice through use of soft start (for impact driving), marine mammals are expected to move away from a sound source. PSOs will be stationed on a portal island whenever pile driving operations are underway at that island. The portal island locations provide a relatively clear view of the shutdown zones as well as monitoring zones. These factors will limit exposure of animals to noise levels that could result in injury.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated;
- The area of potential impacts is highly localized;
- No adverse impacts to marine mammal habitat;
- The absence of any significant habitat within the project area, including rookeries, or known areas or features of special significance for foraging or reproduction;
- Anticipated incidents of Level A harassment would likely be mild;
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; and
- The anticipated efficacy of the required mitigation measures in reducing the effects of the specified activity.

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 monitoring and mitigation measures, NMFS finds that the total marine mammal take from the 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 has determined that the estimated Level B take of humpback whale is 1.5 percent of the Gulf of Maine stock; take of harbor seals is 10.6 percent of the Western North Atlantic stock; take of gray seals is 0.25 percent of the Western North Atlantic stock; and take of harbor porpoise is <0.01 percent of the Gulf of Maine/Bay of Fundy stock. Total estimated take of bottlenose dolphins is 4,740. NMFS assumes 100 takes accruing to the NNCES stock and no more than half (2,300) of the remaining takes accruing to either of two migratory coastal stocks. This stock division represents 12.1 percent of the NCCES stock, 20.1 percent of the Western North Atlantic northern migratory coastal stock and 25.2 percent of the Western North Atlantic southern migratory coastal stock. Additionally, some number of the anticipated takes are likely to be repeat sightings of the same individual, lowering the number of *individuals* taken.

Based on the analysis contained herein of the planned activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS 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 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.

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 Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to CTJV for conducting pile driving and removal activities as part of the PTST project between August 1, 2018 through July 31, 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 25, 2018.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–16204 Filed 7–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG373

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Committees.

DATES: The meetings will be held Monday, August 13, 2018 through Thursday, August 16, 2018. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Hilton Virginia Beach Oceanfront, 3001 Atlantic Avenue, Virginia Beach, VA 23451, telephone: (757) 213–3000.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible).

Monday, August 13, 2018

Swearing in of New and Reappointed Council Members

Election of Officers

Illex Control Date and 2018 and 2019 Fishery

Consider a new or existing (August 2, 2013) control date and review and consider adjustment to 2018 and 2019 *Illex* specifications.

Atlantic Mackerel Framework and Specifications

Approve rebuilding plan and associated 2019–2021 specifications including river herring and shad cap.

Tuesday, August 14, 2018

Council Meeting With the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass and Bluefish Boards

MRIP Presentation on New Estimates

Summer Flounder, Scup, and Black Sea Bass Framework and Addendum on Conservation Equivalency, Block Island Sound Transit, and Slot Limits

Framework meeting 1—review draft alternatives and review and approve draft addendum.

Black Sea Bass Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations and adopt 2019 specifications.

Black Sea Bass Wave 1 Fishery and Letter of Authorization (LOA)

Consider a potential February 2019 opening of the recreational Wave 1 fishery and discuss the continued development of the LOA Framework.

Wednesday, August 15, 2018

Council Meeting With the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass and Bluefish Boards

Summer Flounder Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations and adopt 2019 specifications.

Scup Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations regarding previously implemented 2019 specifications and recommend changes to 2019 specifications if necessary.

Bluefish Specifications

Review SSC, Monitoring Committee, Advisory Panel, and staff recommendations and adopt 2019 specifications.

Bluefish Allocation Amendment

Review scoping comments and discuss next steps and determine issues to be included in public hearing document.

ASMFC Bluefish FMP Review

Thursday, August 16, 2018

Responsible Offshore Development Alliance

Draft Amendment 11 to the 2006 Consolidated Atlantic HMS FMP for Management of Shortfin Mako Sharks

Business Session

Committee Reports (SSC); Executive Director's Report; Organization Reports; and, Liaison Reports.

Continuing and New Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: July 25, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–16221 Filed 7–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG372

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific & Statistical Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, August 15, 2018 beginning at 9:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, Boston Logan, 100 Boardman Street, Boston, MA 02128; phone: (617) 567–6789.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will review recent stock assessment information from the U.S/Canada Transboundary Resource Assessment Committee and information provided by the Council's Groundfish Plan Development Team (PDT) and recommend the overfishing level (OFL) and acceptable biological catch (ABC) for Georges Bank yellowtail flounder for the 2019 and 2020 fishing years. The committee will also review the 2017 assessments of ocean pout, Georges Bank winter flounder, witch flounder, Northern windowpane flounder, and Southern New England/Mid-Atlantic yellowtail flounder and comment on the rebuilding alternatives under development to advise on the technical basis for the range of alternative rebuilding strategies developed by the PDT. These stocks are managed under the Northeast Multispecies (Groundfish) Fishery Management Plan. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

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

Dated: July 25, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–16217 Filed 7–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF926

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off the Coast of Massachusetts

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to high-resolution geophysical (HRG) survey investigations associated with marine site characterization activities off the coast of Massachusetts in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0500) and along cable routes to the coast of Massachusettes (the Study Area).

DATES: This Authorization is valid for one year from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Dale Youngkin, 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: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-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).

Summary of Request

On October 20, 2017 NMFS received an application from Bay State Wind for the taking of marine mammals incidental to site characterization investigations off the coast of Massachusetts in the OCS–A 0500 Study Area, designated and offered by the Bureau of Ocean Energy Management (BOEM), to support the development of an offshore wind project. Bay State Wind's request was for take, by Level A and Level B harassment, of a small number of 10 species or stocks of marine mammals. As there were changes to the proposed project activities and equipment proposed for use after this initial application submittal, a complete application was received in April, 2018. In addition, some species not originally considered for take have been authorized based on further consideration and coordination, so incidental take of 13 species/stocks have now been authorized. Neither the applicant nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of the Specified Activity

Overview

Bay State Wind proposes to conduct HRG surveys in the Study Area to support the characterization of the existing seabed and subsurface geological conditions in the Study Area. This information is necessary to support the final siting, design, and installation of offshore project facilities, turbines and subsea cables within the project area as well as to collect the data necessary to support the review requirements associated with Section 106 of the National Historic Preservation Act of 1966, as amended. Underwater sound resulting from Bay State Wind's proposed site characterization surveys has the potential to result in incidental take of marine mammals. This take of marine mammals is anticipated to be in the form of harassment and no serious injury or mortality is anticipated, nor is any authorized in this IHA.

Dates and Duration

HRG surveys of the wind turbine generator (WTG) and offshore substation (OSS) areas are anticipated to commence upon issuance of the IHA and will last for approximately 60 days, including estimated weather down time. Likewise, the Export Cable Route HRG surveys are anticipated to commence upon issuance of the IHA and will last approximately 40 days (including estimated weather down time). Offshore and near coastal shallow water regions of the HRG survey will occur within the same 40-day timeframe.

Specified Geographic Region

Bay State Wind's survey activities will occur in the approximately 187,532-acre Lease Area designated and offered by BOEM, located approximately 14 miles (mi) south of Martha's Vineyard, Massachusetts at its closest point, as well as within 2 potential export cable routes to Somerset, MA and to Falmouth, MA (see Figure 1–1 of the IHA application). The Lease Area falls within the Massachusetts Wind Energy Area (MA WEA).

A detailed description of the planned survey activities, including types of survey equipment planned for use, is provided in the **Federal Register** notice for the proposed IHA (83 FR 22443; May 15, 2018). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not repeated here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

NMFS published a notice of proposed IHA in the **Federal Register** on May 15, 2018 (83 FR 22443). During the 30-day public comment period, NMFS received comment letters from the Marine Mammal Commission (Commission) and a group of non-governmental organizations (NGOs) including Natural Resources Defense Council, the National Wildlife Federation, the Conservation Law Foundation, Defenders of Wildlife, Southern Environmental Law Center, Surfrider Foundation, Sierra Club, and the International Fund for Animal Welfare. No other public comments were received. NMFS has posted the comment letters received online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* The U.S. Fish and Wildlife Service (USFWS) New England Field Office reviewed our proposal and had no comment. The following is a summary of the Commission comments received and NMFS's responses.

Comment 1: The Commission notes that impulsive thresholds, rather than non-impulsive thresholds, were incorrectly used to model Level A harassment zones for the ultra-short baseline positioning system (UBPS) and sub-bottom profiler (SBP) sources, which resulted in overly conservative Level A harassment zones. The Commission stated that the correct threshold should have been used, regardless of whether the incorrect threshold was more conservative, and NMFS should prohibit applicants from using impulsive thresholds for non-impulsive sources.

NMFS Response: NMFS appreciates the input from the Commission. We acknowledge the error, and have corrected it in this final notice (refer to Table 3) and IHA. Take by Level A harassment is not likely, even based on the larger (more conservative) isopleth associated with the impulsive threshold. The use of the non-impulsive threshold does not change our findings or determinations under the MMPA. NMFS does not allow applicants to arbitrarily choose which thresholds to use.

Comment 2: The Commission recommended that NMFS refrain from authorizing Level A harassment takes of harbor porpoises.

NMFS Response: Take by Level A harassment is not being authorized in this IHA.

Comment 3: The Commission recommended that, until behavioral thresholds are updated, NMFS require applicants to use the 120-decibel (dB) re 1 micropascal (μPa), rather than 160- dB re 1μPa, threshold for acoustic, non-impulsive sources (*e.g.,* sub-bottom profilers/chirps, echosounders, and other sonars including side-scan and fish-finding).

NMFS Response: Certain sub-bottom profiling systems are appropriately considered to be impulsive sources (*e.g.,* boomers, sparkers); therefore, the threshold of 160 dB re 1μPa will continue to be used for those sources. Other source types referenced by the Commission (*e.g.,* chirp sub-bottom profilers, echosounders, and other sonars including side-scan and fish-finding) produce signals that are not necessarily strictly impulsive; however, NMFS finds that the 160-dB root mean square (rms) threshold is most appropriate for use in evaluating potential behavioral impacts to marine mammals because the temporal characteristics (*i.e.,* intermittency) of these sources are better captured by this threshold. The 120-dB threshold is associated with continuous sources and was derived based on studies examining behavioral responses to drilling and dredging. Continuous sounds are those whose sound pressure level remains above that of the ambient sound, with negligibly small fluctuations in level (NIOSH, 1998; ANSI, 2005). Examples of sounds that NMFS would categorize

as continuous are those associated with drilling or vibratory pile driving activities. Intermittent sounds are defined as sounds with interrupted levels of low or no sound (NIOSH, 1998). Thus, signals produced by these source types are not continuous but rather intermittent sounds. With regard to behavioral thresholds, we consider the temporal and spectral characteristics of signals produced by these source types to more closely resemble those of an impulse sound rather than a continuous sound. The threshold of 160 dB re 1μPa is typically associated with impulsive sources, which are inherently intermittent. Therefore, the 160 dB threshold (typically associated with impulsive sources) is more appropriate than the 120 dB threshold (typically associated with continuous sources) for estimating takes by behavioral harassment incidental to use of such sources.

Comment 4: The Commission noted during informal consultation that NMFS informed the Commission that Orsted (BSW) conducted sound source verification (SSV) on the triple plate boom plate, which resulted in a greatly reduced Level B harassment zone for that sound source. The Commission recommended that NMFS provide the SSV report to its technical experts for review prior to allowing the Level B harassment zone to be reduced based on these findings.

NMFS Response: NMFS has not revised the Level B harassment zone to support a recalculation of take based on this SSV report and does not intend to use the report to support different Level B harassment zones until and unless we are able to validate its findings based on technical review. NMFS has only recently received the SSV report from BSW and is currently reviewing it for potential use in future IHAs. Based on preliminary review of the report, it appears as though the actual Level B harassment isopleth for the Triple Plate Boomer would be no more than 100 m (and could be significantly less), which would equate to reduction in the ensonified area of at least 94%, as compared to the area associated with the 400-m Level B harassment zone that was modelled and presented in the notice of the proposed IHA (83 FR 22443, May 15, 2018).

Comment 5: The Commission noted that Risso's dolphins were observed during an HRG survey conducted by a different company (Deepwater Wind, LLC) in 2017 in the same general area (Rhode Island-Massachusetts Wind Energy Area, located east of Long Island, New York and south of Rhode Island and Massachusetts). The Commission recommended that NMFS authorize at least 20 Level B harassment takes of this species based on encountering a group twice during the 60 days of the proposed activities.

NMFS Response: NMFS has added Level B harassment takes for Risso's dolphin. Out of an abundance of caution, authorized takes assume a group of 15 individuals encountered twice during the survey activities for a total of 30 authorized takes by Level B harassment.

Comment 6: The Commission states recommended that NMFS include takes of sei whales, Atlantic spotted dolphin, and long-finned pilot whales, ensuring that the number of takes authorized for each species is at least equal to the average group size of each species.

NMFS Response: NMFS' decision not to authorize take for sei whales is based on very low calculated takes (low expectation that take is likely to occur based on very conservative take estimates) coupled with the fact that these species are not expected to occur based on past monitoring reports from the area. Calculated takes (which take into account the duration of the survey activities as well as the low densities for this species) did not round up to one take for sei whales. If any species for which take is not authorized are encountered, Bay State Wind are required to implement measures to avoid take of these species and NMFS believes that, in the unlikely event that a sei whale is encountered, Bay State Wind will be able to effectively mitigate to avoid take of this large cetacean species. However, as Atlantic spotted dolphins and long-finned pilot whales are much smaller cetaceans (hence, potentially harder to see to avoid take in certain conditions), may occur in much larger groups, and calculations resulted in at least a small amount of take for pilot whales, NMFS has modified the IHA to authorize a small number of takes by Level B harassment for these species to avoid requiring the applicant to shut down operations for avoidance of take in the unlikely event they are encountered.

Comment 7: The Commission expressed concern that the method used to estimate the numbers of takes, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS' 24-hour reset policy. The Commission recommended that NMFS share their rounding criteria guidance with the Commission in an expeditious manner.

NMFS Response: NMFS appreciates the Commission's ongoing concern in this matter. Calculating predicted takes is not an exact science and there are arguments for taking different mathematical approaches in different situations, and for making qualitative adjustments in other situations. We believe, however, that the methodology used for take calculation in this IHA remains appropriate and is not at odds with the 24-hour reset policy the Commission references. NMFS recently completed internal guidance on rounding and consideration of qualitative factors in the estimation of instances of take. NMFS' internal guidance on rounding and the consideration of qualitative factors in take estimation has been provided to the Commission.

Comment 8: The Commission recommended that NMFS better evaluate the number of Level A and B harassment takes it plans to propose by considering both ecological/biological information and results from previous monitoring reports for all proposed authorizations prior to submitting them for publication in the **Federal Register**.

NMFS Response: NMFS' reasoning takes into account past practice; what estimated take calculations yield; and what the applicant proposes, as well as a suite of situational and context factors such as the size of the zone; the likely effectiveness of the mitigation; and the behavior of the species in question when evaluating Level A and Level B harassment takes it proposes to authorize. NMFS also considers ecological/biological information and results from previous monitoring reports. The purpose of publishing the notice in the **Federal Register** is to obtain feedback on the proposed IHA and, when warranted based on feedback received, we may determine it is appropriate to revise our proposed authorizations. More information regarding how NMFS estimates instances of take, including consideration of qualitative factors, was provided to the Commission on June 27, 2018.

Comment 9: The Commission recommended that NMFS require a standard 30-minute pre- and post-monitoring clearance monitoring period and 15-minute clearance times for small cetaceans and pinnipeds and a 30-minute clearance time for larger cetaceans after a delay or shut down.

NMFS Response: NMFS has revised the monitoring and clearance times as recommended by the Commission.

Comment 10: The Commission requested clarification regarding certain issues associated with NMFS' notice that one-year renewals could be issued in certain limited circumstances and expressed concern that the process

would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA. The Commission also noted that NMFS had recently begun utilizing abbreviated notices, referencing relevant documents, to solicit public input and suggested that NMFS use these notices and solicit review in lieu of the currently proposed renewal process.

NMFS Response: The process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Additional reference to this solicitation of public comment has recently been added at the beginning of the FR notices that consider renewals, requesting input specifically on the possible renewal itself. NMFS appreciates the streamlining achieved by the use of abbreviated FR notices and intends to continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy the renewal requirements. However, we believe our proposed method for issuing renewals meets statutory requirements and maximizes efficiency.

Importantly, such renewals would be limited to circumstances where: the activities are identical or nearly identical to those analyzed in the proposed IHA; monitoring does not indicate impacts that were not previously analyzed and authorized; and, the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as they are for all IHAs. The option for issuing renewal IHAs has been in NMFS's incidental take regulations since 1996. We will provide any additional information to the Commission and consider posting a description of the renewal process on our website before any renewal is issued utilizing this process.

Comment 11: The Commission noted that in this instance, the public comment period closed on 14 June, 2018 which was two weeks after activities were scheduled to begin, as the final version of the application was not submitted until 5 April, 2018. The Commission recommended that NMFS take all steps necessary to ensure that it publishes and finalizes proposed IHAs far enough in advance of the planned start date to ensure full consideration is given to all comments received, noting this can only be accomplished if applicants provide their complete applications at the outset and respond to inquiries from NMFS in a timely manner.

NMFS Response: The delay in issuance of this IHA was specifically to allow for the needed public review and comment period and to allow NMFS time to fully consider the comments received. We have thoroughly reviewed the comments received and discussed many of these comments with the Commission during informal consultation. Where appropriate, we have revised the proposed authorization. In instances where we disagree with the proposed revision, we have explained why we have not revised the authorization. More generally, NMFS publishes FR notices for proposed IHAs as quickly as possible once the application is received, but we cannot control either short processing times driven by the date the activity is supposed to start or later publication of proposed IHAs resulting from back and forth with the applicants to ensure we have the necessary information.

Comment 12: The NGOs noted concern for the unusual mortality events (UME) that have been declared for humpback whales, minke whales, and North Atlantic right whales and expressed concern that the estimates derived from models presented in Roberts *et al.* (2016) may underrepresent density and seasonal presence of large whales in the survey area. The NGOs noted NMFS is required to use the best available science for species presence and densities, and recommended that NMFS consider additional data sources in density modeling in future analyses of estimated take, including initial data from state monitoring efforts, existing passive acoustic monitoring data, opportunistic marine mammal sightings data, and other data sources.

NMFS Response: NMFS acknowledges the UMEs for minke whales since January 2017; north Atlantic right whales since June 2017; and humpback whales since January 2016. Please refer to the discussion of these UMEs in the Negligible Impact Determination section of this notice.

NMFS has determined that the data provided by Roberts *et al.* (2016) represents the best available information concerning marine mammal density in the survey area and has used it accordingly. NMFS has considered other available information, including that cited by the commenters, and determined that it does not contradict the information provided by Roberts *et al.* (2016). The sources suggested by the commenters do not provide data in a format that is directly usable in an acoustic exposure analysis. We will continue to review data sources, including those recommended by commenters for consideration for their suitability for inclusion in future analyses to ensure the use of best available science in our analyses.

In addition to considering the density estimates, NMFS has reviewed past monitoring reports from the survey area. In 2016, one fin and two minke whales were observed during surveys at distances ranging from 1,000 to 2,000 m from the source. In 2017 there were 5 minke whales and 13 fin whales observed while on survey with only one of these being close enough to be considered a take by Level B harassment. Review of past monitoring reports confirm that large whales are not as common in the survey area as small delphinoid species and at no point has the amount of take authorized been exceeded or even approached so as to cause concern that the amount would be met or exceeded. As presented in the proposed IHA notice (83 FR 22443, May 15, 2018), where warranted, estimated take calculations were adjusted based on average group size and sightings from the survey area and are not solely based on calculations based on density data.

Comment 13: Regarding mitigation measures, the NGOs recommended NMFS impose a restriction on site assessment and characterization activities that have the potential to harass the North Atlantic right whale from November 1st to May 14th.

NMFS Response: In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or

stocks and their habitat, 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; and (2) the practicability of the measures for applicant implementation, which may consider such things as relative cost and impact on operations.

No take of North Atlantic right whales is anticipated, nor are any takes authorized. In addition, although the IHA covers Bay State Wind's activities should they occur at any point during the year, as stated in the notice for the proposed IHA (83 FR 83 FR 22443, May 15, 2018), Bay State Wind's activities are anticipated to begin as soon as they receive their authorization and last for approximately 60 days (60 days for the offshore sections and 40 days for the inshore sections that may occur concurrently). In addition, again although the analysis covers activities conducted in any months, Bay State Wind's HRG survey activities are anticipated to be complete prior to the recommended restriction (November 1–May 14).

Bay State Wind determined the planned duration of the survey based on their data acquisition needs, which are largely driven by the BOEM's data acquisition requirements prior to required submission of a construction and operations plan (COP). Any effort on the part of NMFS to restrict the months during which the survey could operate could have the effect of forcing the applicant to conduct additional months of surveys the following year, resulting in increased costs incurred by the applicant and extending the amount of time need to complete the surveys with associated additional production of underwater noise which could have further potential impacts to marine mammals. Thus, the time and area restrictions recommended by the commenters would not be practicable for the applicant to implement and would to some degree offset the benefit of the recommended measure. In addition, our analysis of the potential impacts of the survey on right whales does not indicate that such closures are warranted, as there are no takes of North Atlantic right whales anticipated or authorized and no marine mammal injury is expected as a result of the survey, nor is injury authorized in the IHA. Thus, in consideration of the limited potential benefits of time and area restrictions, in concert with the impracticability and increased cost on the part of the applicant that would result from such restrictions, NMFS has determined that time and area restrictions are not warranted in this case. Existing mitigation measures, including exclusion zones, ramp-up of survey equipment, and vessel strike avoidance measures, are sufficiently protective to ensure the least practicable adverse impact on species or stocks and their habitat.

Comment 14: Regarding mitigation measures, the NGOs recommended that NMFS require that geophysical surveys commence, with ramp-up, during daylight hours only to maximize the probability that North Atlantic right whales are detected and confirmed clear of the exclusion zone, and that, if a right whale were detected in the exclusion zone during nighttime hours and the survey is shut down, developers should be required to wait until daylight hours for ramp-up to commence.

NMFS Response: We acknowledge the limitations inherent in detection of marine mammals at night. However, as described above, no takes of North Atlantic right whales have been authorized and potential impacts to other marine mammals from the survey activities would be limited to short-term behavioral responses. Restricting surveys in the manner suggested by the commenters may reduce marine mammal exposures by some degree in the short term, but would not result in any significant reduction in either intensity or duration of noise exposure. No injury is expected to result even in the absence of mitigation, given the very small estimated Level A harassment zones. In the event that NMFS imposed the restriction suggested by the commenters, potentially resulting in a second season of surveys required for the applicant, vessels would be on the water introducing noise into the marine environment for an extended period of time. Therefore, in addition to practicability concerns for the applicant, the restrictions recommended by the commenters could result in the surveys spending increased time on the water, which may result in greater overall exposure to sound for marine mammals; thus the commenters have failed to demonstrate that such a requirement would result in a net benefit for affected marine mammals. Further, we note that past monitoring reports indicate the ability to detect marine mammals at night, including smaller cetaceans, with use of the infrared and night vision technologies in combination with passive acoustic monitoring (PAM) employed during nighttime activities. Therefore, in consideration of potential effectiveness of the recommended measure and its practicability for the applicant, NMFS has determined that restricting survey start-ups to daylight hours is not warranted in this case.

We note that the proposed IHA **Federal Register** notice included a mitigation requirement that shutdown of geophysical survey equipment would be required upon confirmed PAM detection of a North Atlantic right whale at night, even in the absence of visual confirmation, except in cases where the acoustic detection can be localized and the right whale can be confirmed as being beyond the 500 meter (m) exclusion zone (EZ); equipment may be re-started no sooner than 30 minutes after the last confirmed acoustic detection. This mitigation measure was retained and has been included as part of the issued IHA.

Comment 15: The NGOs recommended that NMFS require a 500 m EZ for marine mammals (with the exception of dolphins that voluntarily approach the vessel). Additionally, the NGOs recommended that protected species observers (PSO) monitor to an extended 1,000 m EZ for North Atlantic right whales, and stated that NMFS has been inconsistent in its EZ requirements for different lease areas without explanation or justification.

NMFS Response: NMFS' mitigation measures, including establishment of EZs, are based on consideration of a variety of factors including consideration of two primary factors: (1) The manner in which, and the degree to which, the successful implementation of the measure(s) would be expected to reduce impacts (which considers the nature of the potential adverse impact being mitigated and likelihood that the measure will be effective if implemented along with the likelihood of effective implementation), and (2) the practicability of the measure for the applicant (which may consider such things as cost and impact on operations among other things for activities not applicable to this authorization). These considerations may at times result in different outcomes and requirements between differing areas. Regarding the specific recommendation for a 1,000 m EZ specifically for North Atlantic right whales, we have determined that the 500 m EZ, as required in the IHA, is sufficiently protective. We note that the 500 m EZ exceeds the modeled distance to the conservatively modeled Level B harassment isopleth (400 m), thus for North Atlantic right whales detected by PSOs this EZ would effectively minimize potential instances of injury and harassment.

Regarding the commenters' recommendation to require a 500 m EZ for all marine mammals (except dolphins that approach the vessel) we

have determined the EZs as currently required in the IHA (described in Mitigation Measures, below) are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. The EZs would prevent all potential instances of marine mammal injury. In this instance, injury would not be an expected outcome even in the absence of mitigation due to very small predicted isopleths corresponding to the Level A harassment threshold (Note that the 75 m Level A harassment threshold for harbor porpoises as discussed in the proposed IHA was based on the more conservative impulsive threshold and has since been updated with the correct non-impulsive threshold, which means the isopleth is actually < 5 m, as opposed to the previously considered 75 m) and would further prevent some instances of behavioral harassment, as well as limiting the intensity and/or duration of behavioral harassment that does occur. As NMFS has determined the EZs currently required in the IHA to be sufficiently protective, we do not think expanded EZs, beyond what is required in the IHA are warranted.

Comment 16: The NGOs recommended that a combination of visual monitoring by PSOs and PAM should be required 24 hours per day.

NMFS Response: As stated in the notice for the proposed IHA (83 FR 22443, May 15, 2018) and below in the Mitigation section, when evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on marine mammals species or stocks and their habitats, as well as subsistence uses where applicable, NMFS considers two primary factors: (1) The manner in which, and the degree to which, the successful implementation of the measure(s) would be expected to reduce impacts (which considers the nature of the potential adverse impact being mitigated and likelihood that the measure will be effective if implemented along with the likelihood of effective implementation), and (2) The practicability of the measure for the applicant (which may consider such things as cost and impact on operations among other things for activities not applicable to this authorization). The PAM requirement has been included in the IHA because PAM was proposed by the applicant, and PAM is required in BOEM lease stipulations. We do not think the use of PAM is necessarily warranted for surveys using the sound sources proposed for use by the applicant, due to relatively small areas that are expected to be ensonified to the Level A harassment threshold making it unlikely that injury or more serious effects would result from the activities. As such, this is an example of a mitigation measure that NMFS would not require, but is implementing due to consideration of other factors. As we are not convinced that PAM is necessarily warranted for this type of survey, we do not think a requirement to expand the use of PAM to 24 hours a day during the survey is warranted. Expanding the PAM requirement to 24 hours a day may also result in increased costs on the part of the applicant. When the potential benefits of a 24 hour PAM requirement are considered in concert with the potential increased costs on the part of the applicant that would result from such a requirement, we determined a requirement for 24 hour PAM operation is not warranted in this case. Given the lower level of effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to behavioral harassment even in the absence of mitigation, we have determined the current requirements for visual and acoustic monitoring are sufficient to ensure the EZs and Watch Zone are adequately monitored for this particular activity.

Comment 17: The NGOs recommended that NMFS require a 10 knot speed restriction on all project-related vessels transiting to/from the survey area from February 1 to May 14, and that all project vessels operating within the survey area should be required to maintain a speed of 10 knots or less during the entire survey period. It was also noted that vessels less than 65 ft. in length are exempt from NMFS' regulations (presumably this is in reference to mandatory speed restrictions of 10 knots or less, in effect for the following seasonal management areas (SMA): Cape Cod Bay from January 1 through May 15 and/or Block Island from November 1 through April 30 and/or the voluntary speeds in the voluntary DMAs, which includes the area south of Nantucket July 2, 2018 through July 15, 2018. We note here that the survey area is not within any of these areas, but that DMAs may be developed and Bay State Wind will be required to monitor for the creation of DMAs and abide by the requirements of any DMA created) and that the proposed IHA provided no speed restrictions for the Autonomous Surface Vessels (ASV) or other support vessels that may be operating during the survey months.

NMFS Response: NMFS has analyzed the potential for ship strike resulting from Bay State Wind's activity and has determined that the mitigation measures specific to ship strike avoidance are sufficient to minimize the potential for ship strike such that we have determined this is discountable. These measures include: A requirement that all vessel operators comply with 10 knot (18.5 kilometer (km)/hour) or less speed restrictions in any SMA or Dynamic Management Area (DMA); a requirement that all vessel operators reduce vessel speed to 10 knots (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed within 100 m of an underway vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any sighted North Atlantic right whale; a requirement that, if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots or less until the 500 m minimum separation distance has been established; and a requirement that, if a North Atlantic right whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Additional measures to prevent the potential for ship strike are discussed in more detail below (see the Mitigation section). We have determined that the ship strike avoidance measures are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. We also note that vessel strike during surveys is extremely unlikely based on the low vessel speed; the survey vessel would maintain a speed of approximately 4 knots (7.4 km/hour) while transiting survey lines. The stated speed restrictions would apply to all vessels including the ASVs and support vessels. Further, given that the ASVs must be within a maximum of 800 m from the mother ship, the speed of the ASV vessels could not exceed that of the mother vessel.

Comment 18: The NGOs recommended that NMFS analyses account for the potential for indirect ship strike risk resulting from habitat displacement.

NMFS Response: NMFS determined that habitat displacement was not an expected outcome of the specified activity. As discussed in the notice for the proposed IHA (83 FR 22443, May 15, 2018) we anticipate marine mammals may avoid the area of disturbing noise, but this would be a relatively small area, as the Level B harassment zone was conservatively estimated to be 400 m, and would be short-term in nature such that habitat displacement is not anticipated. As discussed above, since publication of the proposed IHA notice, NMFS has received a sound source verification study from Bay State Wind for the Triple Plate Boomer and based on

preliminary review, the actual Level B harassment isopleth would be no more than 100 m, as compared to the 400-m modelled zone, so the area of disturbance would be significantly less than originally reported. Therefore, habitat displacement is not reasonably likely to occur an analysis of potential impacts to marine mammals from habitat displacement is not warranted in this case.

Comment 19: The NGOs stated that NMFS should not adjust take numbers for North Atlantic right whales based on mitigation measures and stated that they do not share NMFS' level of confidence that it is possible to mitigate all potential for Level B harassment. This lack of confidence is based on (1) an assertion that the 160 dB threshold for behavioral harassment is not supported by best available science (citing to footnote 11 of the comment letter), and (2) an assertion that the monitoring protocols prescribed for the EZs are under-protective (referring to Section III.D of the comment letter for further discussion).

NMFS Response: Regarding the comment addressing the appropriateness of the 160-db behavioral harassment threshold, NMFS assumes that the reference to footnote 11 (Kraus, *et al.*, 2016) in the comment is in error, and the correct reference was meant to be footnote 16, which references Nowacek *et al.,* 2004 and Kastelein *et al.,* 2012 and 2015 as sources for the assertion that take would occur with near certainty at exposure levels well below the 160 dB threshold for behavioral harassment. Regardless, NMFS notes that the potential for behavioral response to an anthropogenic source is highly variable and context-specific and acknowledges the potential for Level B harassment at exposures to received levels below 160 dB rms. Alternatively, NMFS acknowledges the potential that animals exposed to received levels above 160 dB rms will not respond in ways constituting behavioral harassment. There are a variety of studies indicating that contextual variables play a very important role in response to anthropogenic noise, and the severity of effects are not necessarily linear when compared to a received level (RL). The studies cited in the comment (Nowacek *et al.,* 2004 and Kastelein *et al.,* 2012 and 2015) showed there were behavioral responses to sources below the 160 dB threshold, but also acknowledge the importance of context in these responses. For example, Nowacek *et al.,* 2004 reported the behavior of five out of six North Atlantic right whales was disrupted at RLs of only 133–148 dB re 1 μPa (returning to normal behavior within minutes) when exposed to an alert signal. However, the authors also reported that none of the whales responded to noise from transiting vessels or playbacks of ship noise even though the RLs were at least as strong, and contained similar frequencies, to those of the alert signal. The authors state that a possible explanation for whales responded to the alert signal and did not respond to vessel noise is due to the whales having been habituated to vessel noise, while the alert signal was a novel sound. In addition, the authors noted differences between the characteristics of the vessel noise and alert signal which may also have played a part in the differences in responses to the two noise types. Therefore, it was concluded that the signal itself, as opposed to the RL, was responsible for the response. DeRuiter *et al.* (2012) also indicate that variability of responses to acoustic stimuli depends not only on the species receiving the sound and the sound source, but also on the social, behavioral, or environmental contexts of exposure. Finally, Gong *et al.* (2014) highlighted that behavioral responses depend on many contextual factors, including range to source, RL above background noise, novelty of the signal, and differences in behavioral state. Similarly, Kastelein *et al.,* 2015 (cited in the comment) examined behavioral responses of a harbor porpoise to sonar signals in a quiet pool, but stated behavioral responses of harbor porpoises at sea would vary with context such as social situation, sound propagation, and background noise levels.

NMFS uses 160 dB (rms) as the exposure level for estimating Level B harassment takes and is currently considered the best available science, while acknowledging that the 160 db rms step-function approach is a simplistic approach. However, there appears to be a misconception regarding the concept of the 160 dB threshold. While it is correct that in practice it works as a step-function, *i.e.,* animals exposed to received levels above the threshold are considered to be ''taken'' and those exposed to levels below the threshold are not, it is in fact intended as a sort of mid-point of likely behavioral responses (which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context). What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that are appropriately considered take, while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simplistic quantitative estimate of take, while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

Overall, we reiterate the lack of scientific consensus regarding what might criteria might be more appropriate. Defining sound levels that disrupt behavioral patterns is difficult because responses depend on the context in which the animal receives the sound, including an animal's behavioral mode when it hears sounds (*e.g.,* feeding, resting, or migrating), prior experience, and biological factors (*e.g.,* age and sex). Other contextual factors, such as signal characteristics, distance from the source, and signal to noise ratio, may also help determine response to a given received level of sound. Therefore, levels at which responses occur are not necessarily consistent and can be difficult to predict (Southall *et al.,* 2007; Ellison *et al.,* 2012; Bain and Williams, 2006).

There is currently no agreement on these complex issues, and NMFS followed the practice at the time of submission and review of this application in assessing the likelihood of disruption of behavioral patterns by using the 160 dB threshold. This threshold has remained in use in part because of the practical need to use a relatively simple threshold based on available information that is both predictable and measurable for most activities. We note that the seminal review presented by Southall *et al.* (2007) did not suggest any specific new criteria due to lack of convergence in the data. NMFS is currently evaluating available information towards development of guidance for assessing the effects of anthropogenic sound on marine mammal behavior. However, undertaking a process to derive defensible exposure-response relationships is complex (*e.g.,* NMFS previously attempted such an approach, but is currently re-evaluating the approach based on input collected during peer review of NMFS (2016)). A recent systematic review by Gomez *et al.* (2016) was unable to derive criteria expressing these types of exposure-response relationships based on currently available data.

NMFS acknowledges that there may be methods of assessing likely behavioral response to acoustic stimuli that better capture the variation and context-dependency of those responses than the simple 160 dB step-function used here, there is no agreement on

what that method should be or how more complicated methods may be implemented by applicants. NMFS is committed to continuing its work in developing updated guidance with regard to acoustic thresholds, but pending additional consideration and process is reliant upon an established threshold that is reasonably reflective of available science.

Regarding the assertion that that monitoring protocols prescribed for the EZs are under-protective, the comment refers to Section III.D of the comment letter for further discussion. The responses to Comments 13–18 addresses the recommendation for additional mitigation measures in Section III.D of the comment letter. Please refer to these responses for NMFS' reasoning for why these additional measures are not warranted and why NMFS has determined that the monitoring protocols prescribes are sufficiently protective of marine mammals. Specifically, the required 500-m shutdown for North Atlantic right whales is adequate to effectively ensure that no takes occur for this species, given the large size (visibility) of the animals, the visual and PAM monitoring, and results of past reports regarding right whales in the area (please also refer to the Estimated Take section of this notice).

Further, since publication of the notice of the proposed IHA (83 FR 22443, May 15, 2018), NMFS received a sound source verification (SSV) study for the sound source with the largest Level B harassment isopleth (Applied Acoustics S-Boom Triple Plate Boomer). The Level B harassment isopleth was modelled to be 400 m, which was presented in the proposed IHA. Preliminary analysis of the new SSV study indicates that the actual Level B harassment isopleth for this source is no larger than 100 m (and may be significantly smaller), which means that the associated area ensonified above the Level B harassment zone is at least 94% smaller as compared to that associated with the 400-m isopleth and discussed in the proposed notice. This new information further strengthens the NMFS' determination that the required 500-m shut down for North Atlantic right whales will successfully avoid take of this species.

Comment 20: The NGOs recommended that NMFS encourage offshore wind developers to partner with scientists to collect data that would increase the understanding of the effectiveness of night vision and infra-red technologies off Rhode Island, Massachusetts, and the broader region, with a view towards greater reliance on these technologies to commence surveys during nighttime hours in the future.

NMFS Response: NMFS agrees with the NGOs that improved data on relative effectiveness of night vision and infra-red technologies would be beneficial and could help to inform future efforts at detection of marine mammals during nighttime activities. The commenters have not provided us with any specific recommendations to evaluate beyond a broad recommendation. However, we agree that coordination and communication between offshore wind developers and researchers on effectiveness of night vision and infra-red technologies should be encouraged to the extent possible. NMFS also notes that a requirement for the final report submitted to NMFS to include an assessment of the effectiveness of night vision equipment used during nighttime surveys, including comparisons of relative effectiveness among the different types of night vision equipment used, is included in the IHA. The IHA issued in 2016 (81 FR 56589, August 22, 2016) also included this requirement, so information gained from this IHA furthers this commitment.

Description of Marine Mammals in the Area of the Specified Activity

Sections 3 and 4 of Bay State Wind's IHA application summarize available information regarding the 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; *http://www.nmfs.noaa.gov/pr/sars/species.htm*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*http://www.nmfs.noaa.gov/pr/species/mammals/*).

Table 1 lists all marine mammal species with expected occurrence in the Northwest Atlantic Outer Continental Shelf (OCS) and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) as well as potential biological removal (PBR), where known. For taxonomy, we follow the 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' 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' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprise that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic Ocean SARs (*e.g.,* Hayes *et al.,* 2017). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2016 SARs (Hayes *et al.,* 2017) and draft 2017 SARs (available online at: *http://www.nmfs.noaa.gov/pr/sars/draft.htm*).

TABLE 1—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OF SOUTHERN NEW ENGLAND

Common name	Scientific name	ESA/MMPA status [1]	Stock abundance (CV; N_{min}) [2]	Stock	PBR	Annual M/SI3
Toothed Whales (Odontoceti)						
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	*N/A*	*48,819 (0.61; 30,403)*	*W. North Atlantic*	*304*	*74.*
Atlantic spotted dolphin	*Stenella frontalis*	*N/A*	*44,715 (0.43; 31,610)*	*W. North Atlantic*	*316*	*0.*
Bottlenose dolphin	*Tursiops truncatus*	*Northern coastal stock is Strategic.*	*11,548 (0.36; 8,620)*	*W. North Atlantic, Northern Migratory Coastal.*	*86*	*1–7.5.*
Clymene dolphin	*Stenella clymene*	N/A	Unknown	W. North Atlantic	Unknown	0.
Fraser's dolphin	*Lagenodelphis hosei*	N/A	Unknown	W. North Atlantic	Unknown	0.
Pan-tropical spotted dolphin.	*Stenella attenuata*	N/A	3,333 (0.91; 1,733)	W. North Atlantic	17	0.
Risso's dolphin	*Grampus griseus*	*N/A*	*18,250 (0.46; 12,619)*	*W. North Atlantic*	*126*	*53.6.*

TABLE 1—MARINE MAMMALS KNOWN TO OCCUR IN THE WATERS OF SOUTHERN NEW ENGLAND—Continued

Common name	Scientific name	ESA/MMPA status [1]	Stock abundance (CV; N_{min}) [2]	Stock	PBR	Annual M/SI3
Rough-toothed dolphin	*Steno bredanensis*	N/A	271 (1.0; 134)	W. North Atlantic	1.3	0.
Short-beaked common dolphin.	*Delphinus delphis*	*N/A*	*70,184 (0.28; 55,690)*	*W. North Atlantic*	*557*	*409.*
Striped dolphin	*Stenella coeruleoalba*	N/A	54,807 (0.3; 42,804)	W. North Atlantic	428	0.
Spinner dolphin	*Stenella longirostris*	N/A	Unknown	W. North Atlantic	Unknown	0.
White-beaked dolphin	*Lagenorhynchus albirostris*	N/A	2,003 (0.94; 1,023)	W. North Atlantic	10	0.
Harbor porpoise	*Phocoena phocoena*	*N/A*	*79,833 (0.32; 61,415)*	*Gulf of Maine/Bay of Fundy.*	*706*	*437.*
Killer whale	*Orcinus orca*	N/A	Unknown	W. North Atlantic	Unknown	0.
Pygmy killer whale	*Feresa attenuata*	N/A	Unknown	W. North Atlantic	Unknown	0.
False killer whale	*Pseudorca crassidens*	Strategic	442 (1.06; 212)	W. North Atlantic	2.1	Unknown.
Long-finned pilot whale	*Globicephala melas*	*N/A*	*5,636 (0.63; 3,464)*	*W. North Atlantic*	*35*	*38.*
Short-finned pilot whale	*Globicephala macrorhynchus.*	N/A	21,515 (0.37; 15,913)	W. North Atlantic	159	192.
Sperm whale	*Physeter macrocephalus*	*Endangered*	*2,288 (0.28; 1,815)*	*North Atlantic*	*3.6*	*0.8.*
Pigmy sperm whale	*Kogia breviceps*	N/A	3,785 [4] (0.47; 2,598)	W. North Atlantic	21	3.5.
Dwarf sperm whale	*Kogia sima*	N/A	3,785 [4] (0.47; 2,598)	W. North Atlantic	21	3.5.
Cuvier's beaked whale	*Ziphius cavirostris*	N/A	6,532 (0.32; 5,021)	W. North Atlantic	50	0.4.
Blainville's beaked whale	*Mesoplodon densirostris*	N/A	7,092 [5] (0.54; 4,632)	W. North Atlantic	46	0.2.
Gervais' beaked whale	*Mesoplodon europaeus*	N/A	7,092 [5] (0.54; 4,632)	W. North Atlantic	46	0.
True's beaked whale	*Mesoplodon mirus*	N/A	7,092 [5] (0.54; 4,632)	W. North Atlantic	46	0.
Sowerby's beaked whale	*Mesoplodon bidens*	N/A	7,092 [5] (0.54; 4,632)	W. North Atlantic	46	0.
Northern bottlenose whale	*Hyperoodon ampullatus*	N/A	Unknown	W. North Atlantic	Unknown	0.
Melon-headed whale	*Peponocephala electra*	N/A	Unknown	W. North Atlantic	Unknown	0.
Baleen Whales (Mysticeti)						
Minke whale	*Balaenoptera acutorostrata.*	*N/A*	*2,591 (0.81; 1,425)*	*Canadian East Coast*	*14*	*8.25.*
Blue whale	*Balaenoptera musculus*	Endangered	Unknown (Unknown; 440)	W. North Atlantic	0.9	Unknown.
Fin whale	*Balaenoptera physalus*	*Endangered*	*1,618 (0.33; 1,234)*	*W. North Atlantic*	*2.5*	*3.8.*
Humpback whale	*Megaptera novaeangliae*	*N/A*	*823 (0; 823)*	*Gulf of Maine*	*13*	*9.05.*
North Atlantic right whale	*Eubalaena glacialis*	Endangered	440 (0; 440)	W. North Atlantic	1	5.66.
Sei whale	*Balaenoptera borealis*	Endangered	357 (0.52; 236)	Nova Scotia	0.5	0.8.
Earless Seals (Phocidae)						
Gray seals	*Halichoerus grypus*	*N/A*	*424,300 (0.16; 371,444)*	*W. North Atlantic*	*Unknown*	*4,937.*
Harbor seals	*Phoca vitulina*	*N/A*	*75,834 (0.15; 66,884)*	*W. North Atlantic*	*2,006*	*389.*
Hooded seals	*Cystophora cristata*	N/A	Unknown	W. North Atlantic	Unknown	Unknown.
Harp seal	*Phoca groenlandica*	N/A	8,300,000 (Unknown)	W. North Atlantic	Unknown	Unknown.

Note: Species information in bold italics are species expected to be taken and are authorized for take in our IHA; others are not expected or authorized to be taken.

[1] A strategic stock is defined as any marine mammal stock: (1) For which the level of direct human-caused mortality exceeds the potential biological removal (PBR) level; (2) which is declining and likely to be listed as threatened under the Endangered Species Act (ESA); or (3) which is listed as threatened or endangered under the ESA or as depleted under the Marine Mammal Protection Act (MMPA).

[2] NMFS stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars*. CV = coefficient of variarion; Nmin = minimum estimate of stock abundance.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury (M/SI) from all sources combined (*e.g.,* commercial fisheries, ship strike, etc.). 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.

[4] This estimate may include both the dwarf and pygmy sperm whales.

[5] This estimate includes Gervais' and Blainville's beaked whales and undifferentiated *Mesoplodon* spp. beaked whales.

Sources: Hayes *et al.,* 2016, Waring *et al.,* 2015; Waring *et al.,* 2013; Waring *et al.,* 2011; Warring *et al.,* 2010; RI SAMP, 2011; Kenney and Vigness-Raposa, 2009; NMFS, 2012.

All species that could potentially occur in the survey area are included in Table 1. However, the proposed IHA (83 FR 22443, May 15, 2018) noted that the temporal and/or spatial occurrence of all but 10 species listed in Table 1 is such that take of these species is not expected to occur, and they were not discussed further. Take of the remaining species was not anticipated either because they have very low densities in the project area, are known to occur further offshore than the project area, or are considered very unlikely to occur in the project area during the survey due to the species' seasonal occurrence in the area. However, based on review of public comments received and consideration of updated sighting information, takes of Risso's dolphins, Atlantic spotted dolphins, and long-finned pilot whales have been added even though they were not included in the proposed IHA. This brings the total to 13 species/stocks of marine mammals authorized for incidental take in this IHA.

A detailed description of the species likely to be affected by Bay State Wind's survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (83 FR 22443; May 15, 2018); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not repeated here. As Risso's dolphins, Atlantic spotted dolphins, and long-finned pilot whales were not included in the proposed IHA, descriptions of these species are included below. Please refer to the **Federal Register** notice for the proposed IHA for descriptions of other species. Please also refer to NMFS' website (*www.fisheries.noaa.gov/species-directory*) for generalized species accounts.

Risso's Dolphin

Risso's dolphin is typically an offshore dolphin that is uncommon to see inshore (Reeves *et al.,* 2002). Risso's dolphin prefers temperate to tropical waters along the continental shelf edge and can range from Cape Hatteras to Georges Bank from spring through fall,

and throughout the mid-Atlantic Bight out to oceanic waters during winter (Payne *et al.,* 1984). Risso's dolphins are usually seen in groups of 12 to 40, but loose aggregations of 100 to 200 or more are seen occasionally (Reeves *et al.,* 2002).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and usually found inside or near the 200 m isobaths (Waring *et al.,* 2014). Atlantic spotted dolphins are not listed under the ESA and the stock is not considered depleted or strategic under the MMPA.

Long-Finned Pilot Whale

Long-finned pilot whales are found from North Carolina and north to Iceland, Greenland and the Barents Sea (Waring *et al.,* 2016). In U.S. Atlantic waters the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring and in late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016). Long-finned pilot whales are not listed under the ESA. The Western North Atlantic stock is considered strategic under the MMPA.

Information concerning marine mammal hearing, including marine mammal functional hearing groups, was provided in the **Federal Register** notice for the proposed IHA (83 FR 22443; May 15, 2018), and that information is not repeated here; please refer to that **Federal Register** notice for this information. For further information about marine mammal functional hearing groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Fourteen marine mammal species (twelve cetacean and two pinniped (both phocid) species) have the potential to co-occur with the survey activities. Of the cetacean species that may be present, four are classified as low-frequency cetaceans (*i.e.,* North Atlantic right whale, humpback whale, fin whale, and minke whale), six are classified as mid-frequency cetaceans (*i.e.,* sperm whale, bottlenose dolphin, common dolphin. Atlantic white sided dolphin, Risso's dolphin, and long-finned pilot whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

The effects of underwater noise from Bay State Wind's survey activities have the potential to result in take of marine mammals by harassment in the vicinity of the survey area. The **Federal Register** notice for the proposed IHA (83 FR 22443; May 15, 2018) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, and that information is not repeated here. No instances of serious injury or mortality are expected as a result of the planned activities.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which informed both NMFS' consideration of ''small numbers'' 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, 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, as use of the HRG equipment (*i.e.,* USBL&GAPS systems, sub-bottom profilers, sparkers, and boomers) has the potential to result in disruption of behavioral patterns for individual marine mammals. However, the potential for auditory injury (Level A harassment), primarily for high frequency species (*i.e.,* harbor porpoise) was discussed in the proposed IHA (83 FR 22443, May 15, 2018). While it was noted that auditory injury was unlikely, NMFS proposed to authorize a small number of takes by Level A harassment for harbor porpoises because the applicant requested this out of an abundance of caution. However, after further discussion and consideration of the public comments received, the applicant has withdrawn the request for authorization for Level A harassment takes and none is being authorized in this IHA. Due to the physical properties of the sound sources and the nature of the activities in combination with the hearing capabilities of marine mammals in the Study Area, Level A harassment is so unlikely as to be discountable.

Project activities that have the potential to cause Level B harassment include underwater noise from operation of the HRG survey sub-bottom profilers, boomers, sparkers, and equipment positioning systems. No take by Level A harassment (including injury or serious injury), or mortality is authorized. NMFS does not anticipate take resulting from the movement of vessels associated with construction because there will be a limited number of vessels moving at slow speeds and the BOEM lease agreement requires measures to ensure vessel strike avoidance.

As described below, we estimate take by estimating: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. Below we describe these components in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, and behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine

mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Bay State Wind's proposed activity includes the use of intermittent impulsive (HRG Equipment) sources, and therefore the 160 dB re 1 μPa (rms) threshold is applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

These thresholds are provided in Table 2 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB $L_{E,MF,24h}$: 185 dB;	*Cell 4:* $L_{E,MF,24h}$ 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$ 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$ 185 dB	*Cell 8:* $L_{E,PW,24h}$ 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$ 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

When NMFS' Acoustic Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component of the new thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A harassment takes. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For mobile sources such as the HRG survey equipment proposed for use in Bay State Wind's activity, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed. Inputs used in the User Spreadsheet, and the resulting isopleths for the various HRG equipment types are reported in Appendix A of Bay State Wind's IHA application, and distances to the acoustic exposure criteria discussed above are shown in Tables 3 and 4.

TABLE 3—DISTANCES TO THRESHOLDS FOR LEVEL A HARASSMENT (PTS ONSET)

Generalized hearing group	Marine mammal level a harassment (PTS Onset)	Distance (m)
USBL/GAPS Positioning Systems [1] *		
LF cetaceans	219 dB_{peak}/	—
	183 dB SEL_{cum}	—
MF cetaceans	230 dB_{peak}/	—
	185 dB SEL_{cum}	—
HF cetaceans	202 dB_{peak}/	—
	155 dB SEL_{cum}	—
Phocid pinnipeds	218 dB_{peak}/	—
	185 dB SEL_{cum}	—

TABLE 3—DISTANCES TO THRESHOLDS FOR LEVEL A HARASSMENT (PTS ONSET)—Continued

Generalized hearing group	Marine mammal level a harassment (PTS Onset)	Distance (m)
Sub-bottom Profiler [1]		
LF cetaceans	219 dB_{peak}/	—
	183 dB SEL_{cum}	—
MF cetaceans	230 dB_{peak}/	—
	185 dB SEL_{cum}	—
HF cetaceans	202 dB_{peak}/	—
	155 dB SEL_{cum}	—
Phocid pinnipeds	218 dB_{peak}/	—
	185 dB SEL_{cum}	—
Innomar SES–2000 Medium Sub-Bottom Profiler **		
LF cetaceans	199 dB SEL_{cum}	N/A
MF cetaceans	198 dB SEL_{cum}	—
HF cetaceans	173 dB SEL_{cum}	< 5
Phocid pinnipeds	201 dB SEL_{cum}	N/A
Sparker [1]		
LF cetaceans	219 dB_{peak}/	—
	183 dB SEL_{cum}	—
MF cetaceans	230 dB_{peak}/	—
	185 dB SEL_{cum}	—
HF cetaceans	202 dB_{peak}/	< 3
	155 dB SEL_{cum}	—
Phocid pinnipeds	218 dB_{peak}/	—
	185 dB SEL_{cum}	—
Boomer		
LF cetaceans	219 dB_{peak}/	< 2
	183 dB SEL_{cum}	<15
MF cetaceans	230 dB_{peak}/	—
	185 dB SEL_{cum}	—
HF cetaceans	202 dB_{peak}/	< 10
	155 dB SEL_{cum}	<1
Phocid pinnipeds	218 dB_{peak}/	< 2
	185 dB SEL_{cum}	<1

Notes:
Peak SPL criterion is unweighted, whereas the cumulative SEL criterion is M-weighted for the given marine mammal hearing group;
Calculated sound levels and results are based on NMFS Acoustic Technical Guidance companion User Spreadsheet except as indicated (refer to Appendix A of the IHA application, which includes all spreadsheets);
[1] Indicates distances for this equipment type have been field verified;
— Indicates not expected
* Indicates that while calculated with the incorrect threshold (impulsive instead of non-impulsive), due to the fact that impulsive threshold would be larger and still not anticipated to be measureable, this was not recalculated here.
** Indicates a change from the proposed IHA. In proposed IHA, these distances were calculated with the impulsive threshold, which resulted in larger isopleths. The values presented her are calculated with corrected, non-impulsive, threshold.

TABLE 4—DISTANCES TO LEVEL B HARASSMENT THRESHOLDS (160 $dB_{RMS\ 90\%}$)

Survey equipment	Marine mammal level B harassment 160 dB_{RMS} re 1 μPa (m)
USBL & GAPS Positioning Systems	
Sonardyne Ranger 2 USBL HPT 5/7000	6
Sonardyne Ranger 2 USBL HPT 3000	1
Easytrak Nexus 2 USBL	2
IxSea GAPS System	1
Sidescan Sonar	
EdgeTech 4200 dual frequency Side Scan Sonar	N/A
Multibeam Sonar	
R2 Sonic 2024 Multibeam Echosounder	N/A

TABLE 4—DISTANCES TO LEVEL B HARASSMENT THRESHOLDS (160 $dB_{RMS\ 90\%}$)—Continued

Survey equipment	Marine mammal level B harassment 160 dB_{RMS} re 1 μPa (m)
Kongsberg EM2040C Dual Band Head	N/A
Shallow Sub-Bottom Profilers	
Edgetech 3200 XS 216	9
Innomar SES–2000 Sub Bottom Profiler	[1] 135
Sparkers	
GeoMarine Geo-Source 400tip	54
Boomers	
Applied Acoustics S-Boom Triple Plate Boomer	[1] 400

Notes:
[1] These sources modeled with RAM/BELLHOP
The Level B harassment criterion is unweighted.
N/A indicates the operating frequencies are above all relevant marine mammal hearing thresholds and these systems were not directly assessed in this IHA.

Bay State Wind completed an underwater noise monitoring program for field verification at the project site prior to commencement of the HRG survey that took place in 2016. One of the main objectives of this program was to determine the apparent sound source levels of HRG activities. Results from field verification studies during previously authorized activities were used where applicable and manufacturer source levels were adjusted to reflect the field verified levels. However, not all equipment proposed for use in the 2018 season was used in the 2016 activities. As no field data currently exists for the Innomar sub-bottom profiler, acoustic modeling was completed using a version of the U.S. Naval Research Laboratory's Range-dependent Acoustic Model (RAM) and BELLHOP Gaussian beam ray-trace propagation model (Porter and Liu 1994). The proposed IHA notice noted that this was done for the Applied Acoustics S-Boom Triple Plate Boomer as well, but since publication of that notice (83 FR 22443, May 15, 2018), NMFS has received a sound source verification study which calculated the Level B harassment isopleth for this source. Preliminary analysis indicates that actual distance to the Level B harassment threshold is no more than 100 m, and could be significantly smaller, which would result in no less than a 94% decrease in the size of the associated area ensonified above the Level B harassment threshold for this source, as compared to the 400-m isopleth. However, because review of the SSV report has not been completed and because the report was not available until after the proposed IHA was noticed to the public, the take estimates have not been modified to reflect this new information, which would result in a significant reduction.

Further, calculations of the ensonified area are conservative due to the directionality of the sound sources. For the various HRG transducers Bay State Wind proposes to use for these activities, the beamwidth varies from 200° (almost omnidirectional) to 1°. The modeled directional sound levels were then used as the input for the acoustic propagation models, which do not take the directionality of the source into account. Therefore, the volume of area affected would be much lower than modeled in cases with narrow beamwidths such as the Innomar SES–2000 sub-bottom profiler, which has a 1° beamwidth.

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.

The data used as the basis for estimating species density (''D'') for the Study Area are derived from data provided by Duke University's Marine Geospatial Ecology Lab and the Marine Life Data and Analysis Team. This data set is a compilation of the best available marine mammal data (1994–2014) and was prepared in a collaboration between Duke University, Northeast Regional Planning Body, University of Carolina, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.,* 2016; MDAT 2016).

Northeast Navy Operations Area (OPAREA) Density Estimates (DoN, 2007) were used in support for estimating take for seals, which represents the only available comprehensive data for seal abundance. Navy Oparea Density Estimates (NODEs) utilized vessel-based and aerial survey data collected by NMFS from 1998–2005 during broad-scale abundance studies. Modeling methodology is detailed in DoN (2007). Therefore, for the purposes of the take calculations, NODEs Density Estimates (DoN, 2007) as reported for the summer and fall seasons were used to estimate harbor seal and gray seal densities.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce an initial quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day of the survey is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and the estimated trackline distance traveled per day by the survey vessel.

The estimated distance of the daily vessel trackline was determined using the estimated average speed of the vessel and the 24-hour or daylight-only

operational period within each of the corresponding survey segments. All noise producing survey equipment are assumed to be operating concurrently and the entire duration of the survey. Using the distance of 400 m (1,312 ft) to the Level B harassment isopleth and the estimated daily vessel track of approximately 177.8 km (110.5 miles) for 24-hour operations and 43 km (26.7 miles) for daylight-only operations, areas of ensonification (zone of influence, or ZOI) were calculated and used as a basis for calculating takes of marine mammals. The ZOI is based on the worst case (since it assumes the equipment with the larger ZOI will be operating all the time), and are presented in Table 5. Take calculations were based on the highest seasonal species density as derived from Duke University density data (Roberts *et al.,* 2016) for cetaceans and seasonal OPAREA density estimates (DoN, 2007) for pinnipeds. The resulting take calculations and number of authorized takes (rounded to the nearest whole number) are presented in Table 6.

TABLE 5—SURVEY SEGMENT DISTANCES AND ZONES OF INFLUENCE

Survey segment	Total track line (km)	Number active survey days	Estimated distance/ day (km)	Calculated level B harassment ZOI (km^2)
Lot 3 (WSG/OSS Location-Offshore)	2,845	60	177.8	142.74
Lot 1 (nearshore)	1,091	18	43.0	34.88
Lot 2 (offshore)	563	15	177.8	142.74
Lot 4 (offshore)	2,253	37	177.8	142.74
Lot 5 (nearshore)	108	5	43.0	34.88

TABLE 6—ESTIMATED B HARASSMENT TAKES FOR HRG SURVEY ACTIVITIES

Species	Lot 3 (WSG/OSS location-offshore)		Lot 2 (Somerset export-offshore)		Lot 1 (Somerset export—nearshore)		Lot 4 (Falmouth export-offshore)		Lot 5 (Falmouth export—nearshore)		Totals	
	Highest Seasonal Avg. Density [a] (Number/ 100 km^2)	Calc. take	Highest Seasonal Avg. Density [a] (Number/ 100 km^2)	Calc. take	Highest Seasonal Avg. Density [a] (Number/ 100 km^2)	Calc. take	Highest Seasonal Avg. Density [a] (Number/ 100 km^2)	Calc. take	Highest Seasonal Avg. Density [a] (Number/ 100 km^2)	Calc. take	Authorized take	% of population
North Atlantic right whale *	0.96	82.22 (0.00)	1.25	26.76 (0.00)	.....	.....	0.79	41.72 (0.00)	.....	.....	[b] 0.00	0.00
Humpback whale	0.15	12.44	0.12	2.46	.....	.....	0.04	2.30	.....	.....	17	2.07
Fin whale	0.27	23.24	0.19	4.15	.....	.....	0.07	3.64	.....	.....	31	1.92
Sei whale	0.02	0.00	0.02	0.38	.....	.....	0.01	0.00	.....	.....	0.00	0.00
Sperm whale	0.01	0.71	0.01	0.15	.....	.....	0.00	0.22	.....	.....	[c] 5	0.22
Minke whale	0.08	7.00	0.05	1.14	.....	.....	0.03	1.82	.....	.....	[d] 20	0.77
Bottlenose dolphin	1.72	147.34	0.46	9.85	.....	.....	9.00	475.06	.....	.....	[c] 1,000	8.66
Risso's dolphin [e]	0.00	0.00	0.00	0.00	.....	.....	0.00	0.00	.....	.....	30	0.16
Atlantic spotted dolphin [e]	0.02	0.00	0.01	0.29	.....	.....	0.46	0.00	.....	.....	50	0.11
Long-finned pilot whale [e]	0.26	0.00	0.13	2.88	.....	.....	0.01	0.00	.....	.....	3	0.05
Common dolphin	6.26	535.71	2.74	58.67	.....	.....	0.46	24.34	.....	.....	[d] 2,000	2.85
Atlantic white-sided dolphin	1.90	162.75	1.07	22.98	.....	.....	0.21	10.85	.....	.....	[c] 500	1.02
Harbor porpoise	6.67	677.69	4.89	124.17	.....	.....	1.11	69.52	.....	.....	871	1.09
Harbor seal [f]	9.74	834.41	9.74	208.60	9.74	61.15	9.74	514.55	9.74	16.99	1,636	2.16
Gray seal [f]	14.12	1,209.26	14.12	302.32	14.12	88.65	14.12	745.71	14.12	24.62	2,371	0.56

Notes:

* Calculated takes based on the overly conservative 400 m Level B harassment isopleth originally reported. Since publication of the proposed IHA, a sound source verification has been received, which indicates that the Level B harassment zone would be greatly reduced.

[a] Density values from Duke University (Roberts *et al.,* 2016) except for pinnipeds

[b] Exclusion zone exceeds Level B harassment isopleth; take adjusted to 0 given mitigation to prevent take

[c] Value not based on calculated takes, but estimates from applicant based on recent sightings information

[d] Adjusted to account for actual take sighting data in the Survey Area to date (Smultea Environmental Sciences, 2016; Gardline, 2016)

[e] The number of authorized takes (Level B harassment only) for these species has been increased from the estimated take to mean group size. Source for long-finned pilot whale group size estimate is: Augusto *et al.* (2017). Source for Atlantic spotted dolphin group size estimate is: Jefferson *et al.* (2008). Source for Risso's dolphin group size estimate is: Baird and Stacey (1991).

[f] Density from NODEs (DoN, 2007)

As noted in Table 6, requested take estimates were adjusted to account for typical group size and were also adjusted to account for recent sightings data (Smultea Environmental Sciences, 2016; Gardline, 2016) for certain species. In addition, requested Level A harassment take numbers for harbor porpoise were included in the proposed IHA **Federal Register** notice (83 FR 22443, May 15, 2018). In that notice, NMFS stated that due to a variety of reasons, Level A harassment take was not a likely occurrence (short pulse duration and highly directional sound pulse transmission of these mobile sources in addition to the propensity of harbor porpoises to avoid such sound sources and the unlikely probability that they would remain within the narrow beam long enough to accumulate energy to experience PTS), but a small number of Level A harassment take was proposed at the request of Bay State

Wind out of an abundance of caution. However, since publication of the proposed IHA, and consideration of public comments received, NMFS has determined that Level A harassment take is so unlikely as to be discountable. Bay State Wind has agreed and withdrew the request for authorization of Level A harassment take. Therefore, no Level A harassment take for harbor porpoises has been authorized. The requested take numbers remain adjusted for north Atlantic right whales due to the implementation of a 500 m shutdown zone, which is greater than the conservatively modeled 400 m Level B behavioral harassment zone, to avoid Level B harassment takes of this species consistent with the Proposed IHA. As discussed previously, preliminary analysis of a sound source verification study of the Triple Plate Boomer indicates that the Level B harassment isopleth is actually no more than 100 m, which further supports our determination that implementation of the 500 m shutdown zone for North Atlantic right whales would successfully avoid any take for this species. Finally, the proposed IHA did not include proposed take of Risso's dolphins, Atlantic spotted dolphins, or long-finned pilot whales. After consideration of public comments received as well as review of monitoring reports and IHAs for other activities in the same general area, NMFS has added authorized Level B harassment takes of these species.

Bay State Wind's calculations do not take into account whether a single animal is harassed multiple times or whether each exposure is a different animal. Therefore, the numbers in Tables 6 are the maximum number of animals that may be harassed during the HRG surveys (*i.e.,* Bay State Wind assumes that each exposure event is a different animal). With the exception of north Atlantic right whales, these estimates do not account for prescribed mitigation measures that Bay State Wind would implement during the specified activities and the fact that other mitigation measures may be imposed as part of other agreements that Bay State Wind must adhere to, such as their lease agreement with BOEM.

No take of North Atlantic right whale is requested, nor is any take of this species authorized. The conservatively modeled Level B behavioral harassment (400 m) is well within the 500 m mitigation shut down zone for this species and, based on the described monitoring measures, information from previous monitoring reports, and in consideration of the size and visibility of this species, and consideration of a recently-received sound source verification study for the Applied Acoustics S-Boom Triple Plate Boomer (which indicates the Level B harassment zone is substantially less than modelled) it is reasonable to expect that North Atlantic right whales will be able to be observed such that shut down would occur well beyond the threshold for potential behavioral harassment.

There are several reasons why the 400-m Level B harassment threshold is considered conservative. First, calculation of the ensonified area does not take directionality of the sound source into account and this results in a conservative estimate for the ZOI. The Applied Acoustics S-Boom triple plate boomer resulted in the largest isopleth for Level B harassment, so the ZOI was calculated using this 400 m isopleth and, as described above, this equipment has a beamwidth of 25°–35° (is not omnidirectional) so the actual ensonified volume would be less than the calculated area. Further, the equipment with the largest radial distance to Level B harassment thresholds was used to calculate the ZOI under the assumption that this equipment would be in use for the entirety of the survey activities. The calculated takes are conservative because these HRG sound sources have very short pulse durations that are also not taken into account in calculations of take, but would lessen the potential for marine mammals to be exposed to the sound source for long enough periods to result in the potential for take as described above. Last, although the information has not been used to modify the ensonified area and inform the take estimates, because it has not been fully reviewed and verified, we note our recent receipt (since the proposed FRN for this IHA was published) of the results of a sound source verification study for the Applied Acoustics S-Boom Triple Plate Boomer, which suggest a notably smaller Level B harassment zone (see the Comment Response section for more detail).

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) and the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Bay State Wind must implement the following mitigation measures during site characterization surveys utilizing HRG survey equipment. The mitigation measures outlined in this section are based on protocols and procedures that have been successfully implemented and resulted in no observed take of marine mammals for similar offshore projects and previously approved by NMFS (DONG Energy, 2016, ESS, 2013; Dominion, 2013 and 2014), as well as results of sound source verification (SSV) studies implemented by Bay State Wind during past activities in the proposed project area.

Marine Mammal Exclusion and Monitoring Zones

Protected species observers (PSOs) must monitor the following exclusion/monitoring zones for the presence of marine mammals:

- A 1,640 feet (ft) (500-m) exclusion zone for North Atlantic right whales, which encompasses the largest Level B harassment isopleth of 400 m for the

Applied Acoustics S-Boom Triple Plate Boomer;

- A 328-ft (100-m) exclusion zone for non-delphinoid large cetacean and ESA-listed marine mammals, which is consistent with vessel strike avoidance measures stipulated in the BOEM lease; and
- A 1,312-ft (400-m) Level B harassment monitoring zone for all marine mammals except for North Atlantic right whales, which is the extent of the largest Level B harassment isopleth for the Applied Acoustics S-Boom Triple Plate Boomer. We note that the actual area monitored (watch zone) will be much larger than this and must include the largest area visible. All marine mammals observed within the watch zone must be reported in the monitoring reports, but only marine mammals within the Level B harassment zone will be counted as Level B harassment takes in the monitoring reports.

The distances from the sound sources for these exclusion/monitoring zones are based on distances to NMFS Level B harassment threshold or requirements of the BOEM lease stipulations for vessel strike avoidance (discussed below). The representative area ensonified to the MMPA Level B harassment threshold for each of the pieces of HRG survey equipment represents the zone within which take of a marine mammal could occur. The distances to the harassment criteria were used to support the estimate of take as well as the development of the monitoring and/or mitigation measures. Radial distance to NMFS' Level A and Level B harassment thresholds are summarized in Table 5 above.

Visual monitoring of the established exclusion and monitoring zone(s) for the HRG surveys must be performed by qualified and NMFS-approved PSOs. Observer qualifications must include direct field experience on a marine mammal observation vessel and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico. An observer team comprising a minimum of four NMFS-approved PSOs and two certified PAM operators (PAM operators shall not function as PSOs), operating in shifts, must be stationed aboard either the survey vessel or a dedicated PSO-vessel. PSOs and PAM operators must work in shifts such that no one monitor must work more than 4 consecutive hours without a 2-hour break or longer than 12 hours during any 24-hour period. During daylight hours the PSOs must rotate in shifts of 1 on and 3 off, while during nighttime operations PSOs must work in pairs. The PAM operators must also be on call as necessary during daytime operations should visual observations become impaired. Each PSO must monitor 360 degrees of the field of vision.

PSOs are responsible for visually monitoring and identifying marine mammals approaching or within the established exclusion zone(s) during survey activities. It is the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and ensure the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. PAM operators must communicate detected vocalizations to the Lead PSO on duty, who is then be responsible for implementing the necessary mitigation procedures. A mitigation and monitoring communications flow diagram has been included as Appendix A in the IHA application.

PSOs must be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine species. Digital single-lens reflex camera equipment must be used to record sightings and verify species identification. During night operations, PAM (see *Passive Acoustic Monitoring* requirements below) and night-vision equipment in combination with infrared video monitoring must be used (Additional details and specifications of the night-vision devices and infrared video monitoring technology will be provided under separate cover by the Bay State Wind Survey Contractor once selected.). Position data must be recorded using hand-held or vessel global positioning system (GPS) units for each sighting.

For monitoring around the ASV, a dual thermal/high definition (HD) camera must be installed on the mother vessel, facing forward, angled in a direction so as to provide a field of view ahead of the vessel and around the ASV. The ASV must be kept in sight of the mother vessel at all times (within 2,625 ft (800 m)). PSOs must be able to monitor the real time output of the camera on hand-held devices. Images from the cameras must be captured for review and to assist in verifying species identification. A monitor must also be installed on the bridge displaying the real-time picture from the thermal/HD camera installed on the front of the ASV itself, providing a further forward field of view of the craft. In addition, night-vision goggles with thermal clip-ons, as mentioned above, and a hand-held spotlight must be provided such that PSOs can focus observations in any direction, around the mother vessel and/or the ASV. PSOs must also monitor the data as it is acquired by the ASV utilizing a real time IP radio link. For each 12 hour shift, an ASV technician must be assigned to manage the vessel and monitor the array of cameras, radars, and thermal equipment during their shift to ensure the vehicle is operating properly and to take over control of the vessel should the need arise. Additionally, there must be 2 survey technicians per shift assigned to acquire the ASV survey data.

The PSOs must begin observation of the exclusion zone(s) at least 30 minutes prior to ramp-up of HRG survey equipment. Use of noise-producing equipment must not begin until the exclusion zone is clear of all marine mammals for at least 30 minutes.

If a marine mammal is detected approaching or entering the exclusion zones during the HRG survey, the vessel operator must adhere to the shutdown procedures described below to minimize noise impacts on the animals.

At all times, the vessel operator must maintain a separation distance of 500 m from any sighted North Atlantic right whale as stipulated in the *Vessel Strike Avoidance* procedures described below. These stated requirements must be included in the site-specific training to be provided to the survey team.

Vessel Strike Avoidance

The Applicant must ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down or stop their vessels to avoid striking these species. Survey vessel crew members responsible for navigation duties must receive site-specific training on marine mammal and sea turtle sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures must include the following, except under extraordinary circumstances, when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators must comply with 10 knot (<18.5 km per hour (km/h)) speed restrictions in any DMA. In addition, all vessels operating from November 1 through July 31 must operate at speeds of 10 knots (<18.5 km/h) or less;
- All vessel operators must reduce vessel speed to 10 knots or less when mother/calf pairs, pods, or larger assemblages of non-delphinoid cetaceans are observed near an underway vessel;

• All survey vessels must maintain a separation distance of 1,640 ft (500 m) or greater from any sighted North Atlantic right whale;

• If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (<18.5 km/h) or less until the 1,640 ft (500 m) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 330 ft (100 m) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines shall not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 330 ft (100 m). If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 330 ft (100 m);

• All vessels must maintain a separation distance of 330 ft (100 m) or greater from any sighted non-delphinoid (*i.e.,* mysticetes and sperm whales) cetaceans. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 330 ft (100 m). If a survey vessel is stationary, the vessel must not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 330 ft (100 m);

• All underway vessels must avoid excessive speed or abrupt changes in direction to avoid injury to any sighted delphinoid cetacean or pinniped; and

• All vessels must maintain a separation distance of 164 ft (50 m) or greater from any sighted pinniped.

The training program must be provided to NMFS for review and approval prior to the start of surveys. Confirmation of the training and understanding of the requirements must be documented on a training course log sheet. Signing the log sheet certifies that the crew members understand and must comply with the necessary requirements throughout the survey event.

Seasonal Operating Requirements

Between watch shifts, members of the monitoring team shall consult the NMFS North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. However, the proposed survey activities will occur outside of the seasonal management area (SMA) located off the coast of Massachusetts and Rhode Island. The proposed survey activities are also scheduled to occur outside of the seasonal mandatory speed restriction period for this SMA (November 1 through April 30); however, survey vessels will operate at or below the speed restrictions due to the nature of the survey activities.

Throughout all survey operations, the Applicant shall monitor the NMFS North Atlantic right whale reporting systems for the establishment of a DMA. If NMFS should establish a DMA in the Study Area under survey, within 24 hours of the establishment of the DMA the Applicant shall work with NMFS to shut down and/or alter the survey activities to avoid the DMA.

Passive Acoustic Monitoring

As per the BOEM Lease, alternative monitoring technologies (*e.g.,* active or passive acoustic monitoring) are required if a Lessee intends to conduct geophysical surveys at night or when visual observation is otherwise impaired. To support 24-hour HRG survey operations, Bay State Wind shall use certified PAM operators with experience reviewing and identifying recorded marine mammal vocalizations, as part of the project monitoring during nighttime operations to provide for optimal acquisition of species detections at night, or as needed during periods when visual observations may be impaired. In addition, PAM systems shall be employed during daylight hours to support system calibration and PSO and PAM team coordination, as well as in support of efforts to evaluate the effectiveness of the various mitigation techniques (*i.e.,* visual observations during day and night, compared to the PAM detections/operations).

Given the range of species that could occur in the Study Area, the PAM system shall consist of an array of hydrophones with both broadband (sampling mid-range frequencies of 2 kHz to 200 kHz) and at least one low-frequency hydrophone (sampling range frequencies of 10 Hz to 30 kHz). Monitoring of the PAM system shall be conducted from a customized processing station aboard the HRG survey vessel. The on-board processing station provides the interface between the PAM system and the operator. The PAM operator(s) shall monitor the hydrophone signals in real time both aurally (using headphones) and visually (via the monitor screen displays). Bay State Wind proposes the use of PAMGuard software for 'target motion analysis' to support localization in relation to the identified exclusion zone. PAMGuard is an open source software/hardware interface to enable flexibility in the configuration of in-sea equipment (number of hydrophones, sensitivities, spacing, and geometry). PAM operators shall immediately communicate detections/vocalizations to the Lead PSO on duty who will ensure the implementation of the appropriate mitigation measure (*e.g.,* shutdown) even if visual observations by PSOs have not been made.

Ramp-Up

As per the BOEM Lease, a ramp-up procedure shall be used for HRG survey equipment capable of adjusting energy levels at the start or re-start of HRG survey activities. A ramp-up procedure shall be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the Study Area by allowing them to vacate the area prior to the commencement of survey equipment use. The ramp-up procedure shall not be initiated during daytime, night time, or periods of inclement weather if the exclusion zone cannot be adequately monitored by the PSOs using the appropriate visual technology (*e.g.,* reticulated binoculars, night vision equipment) and/or PAM for a 30-minute period. A ramp-up shall begin with the power of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The power shall then be gradually turned up and other acoustic sources added such that the source level would increase in steps not exceeding 6 dB per 5-minute period. If marine mammals are detected within the HRG survey exclusion zone prior to or during the ramp-up, activities shall be delayed until the animal(s) has moved outside the monitoring zone and no marine mammals are detected for a period of 30 minutes.

Shutdown Procedures

The EZ around the HRG survey equipment shall be monitored, as previously described, by PSOs and at night by PAM operators for the presence of marine mammals before, during, and after HRG surveys. The vessel operator must comply immediately with any call for shutdown by the Lead PSO. Any disagreement should be discussed only after shutdown.

As per the BOEM Lease, if a non-delphinoid (*i.e.,* mysticetes and sperm whales) cetacean is detected at or within the established Level A harassment exclusion zone, an immediate shutdown of the HRG survey equipment is required. Subsequent restart of the electromechanical survey equipment must use the ramp-up procedures described above and may only occur following clearance of the exclusion zone for 30 minutes for large cetaceans or 15 minutes for small cetaceans and pinnipeds. Subsequent power up of the survey equipment must use the ramp-up

procedures described above and may occur after the exclusion zone is clear of small cetaceans and/or pinniped for 15 minutes and large cetaceans for 30 minutes.

If the HRG sound source (including the sub-bottom profiler) shuts down for reasons other than encroachment into the exclusion zone by a marine mammal including but not limited to a mechanical or electronic failure, resulting in in the cessation of sound source for a period greater than 20 minutes, a restart for the HRG survey equipment (including the sub-bottom profiler) is required using the full ramp-up procedures and clearance of the exclusion zone of all cetaceans for 30 minutes, or 15 minutes for pinnipeds. If the pause is less than 20 minutes, the equipment may be restarted as soon as practicable at its operational level as long as visual surveys were continued diligently throughout the silent period and the exclusion zone remained clear of cetaceans and pinnipeds. If the visual surveys were not continued diligently during the pause of 20 minutes or less, a restart of the HRG survey equipment (including the sub-bottom profiler) is required using the full ramp-up procedures and clearance of the exclusion zone for all cetaceans and pinnipeds for 30 minutes.

The required mitigation measures are designed to avoid the already low potential for injury (Level A harassment) and minimize Level B harassment, as well as to minimize the potential for vessel strikes. There are no known marine mammal rookeries or mating grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The proposed survey would occur in an area that has been identified as a biologically important area (BIA) for migration for North Atlantic right whales. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area, the survey is not expected to appreciably reduce migratory habitat nor to negatively impact the migration of North Atlantic right whales. In addition, the timing of importance for migration in this biologically important area BIA is March-April and November-December, and Bay State Wind's proposed activities are anticipated to occur outside of the timing of importance. Thus, mitigation to address the proposed survey's occurrence in North Atlantic right whale migratory habitat is not warranted. The proposed survey area would partially overlap spatially with a biologically important feeding area for fin whales. However, the fin whale feeding area is sufficiently large (2,933 km^2), and the acoustic footprint of the proposed survey is sufficiently small that the survey is not expected to appreciably reduce fin whale feeding habitat nor to negatively impact the feeding of fin whales, thus mitigation to address the proposed survey's occurrence in fin whale feeding habitat is not warranted. Further, we believe the required mitigation measures are practicable for the applicant to implement

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs 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.

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.

Monitoring Measures

Visual Monitoring—Visual monitoring shall be performed by qualified and NMFS-approved PSOs (see discussion of PSO qualifications and requirements in *Marine Mammal Exclusion Zones* above).

The PSOs shall begin observation of the monitoring zone during all HRG survey activities, which will encompass the maximum sight distance possible, including harassment zones and exclusion zones. Observations of the monitoring zone shall continue throughout the survey activity. PSOs shall be responsible for visually monitoring and identifying marine mammals approaching or entering the established monitoring zone during survey activities.

Observations shall take place from the highest available vantage point on the survey vessel. General 360-degree scanning shall occur during the monitoring periods, and target scanning by the PSO shall occur when alerted of a marine mammal presence. For monitoring around the autonomous surface vessel (ASV), a dual thermal/HD camera shall be installed on the mother vessel facing forward and angled in a direction so as to provide a field of view ahead of the vessel and around the ASV. PSOs shall be able to monitor the real-time output of the camera on hand-held computer tablets. Images from the cameras shall be able to be captured and reviewed to assist in verifying species identification. A monitor shall also be installed in the bridge displaying the real-time images from the thermal/HD camera installed on the front of the ASV itself, providing a further forward view of the craft. In addition, night-vision goggles with thermal clip-ons and a hand-held spotlight shall be provided and used such that PSOs can focus observations in any direction around the mother vessel and/or the ASV.

Data on all PSO observations shall be recorded based on standard PSO collection requirements. This shall include dates and locations of construction operations; time of observation, location and weather; details of the sightings (*e.g.,* species, age

classification [if known], numbers, behavior, distance from the source); and details of any observed behavioral disturbances, injury or mortality). The data sheet shall be provided to both NMFS and BOEM for review and approval prior to the start of survey activities. In addition, prior to initiation of survey work, all crew members will undergo environmental training, a component of which shall focus on the procedures for sighting and protection of marine mammals. A briefing shall also be conducted between the survey supervisors and crews, the PSOs, and the Applicant. The purpose of the briefing shall be to establish responsibilities of each party, define the chains of command, discuss communication procedures, provide an overview of monitoring purposes, and review operational procedures.

Reporting Measures

The Applicant shall provide the following reports as necessary during survey activities:

Any observed significant behavioral reactions (*e.g.,* animals departing the area) or injury or mortality to any marine mammals must be reported to NMFS and BOEM within 24 hours of observation. Dead or injured protected species are reported to the NMFS Greater Atlantic Regional Fisheries Office Stranding Hotline (800–900–3622) within 24 hours of sighting, regardless of whether the injury is caused by a vessel. In addition, if the injury or death was caused by a collision with a project related vessel, the Applicant must ensure that NMFS and BOEM are notified of the strike within 24 hours. The Applicant must use the form included as Appendix A to Addendum C of the Lease to report the sighting or incident. If the Applicant is responsible for the injury or death, the vessel must assist with any salvage effort as requested by NMFS. Additional reporting requirements for injured or dead animals are described below (*Notification of Injured or Dead Marine Mammals*).

Notification of Injured or Dead Marine Mammals

In the unanticipated event that the specified activities lead to an unauthorized injury of a marine mammal or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), Bay State Wind must immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the NOAA Greater Atlantic Regional Fisheries Office (GARFO) Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, 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).

Activities shall not resume until NMFS is able to review the circumstances of the event. NMFS will work with Bay State Wind to minimize reoccurrence of such an event in the future. Bay State Wind shall not resume activities until notified by NMFS.

In the event that Bay State Wind discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition), Bay State Wind shall immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources and the GARFO Stranding Coordinator. The report shall include the same information identified in the paragraph above. Activities shall be allowed to continue while NMFS reviews the circumstances of the incident. NMFS will work with the Applicant to determine if modifications in the activities are appropriate.

In the event that Bay State Wind discovers an injured or dead marine mammal and 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), Bay State Wind shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Greater Atlantic Regional Fisheries Office Regional Stranding Coordinator, within 24 hours of the discovery. Bay State Wind shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Bay State Wind can continue its operations in such a case.

Within 90 days after completion of the marine site characterization survey activities, a technical report shall be provided to NMFS and BOEM that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of marine mammals that may have been taken during survey activities, and provides an interpretation of the results and effectiveness of all monitoring tasks. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

In addition to the Applicant's reporting requirements outlined above, the Applicant shall provide an assessment report of the effectiveness of the various mitigation techniques, *i.e.* visual observations during day and night, compared to the PAM detections/operations. This shall be submitted as a draft to NMFS and BOEM 30 days after the completion of the HRG surveys and as a final version 60 days after completion of the surveys.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing

sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analyses applies to all of the species listed in Table 6, given that the anticipated effects of the HRG surveys on different marine mammal species or stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of the expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

As discussed in the ''Potential Effects of the Specified Activity on Marine Mammals and Their Habitat'' section of the proposed IHA notice and referenced above, masking, non-auditory physical effects, and vessel strike are not expected to occur. Animals in the area would likely incur no more than brief hearing impairment (*i.e.,* TTS) due to generally low SPLs—and in the case of the HRG survey equipment use, directional beam pattern, transient signals, and moving sound sources—and the fact that most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity for an amount of time as to result in TTS. Further, once an area has been surveyed, it is not likely that it will be surveyed again, therefore reducing the likelihood of repeated impacts within the project area.

Potential impacts to marine mammal habitat were discussed previously in the Proposed IHA document (83 FR 22443, May 15, 2018; see the ''Potential Effects of the Specified Activity on Marine Mammals and their Habitat'' section). Marine mammal habitat may be impacted by elevated sound levels and some sediment disturbance, but these impacts would be temporary and relatively short term. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.,* 1995). Prey species are mobile, and are broadly distributed throughout the Study Area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

ESA-Listed Marine Mammal Species

The North Atlantic right whale population demonstrated overall growth of 2.8 percent per year between 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.,* 2017). However, since 2010 the population has been in decline, with a 99.99 percent probability of a decline of just under one percent per year (Pace *et al.,* 2017). In the western North Atlantic, there were estimated to be 458 whales in November 2015 (as reported in NMFS's draft 2017 SARs and Table 2) based on a Bayesian mark-recapture open population model, which accounts for individual differences in the probability of being photographed (95 percent credible intervals 444–471, Pace *et al.,* 2017). While photographic data for 2016 are still being processed, using this same Bayesian methodology with the available data as of September 1, 2017, gave an estimate of 451 individuals for 2016 (Pettis *et al.,* 2017a). While data are not yet available to statistically estimate the population's trend beyond 2015, three lines of evidence indicate the population is still in decline. First, calving rates in 2016 and 2017 were low, with only five new calves being documented in 2017 (Pettis *et al.,* 2017a), well below the number needed to compensate for expected mortalities (Pace *et al.,* 2017). In 2018, no new North Atlantic right whale calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. Long-term photographic identification data indicate new calves rarely go undetected, so these years likely represent a continuation of the low calving rates that began in 2012 (Kraus *et al.,* 2007; Pace *et al.,* 2017). Second, as noted above, the preliminary abundance estimate for 2016 is 451 individuals, down approximately 1.5 percent from 458 in 2015. Third, since June 2017, at least 18 North Atlantic right whales have died in what has been declared an Unusual Mortality Event (UME; see additional discussion of the UME below), and at least one calf died prior to this in April 2017 (NMFS, 2017). Currently, no identified right whale recovery goals have been met (for more information on these goals, see the 2005 recovery plan; NMFS, 2005, 2017). With whaling now prohibited, the two major known human causes of mortality are vessel strikes and entanglement in fishing gear. Some progress has been made in mitigating vessel strikes by regulating vessel speeds in certain areas (78 FR 73726; December 9, 2013) (Conn and Silber, 2013), but entanglement in fishing gear remains a major threat (Kraus *et al.,* 2016).

There are currently insufficient data to determine population trends for fin whale (Waring *et al.,* 2015). There is also no exact accounting of the total number of sperm whales worldwide, but the best estimate is between 300,000 to 450,000 individuals. There is no designated critical habitat for any ESA-listed marine mammals within the Study Area, and none of the stocks for non-listed species authorized to be taken are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

ESA-listed species for which takes are authorized are sperm whales and fin whales, and these effects are anticipated to be limited to lower level behavioral effects. No take has been authorized for North Atlantic right whales.

Biologically Important Areas (BIA)

A small portion of a BIA for fin whale feeding is within the survey area. However, the portion of the fin whale feeding BIA within the HRG survey area is a very small portion of the overall BIA, and HRG activities would ensonify such a small area that fin whale foraging is not anticipated to be substantially impacted. In addition, as stated above, authorized takes are limited to Level B harassment and are anticipated to be mainly short-term and temporary behavioral harassment and it is anticipated that normal foraging activity would commence shortly after any behavioral disturbance if any were to occur.

The survey area is within a BIA for North Atlantic right whale migration with timing of importance being March–April (northward migration) and November–December (southward migration). Pregnant North Atlantic right whales migrate south, through the mid-Atlantic region of the United States, to low latitudes during late fall where they overwinter and give birth in shallow, coastal waters (Kenney, 2009). During spring, these females migrate back north with their new calves to high latitude foraging grounds where they feed on large concentrations of copepods, primarily *Calanus finmarchicus* (NMFS, 2017). Some non-reproductive North Atlantic right whales (males, juveniles, non-reproducing females) also migrate south through the mid-Atlantic region, although at more variable times throughout the winter, while others

appear to not migrate south, and instead remain in the northern feeding grounds year round or go elsewhere (Bort *et al.,* 2015; Morano *et al.,* 2012; NMFS, 2017). Bay State Wind's HRG survey activity is scheduled to begin as soon as the IHA is issued and continue for approximately 60 days, so it is anticipated that HRG survey activities would be completed prior to the months when highest densities are expected to be present, though the possibility that the survey would occur in this time period was still analyzed and no take of North Atlantic right whales has been authorized in the IHA issued to Bay State Wind, as HRG survey operations are required to shut down at 500 m to avoid any potential for behavioral harassment of this species.

Unusual Mortality Events (UME)

A UME is defined under the MMPA as ''a stranding that is unexpected; involves a significant die-off of any marine mammal population; and demands immediate response.'' Three UMEs are ongoing and under investigation relevant to HRG survey area. These involve humpback whales, North Atlantic right whales, and minke whales. Specific information for each ongoing UME is provided below. There is currently no direct connection between the three UMEs, as there is no evident cause of stranding or death that is common across the three species involved in the different UMEs. Additionally, strandings across the three species are not clustering in space or time.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida. As of June 2018, partial or full necropsy examinations have been conducted on approximately half of the 76 known cases. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). Fourteen of these investigated mortalities showed blunt force trauma or pre-mortem propeller wounds indicative of vessel strike, which is above the annual long-term average; however, these findings of pre-mortem vessel strike are not consistent across all of the whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at *www.fisheries.noaa.gov/national/marine-life-distress/2016-2018-humpback-whale-unusual-mortality-event-along-atlantic-coast* (accessed July 2, 2018).

Since January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. As of June 2018, partial or full necropsy examinations have been conducted on 18 of the 33 known cases. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease. These findings are not consistent across all of the whales examined, so more research is needed. As part of the UME investigation process, NOAA is assembling an independent team of scientists to coordinate with the Working Group on Marine Mammal Unusual Mortality Events to review the data collected, sample stranded whales, and determine the next steps for the investigation. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2018-minke-whale-unusual-mortality-event-along-atlantic-coast* (accessed March 19, 2018).

Elevated North Atlantic right whale mortalities began in June 2017, primarily in Canada. To date, there are a total of 18 confirmed dead stranded whales and 1 suspected dead (12 in Canada; 6 in the United States; 1 suspected dead in the United States), and 5 live whale entanglements in Canada have been documented. Full necropsy examinations have been conducted on eleven of the cases, with results currently available for seven of these that occurred in Canada (Daoust *et al.,* 2017). Results indicate that two whales died from entanglement in fishing gear and, for four whales, necropsy findings were compatible with acute death due to trauma (although it is uncertain whether they were struck pre- or post-mortem) (Daoust *et al.,* 2017). Several investigated cases are undetermined due to advanced decomposition. Overall, findings to date confirm that vessel strikes and fishing gear entanglement continue to be the key threats to recovery of North Atlantic right whales. In response, the Canadian government has enacted fishery closures to help reduce future entanglements and has modified fixed gear fisheries, as well as implementing temporary mandatory vessel speed restrictions in a portion of the Gulf of St. Lawrence. NOAA is cooperating with Canadian government officials as they investigate the incidents in Canadian waters. A previous UME involving right whales occurred in 1996. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2018-north-atlantic-right-whale-unusual-mortality-event* (accessed March 19, 2018).

The required mitigation measures are expected to reduce the number and/or severity of takes by giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy and preventing animals from being exposed to sound levels that have the potential to cause injury (Level A harassment) and more severe Level B harassment during HRG survey activities. Additional vessel strike avoidance requirements will further mitigate potential impacts to marine mammals during vessel transit to and within the Study Area.

Bay State Wind did not request, and NMFS is not authorizing, take of marine mammals by serious injury, or mortality. NMFS expects that most takes would primarily be in the form of short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary vacating of the area, or decreased foraging (if such activity were occurring)—reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). This is largely due to the short time scale of the proposed activities, the low source levels and intermittent nature of many of the technologies proposed to be used, as well as the required mitigation.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality, serious injury or injury is anticipated or authorized;
- Take is anticipated to be limited to Level B behavioral harassment consisting of brief startling reactions and/or temporary avoidance of the survey area due to the intermittent and short term nature of the activities as well as the directionality of the sound sources;
- While the survey area is within areas noted as biologically important for north Atlantic right whale migration mitigation measures to shut down at 500 m are expected to avoid any take of the species. Further, although our analysis considers the potential for the activities to occur at any point during the year, they are anticipated to take place outside of the timeframe of noted

importance for migration for the North Atlantic right whale BIA

• Similarly, due to the small overlap of the survey activities with the biologically important area for fin whales, along with the size of the required shutdown, which should avoid the majority of impacts, the survey activities are not expected to affect foraging behavior of this species.

• For all species, the percentage of stocks affected are less than 9 percent of the stock. This represents the total instances of take and does not consider that there are likely repeat exposures of the same individuals, which would mean that the percentage of individuals are likely lower. In addition, these takes are anticipated to be Level B harassment takes in the form of short-term startle or avoidance reactions that would not affect the species or stock.

NMFS concludes that exposures to marine mammal species and stocks due to Bay State Wind's HRG survey activities would result in only short-term (temporary and short in duration) and relatively infrequent effects to individuals exposed, and not of the type or severity that would be expected to be additive for the very small portion of the stocks and species likely to be exposed. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success, are not expected. For the reasons described herein, NMFS does not anticipate the authorized take to impact annual rates of recruitment or survival.

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 required monitoring and mitigation measures, NMFS finds that the total marine mammal take from Bay State Wind's proposed HRG survey activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The takes authorized for the HRG survey represent 2.07 percent of the Gulf of Maine stock of humpback whale (West Indies Distinct Population Segment); 1.92 percent of the WNA stock of fin whale; 0.77 percent of the Canadian East Coast stock of minke whale; 0.22 percent of the North Atlantic stock of sperm whales; 8.66 percent of the Western North Atlantic stock of bottlenose dolphins; 0.16 percent of the WNA stock of Risso's dolphins; 0.11 percent of the WNA stock of Atlantic spotted dolphins; 0.05 percent of the WNA stock of long-finned pilot whales; 2.85 percent of the WNA stock of common dolphin; 1.02 percent of the WNA stock of Atlantic white-sided dolphin; 1.09 percent of the Gulf of Maine/Bay of Fundy stock of harbor porpoise; 2.16 percent of the WNA stock of harbor seal; and 0.56 percent of the North Atlantic stock of gray seal. These take estimates represent the percentage of each species or stock that could be taken and are small numbers relative to the affected species or stock sizes. Further, the authorized take numbers are the maximum numbers of animals that are expected to be harassed during the project; it is possible that some of these exposures may occur to the same individual, which would mean the percentage of stock taken would be smaller as it would not take into account these multiple exposures of the same individual(s). Therefore, NMFS finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act (NEPA)

The U.S. Bureau of Ocean Energy Management (BOEM) prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA), to evaluate the issuance of wind energy leases covering the entirety of the Massachusetts Wind Energy Area (including the OCS–A 0500 Study Area), and the approval of site assessment activities within those leases (BOEM, 2014). NMFS previously adopted BOEM's EA and issued a Finding of No Significant Effect (FONSI) for similar work in 2016 (81 FR 56589, August 22, 2016).

NMFS has reviewed the BOEM EA and our previous FONSI and has determined that 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 determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. We have reviewed all comments submitted in response to the proposed IHA notice prior to concluding our NEPA process and making a final decision on the IHA request.

Endangered Species Act

The NMFS Office of Protected Resources is authorizing the incidental take fin whales, which are listed under the ESA. BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. The NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, and sperm whale. The Biological Opinion can be found online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*. Upon request from the NMFS Office of Protected Resources, the NMFS GARFO will issue an amended incidental take statement associated with this Biological Opinion to include the takes of the ESA-listed fin whale authorized through this IHA.

Authorization

NMFS has issued an IHA to Bay State Wind for conducting marine site characterization surveys offshore of Massachusetts and along potential submarine cable routes for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 24, 2018.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–16200 Filed 7–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Virginia Broadband Summit

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Telecommunications and Information Administration's (NTIA) BroadbandUSA Program, in partnership with the Center for Innovative Technology (CIT), will host the Virginia Broadband Summit in Roanoke, Virginia on October 30, 2018. The purpose of the Summit is to engage the public and stakeholders with information to accelerate broadband connectivity, improve digital inclusion, and support local priorities. The Summit will provide information on topics including local broadband planning, funding and engagement with service providers. Speakers and attendees from Virginia, federal agencies and across the country will come together to explore ways to facilitate the expansion of broadband capacity, access, and utilization.

DATES: The Broadband Summit will be held on October 30, 2018, from 8:30 a.m. to 4:00 p.m., Eastern Time.

ADDRESSES: The Virginia Broadband Summit will be held in Roanoke, Virginia at the Roanoke South County Library, 6303 Merriman Road, Roanoke, VA 24018.

FOR FURTHER INFORMATION CONTACT: Janice Wilkins, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4678, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5791; email: *broadbandusaevents@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email: *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: The NTIA's BroadbandUSA program promotes innovation and economic growth by supporting efforts to expand broadband access and meaningful use across America. The CIT provides broadband support to Virginia localities, elected officials, state and federal agencies, and broadband providers to accelerate Virginia's economic growth through the application and use of broadband telecommunications.

The Virginia Broadband Summit is open to the public. Pre-registration is requested because space may be limited. NTIA asks registrants to provide their first and last names and email address for registration purposes and to receive any updates on the workshop and other BroadbandUSA news and events. Registration information, meeting updates, including changes in the agenda, and relevant documents will be available on NTIA's website at *https://broadbandusa.ntia.doc.gov/VirginiaBroadbandSummit2018.*

The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as language interpretation or other ancillary aids, should notify Janice Wilkins at the contact information listed above at least five (5) business days before the meeting so that accommodations can be made.

Dated: July 24, 2018.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2018–16157 Filed 7–27–18; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2018–HQ–0010]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army Corps of Engineers, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 29, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Mr. Vlad Dorjets, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Department of the Army Permit and Nationwide Permit Pre-Construction Notification Forms; ENG Form 4345; ENG Form 6082; OMB Control Number 0710–0003.

Type of Request: Reinstatement.

Number of Respondents: 80,000.

Responses per Respondent: 1.

Annual Responses: 80,000.

Average Burden per Response: 11 hours.

Annual Burden Hours: 880,000.

Needs and Uses: Information collected is used to evaluate, as required by law, proposed construction or filing in waters of the United States that result in impacts to the aquatic environment and nearby properties, and to determine which type of permit would be required if one was needed. Respondents are private landowners, businesses, non-profit organizations, and government agencies. Respondents also include sponsors of proposed and approved mitigation banks and in-lieu fee programs.

Affected Public: Business or other for-profit; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Vlad Dorjets.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 25, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–16235 Filed 7–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents, Uniformed Services University of the Health Sciences; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Board of Regents (Board), Uniformed Services University of the Health Sciences (USU), Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of

the Board of Regents, Uniformed Services University of the Health Sciences will take place.

DATES: Tuesday, August 14, 2018 open to the public from 8:00 a.m. to 10:45 a.m. Closed session will occur from approximately 10:50 a.m. to 11:50 a.m.

ADDRESSES: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Everett Alvarez Jr. Board of Regents Room (D3001), Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Jennifer Nuetzi James, 301–295–3066 (Voice), 301–295–1960 (Facsimile), *jennifer.nuetzi-james@usuhs.edu* (Email). Mailing address is 4301 Jones Bridge Road, A1020, Bethesda, Maryland 20814. Website: *https://www.usuhs.edu/vpe/bor.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice and recommendations to the Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness, on academic and administrative matters critical to the full accreditation and successful operation of USU. These actions are necessary for USU to pursue its mission, which is to educate, train and comprehensively prepare uniformed services health professionals, officers, scientists and leaders to support the Military and Public Health Systems, the National Security and National Defense Strategies of the United States, and the readiness of our Uniformed Services.

Agenda: The actions scheduled to occur include the review of the minutes from the Board meeting held on May 18, 2018; recommendations regarding the awarding of associate, baccalaureate and post-baccalaureate degrees; recommendations regarding the approval of faculty appointments and promotions; and recommendations regarding award nominations. The USU President will provide a report on recent actions affecting academic and operational aspects of USU. Member reports will include an Academics Summary consisting of reports from the Dean of the F. Edward Hébert School of Medicine, Dean of the Daniel K. Inouye Graduate School of Nursing, Executive Dean of the Postgraduate Dental College, Dean of the College of Allied Health Sciences, Vice President for Research, and Vice President for Information and Education Technology. Member Reports will also include a Finance and Administration Summary consisting of reports from the Senior Vice President of the Southern Region, Senior Vice President of the Western Region, Vice President for Finance and Administration, Commander of the USU Brigade, and the USU General Counsel. Additional reports include USU Construction Updates, Director of the Armed Forces Radiobiology Research Institute, USU President of the Faculty Senate, and Defense Medical Ethics Center. A closed session will be held, after the open session, to discuss active investigations and personnel actions.

Meeting Accessibility: Pursuant to Federal statutes and regulations (5 U.S.C., Appendix, 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 8:00 a.m. to 10:45 a.m. Seating is on a first-come basis. Members of the public wishing to attend the meeting should contact Jennifer Nuetzi James no later than five business days prior to the meeting, at the address and phone number noted in the **FOR FURTHER INFORMATION CONTACT** section. Pursuant to 5 U.S.C. 552b(c)(2, 5–7), the DoD has determined that the portion of the meeting from approximately 10:50 a.m. to 11:50 a.m. shall be closed to the public. The Under Secretary of Defense (Personnel and Readiness), in consultation with the Department of Defense Office of General Counsel, has determined in writing that this portion of the Board's meeting will be closed as the discussion will disclose sensitive personnel information, will include matters that relate solely to the internal personnel rules and practices of the agency, will involve allegations of a person having committed a crime or censuring an individual, and may disclose investigatory records compiled for law enforcement purposes.

Written Statements: Pursuant to section 10(a)(3) of the Federal Advisory Committee Act and 41 CFR 102–3.140, the public or interested organizations may submit written comments to the Board about its approved agenda pertaining to this meeting or at any time regarding the Board's mission. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address listed above in **FOR FURTHER INFORMATION CONTACT**. Written statements that do not pertain to a scheduled meeting of the Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at the planned meeting, then these statements must be received at least 5 calendar days prior to the meeting, otherwise, the comments may not be provided to or considered by the Board until a later date. The Designated Federal Officer will compile all timely submissions with the Board's Chair and ensure such submissions are provided to Board Members before the meeting.

Dated: July 25, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–16236 Filed 7–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–HA–0047]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency 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 September 28, 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 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy

for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to TRICARE Operations Plan, 7700 Arlington Blvd., Suite 5101, Falls Church, VA 22042–5101, ATTN: Mr. Mark Ellis or call (703) 275–6234.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: TRICARE Young Adult Application; DD–2947; OMB Control Number 0720–0049.

Needs and Uses: The Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (FY11), Section 702, aligns TRICARE Program eligibility by providing a means to extend the age of eligibility of TRICARE dependents from age 21 or 23 up to age 26 to allow the purchase of extended dependent medical coverage across existing TRICARE program options (Select and Prime). This is consistent with the intent of the Patient Protection and Affordable Care Act, the implementing Health and Human Services regulations, and the limitations of Chapter 55 of Title 10. Section 702 allows qualified adult children not eligible for medical coverage at age 21 (23 if enrolled in a full-time course of study at an institution of higher learning approved by the Secretary of Defense) and are under age 26 to qualify to purchase medical coverage unless the dependent is enrolled in or eligible to purchase employer sponsored insurance per section 5000A(f)(2) of the Internal Revenue Code of 1986 or is married. The dependents shall be able to purchase either the TRICARE Prime or Select benefits depending on if they meet specific program requirements and the availability of a desired plan in their geographic location.

Affected Public: Individuals or Households.

Annual Burden Hours: 677.25.

Number of Respondents: 2,709.

Responses per Respondent: 1.

Annual Responses: 2,709.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Respondents are adult age dependents of active duty military and veteran service members. Respondents complete the DD–2947, ''TRICARE Young Adult Application,'' in order to apply for, change, or terminate their TRICARE Young Adult coverage or to request a different Primary Care Manager (PCM). Respondents typically make these requests over the phone by calling their regional contractor responsible for processing the DD–2947. Respondents in the East and West of the U.S. process the DD–2947 through Humana and HealthNet respectively; respondents outside of those regions have their DD–2947 processed by International SOS.

Dated: July 25, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–16237 Filed 7–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–HA–0045]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency 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 September 28, 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 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Decision Support Decision, Defense Health Agency, Attn: Dr. Kimberely Aiyelawo, 7700 Arlington Blvd., Suite 5101, Falls Church, VA 22042–5101, or call 703–681–3636.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Patient Safety Culture Survey; OMB Control Number 0720–0034.

Needs and Uses: The 2001 National Defense Authorization Act contains specific sections addressing patient safety in military and veterans' health care systems. This legislation states that the Secretary of Defense shall establish a patient care error reporting and management system to study occurrences of errors in patient care and that one purpose of the system should be to ''identify systemic factors that are associated with such occurrences'' and ''to provide for action to be taken to correct the identified systemic factors.'' (Sec. 754, items b2 and b3). In addition, the legislation states that the Secretary shall ''continue research and development investments to improve communication, coordination, and team work in the provision of health care.'' (Sec. 754, item d4).

In its ongoing response to this legislation, and in support of its mission to ''promote a culture of safety to eliminate preventable patient harm by engaging, educating and equipping patient-care teams to institutionalize evidence-based safe practices,'' the DoD Patient Safety Program plans to field the Department of Defense Patient Safety Culture Survey. The Culture Survey is based on the Department of Health and Human Services' Agency for Healthcare Research and Quality's validated survey instrument. The survey obtains MHS staff opinions on patient safety issues such as teamwork, communications, medical error occurrence and response,

error reporting, and overall perceptions of patient safety.

Affected Public: Federal Government; Individuals or Households.

Annual Burden Hours: 1,533.

Number of Respondents: 9,200.

Responses per Respondent: 1.

Annual Responses: 9,200.

Average Burden per Response: 10 minutes.

Frequency: As required.

The purpose of the survey is to assess the current status of patient safety in MHS facilities and to assess patient safety improvement over time. The hospital survey tool is the same OMB approved tool that was administered in previous years. There will also be a corresponding outpatient survey tool with congruous questions tailored to the ambulatory or clinic setting. Respondents will select the survey corresponding to their care environment. The Web-based survey will be administered on a voluntary-basis to all staff working in Army, Navy, and Air Force Military Health System (MHS) direct care facilities in the U.S. and internationally, including Military Treatment Facilities (MTF) hospitals as well as ambulatory and dental services. Responses and respondents will remain anonymous. There are two versions of the survey that may be administered, corresponding to the setting in which care is delivered, either Hospital (inpatient) or Ambulatory (outpatient/clinic setting).

Dated: July 24, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–16170 Filed 7–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 16–36]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: DSCA at *dsca.ncr.lmo.mbx.info@mail.mil* or (703) 697–9709.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 16–36 with attached Policy Justification and Sensitivity of Technology.

Dated: July 25, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

APR 27 2018

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 16-36, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Bahrain for defense articles and services estimated to cost $911.4 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 16–36

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* The Government of Bahrain

(ii) *Total Estimated Value:*

Major Defense Equipment *	$490.9 million
Other	$420.5 million
TOTAL	$911.4 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

Twelve (12) AH–1Z Attack Helicopters

Twenty-six (26) T–700 GE 401C Engines (twenty-four (24) installed and two (2) spares)

Fourteen (14) AGM–114 Hellfire Missiles

Fifty-six (56) Advance Precision Kill Weapon System II (APKWS–II) WGU–59B

Non-MDE: Also includes fifteen (15) Honeywell Embedded Global Positioning System (GPS) Inertial Navigation System (INS) (EGI) w/ Standard Positioning Service (SPS) (including three (3) spares), twelve (12) Joint Mission Planning Systems, twelve (12) M197 20mm gun systems, thirty (30) Tech Refresh Mission Computers, fourteen (14) AN/AAQ–30 Target Sight Systems, twenty six (26) Helmet Mounted Display/Optimized Top Owl, communication equipment, electronic warfare systems, fifteen (15) APX–117 Identification Friend or Foe (IFF), fifteen (15) AN/AAR–47 Missile Warning Systems, fifteen (15) AN/ALE–47 Countermeasure Dispenser Sets, fifteen (15) APR–39C(V)2 Radar Warning Receivers, support equipment, spare engine containers, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics and program support.

(iv) *Military Department:* Navy.

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* April 27, 2018.

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain—AH-l Z Attack Helicopters

The Government of Bahrain has requested twelve (12) AH–1Z attack helicopters, twenty-six (26) T–700 GE 401C engines (twenty-four (24) installed and two (2) spares), fourteen (14) AGM–114 Hellfire Missiles, and fifty-six (56) Advance Precision Kill Weapon System II (APKWS–II) WGU–59Bs. This request also includes fifteen (15) Honeywell Embedded Global Positioning System (GPS) Inertial Navigation System (INS) (EGI) w/Standard Positioning Service (SPS) (including three (3) spares), twelve (12) Joint Mission Planning Systems, twelve (12) M197 20mm gun systems, thirty (30) Tech Refresh Mission Computers, fourteen (14) AN/AAQ–30 Target Sight Systems, twenty six (26) Helmet Mounted Display/Optimized Top Owl, communication equipment, electronic warfare systems, fifteen (15) APX–117 Identification Friend or Foe (IFF), fifteen (15) AN/AAR–47 Missile Warning Systems, fifteen (15) AN/ALE–47 Countermeasure Dispenser Sets, fifteen (15) APR–39C(V)2 Radar Warning Receivers, support equipment, spare engine containers, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical, and logistics support services, and other related elements of logistics and program support. The total estimated cost is $911.4 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major Non-NATO ally which is an important security partner in the region. Our mutual defense interests anchor our relationship and the Royal Bahraini Air Force plays a significant role in Bahrain's defense.

The proposed sale improves Bahrain's capability to meet current and future threats. Bahrain will use this capability as a deterrent to regional threats and to strengthen its homeland defense. This sale will improve interoperability with U.S. forces. Bahrain will have no difficulty absorbing these helicopters into its armed forces.

This proposed sale of equipment and support will not alter the basic military balance in the region.

The principal contractors will be Bell Helicopter, Textron, Fort Worth, Texas; and General Electric Company, Lynn, Massachusetts. There are no known offset agreements proposed in conjunction with this potential sale.

Implementation of this proposed sale will require multiple trips by U.S. Government and contractor representatives to participate in program and technical reviews plus training and maintenance support in country, on a temporary basis, for a period of sixty (60) months. It will also require three (3) contractor representatives to reside in country for a period of two (2) years to support this program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 16–36

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) Sensitivity of Technology:

1. The following components and technical documentation for the program are classified as listed below:

a. The AH–1 Z-model has an Integrated Avionics System (IAS) which includes two (2) mission computers and an automatic flight control system. Each crew station has two (2) 8x6-inch multifunction liquid crystal displays (LCD) and one (1) 4.2x4.2-inch dual function LCD display. The communications suite will have NON–COMSEC ARC 210 Ultra High Frequency Very High Frequency (UHF/VHF) radios with associated communications equipment (antennas, mounts). The navigation suite includes Honeywell Embedded Global Positioning System (GPS) Inertial Navigation System (INS) (EGI) w/ Standard Positioning Service (SPS), a digital map system, a low-airspeed air data subsystem, which allows weapons delivery when hovering, and a AN/APX–117/A(V) IFF Transponder.

b. The crew is equipped with the Optimized Top Owl (OTO) helmet-mounted sight and display system. The OTO has a Day Display Module (DDM) and a Night Display Module (NDM). The AH-lZ has survivability equipment including the AN/AAR–47 Missile Warning and Laser Detection System, AN/ALE–47 Counter Measure Dispensing System (CMDS) and the AN/APR–39 Radar Warning Receiver (RWR) to cover countermeasure dispensers, radar warning, incoming/on-way missile warning and on- fuselage laser-spot warning systems.

c. The following performance data and technical characteristics are classified as follows for the AH–1Z Airframe: countermeasure capability—SECRET, counter-countermeasures capability—SECRET, vulnerability to

countermeasures—SECRET, vulnerability to electromagnetic pulse from nuclear environmental effects—SECRET, radar signature—SECRET, infrared signature—SECRET, acoustic signature—CONFIDENTIAL, ultraviolet signature—SECRET, mission effectiveness against threats—CONFIDENTIAL, target sight system—up to SECRET, Tactical Air Moving Map Capability (TAMMAC)—up to SECRET, Honeywell Embedded GPS INS (EGI) w/SPS—UNCLASSIFIED, AN/ARC–210 RT 629F–23—UNCLASSIFIED, AN/APX–117/A(V) IFF Transponder—UNCLASSIFIED, VCR or DVR—up to SECRET, APR–39 Radar Warning System (RWS)—up to SECRET, AN/AAR–47 Missile/Laser Warning System (MLWS)—up to SECRET, AN/ALE–47 Countermeasures Dispenser Set (CMDS)—up to SECRET.

d. The APKWS is a low-cost semi-active laser guidance kit developed by BAE Systems which converts unguided 2.75 inch (70 mm) rockets into precision laser-guided rockets. The classification is up to SECRET.

e. The AGM–114 Hellfire II Semi-Active Laser (SAL) Missiles are rail-launched guided missiles developed and produced by Lockheed Martin. The guidance system employs a SAL seeker. The SAL missile homes in on the laser energy reflected off a target that has been illuminated by a laser designator. The laser can be on either the launch platform or another platform that can be separated from it by several kilometers. The target sets are armor, bunkers, caves, enclosures, boats, and enemy personnel. The weapon system hardware, as an ''All Up Round,'' is UNCLASSIFIED. The highest level of classified information to be disclosed regarding the AGM–114 Hellfire II missile software is SECRET. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is SECRET and the highest level that must be disclosed for production, maintenance, or training is CONFIDENTIAL.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness.

3. The consequences of the loss of this technology to a technologically advanced or competent adversary could result in the compromise of equivalent systems, which in turn could reduce those weapons system's effectiveness, or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the Government of Bahrain can provide substantially the same degree of protection for the technology being released as the U.S. Government. This sale of the AH-l Z Helicopter and associated weapons will further U.S. foreign policy and national security objectives.

5. All defense articles and services listed in this transmittal are authorized for release and export to the Government of Bahrain.

[FR Doc. 2018–16192 Filed 7–27–18; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting August 15 and September 13, 2018

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 15, 2018. A business meeting will be held the following month on Thursday, September 13, 2018. The hearing and meeting are open to the public. The public hearing in August will be held at the West Trenton Volunteer Fire Company Ballroom, 40 West Upper Ferry Road, West Trenton, New Jersey. The business meeting in September will be held at the RiverWinds Community Center, 1000 RiverWinds Drive, Thorofare, New Jersey.

Public Hearing. The public hearing on August 15, 2018 will begin at 1:30 p.m. Hearing items subject to the Commission's review will include draft dockets for withdrawals, discharges, and other projects that could have a substantial effect on the basin's water resources.

The list of projects scheduled for hearing, including project descriptions, will be posted on the Commission's website, *www.drbc.net,* in a long form of this notice at least ten days before the hearing date.

Written comments on matters scheduled for hearing on August 15 will be accepted through 5:00 p.m. on August 20.

The public is advised to check the Commission's website periodically prior to the hearing date, as items scheduled for hearing may be postponed if additional time is deemed necessary to complete the Commission's review, and items may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is also asked to be aware that project details commonly change in the course of the Commission's review, which is ongoing.

Public Meeting. The public business meeting on September 13, 2018 will begin at 10:30 a.m. and will include: Adoption of the Minutes of the Commission's June 13, 2018 Business Meeting, announcements of upcoming meetings and events, a report on hydrologic conditions, reports by the Executive Director and the Commission's General Counsel, and consideration of any items for which a hearing has been completed or is not required.

After all scheduled business has been completed and as time allows, the Business Meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission on any topic concerning management of the basin's water resources outside the context of a duly noticed, on-the-record public hearing.

There will be no opportunity for additional public comment for the record at the September 13 Business Meeting on items for which a hearing was completed on August 15 or a previous date. Commission consideration on September 13 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Sign-Up for Oral Comment. Individuals who wish to comment on the record during the public hearing on August 15 or to address the Commissioners informally during the Open Public Comment portion of the meeting on September 13 as time allows, are asked to sign-up in advance through EventBrite. Links to EventBrite for the Public Hearing and the Business Meeting are available at *drbc.net.* For assistance, please contact Ms. Paula Schmitt of the Commission staff, at *paula.schmitt@drbc.nj.gov.*

Submitting Written Comment. Written comment on items scheduled for hearing may be made through SmartComment, the web-based comment system introduced by the Commission, a link to which is provided at *drbc.net.* Use of SmartComment ensures that all submissions are captured in a single

location and their receipt is acknowledged. Exceptions to the use of SmartComment are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628. For assistance, please contact Paula Schmitt at *paula.schmitt@drbc.nj.gov.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Denise McHugh, 609–883–9500, ext. 240. For other questions concerning hearing items, please contact David Kovach, Project Review Section Manager at 609–883–9500, ext. 264.

Dated: July 24, 2018.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2018–16222 Filed 7–27–18; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0047]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 21st Century Community Learning Centers Annual Performance Report

AGENCY: Department of Education (ED), Office of Elementary and Secondary Education (OESE)

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before August 29, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0047. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9088, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Daryn Hedlund, 202–401–3008.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: 21st Century Community Learning Centers Annual Performance Report.

OMB Control Number: 1810–0668.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 54.

Total Estimated Number of Annual Burden Hours: 1,488.

Abstract: The purpose of the 21st Century Community Learning Centers (21st CCLC) program, as authorized under Title IV, Part B, of the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act (ESSA) (20 U.S.C. 7171–7176) is to create community learning centers that provide academic enrichment opportunities for children, particularly students who attend high poverty and low-performing schools, to meet State and local student standards in core academic subjects, to offer students a broad array of enrichment activities that can complement their regular academic programs, and to offer literacy and other educational services to the families of participating children. Present in all 50 states, the District of Columbia, Puerto Rico, US Virgin Islands, and the Bureau of Indian Education, academic enrichment and youth development programs are designed to enhance participants' well-being and academic success. In support of this program, Congress appropriated nearly $1.2 billion for 21st CCLC programs for fiscal year 2016. Consisting of public and nonprofit agencies, community- and faith-based organizations, postsecondary institutions, and other community entities, 3,695 sub-grantees—operating 9,252 centers—provided academic and enrichment services and activities to over 1.8 million participants.

Dated: July 24, 2018.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–16158 Filed 7–27–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decisions Under the Randolph-Sheppard Act

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: This notice lists arbitration panel decisions under the Randolph-Sheppard Act issued in October, November, and December 2017. The full text of all decisions is available on the Department's website and by request.

FOR FURTHER INFORMATION CONTACT: Donald Brinson, U.S. Department of Education, 400 Maryland Avenue SW, Room 5045, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7310.

If you use a telecommunications device for the deaf (TDD) or a text

telephone (TTY), call the Federal Relay Service, toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: For the purpose of providing individuals who are blind with remunerative employment, enlarging their economic opportunities, and stimulating greater efforts to make themselves self-supporting, the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.* (Act), authorizes individuals who are blind to operate vending facilities on Federal property and provides them with a priority for doing so. The vending facilities include, among other things, cafeterias, snack bars, and automatic vending machines. The Department administers the Act and designates an agency in each State—the State Licensing Agency (SLA)—to license individuals who are blind to operate vending facilities on Federal and other property in the State.

The Act requires arbitration of disputes between SLAs and vendors who are blind and between SLAs and Federal agencies before three-person panels convened by the Department whose decisions constitute final agency action. 20 U.S.C. 107d–1. The Act also makes these decisions matters of public record and requires their publication in the **Federal Register**. 20 U.S.C. 107d–2(c).

On September 5, 2017, the Department announced that it would publish quarterly lists of Randolph-Sheppard arbitration panel decisions in the **Federal Register** and that the full text of the decisions listed would be available on the Department's website or by request (see 82 FR 41941).

In the fourth quarter of 2017, Randolph-Sheppard arbitration panels issued the following decision.

Case name	Docket No.	Date	State
Phyliss P. Davis v. *Georgia Vocational Rehabilitation Agency*	R–S/15–14	11/21/17	Georgia.

That decision, and other decisions that we have already posted, are searchable by key terms, accessible under Section 508 of the Rehabilitation Act, and are available for download in Portable Document Format (PDF) format at *www.ed.gov/programs/rsarsp/arbitration-decisions.html* or by request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 25, 2018.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2018–16243 Filed 7–27–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Graduate Assistance in Areas of National Need

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2018 for the Graduate Assistance in Areas of National Need (GAANN) Program, Catalog of Federal Domestic Assistance (CFDA) number 84.200A.

DATES: *Applications Available:* July 30, 2018.

Deadline for Transmittal of Applications: August 29, 2018.

Deadline for Intergovernmental Review: September 28, 2018.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: Rebecca Ell, U.S. Department of Education, 400 Maryland Avenue SW, Room 268–04, Washington, DC 20202. Telephone: (202) 453–6348. Email: *OPE_GAANN_Program@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), contact the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The GAANN Program provides grants to academic departments and programs of institutions of higher education (IHEs) to support graduate fellowships for students with excellent academic records who demonstrate financial need and plan to pursue the highest degree available in their course of study at the institution.

Background: In accordance with section 712(b) of the Higher Education Act of 1965, as amended (20 U.S.C. 1135a), the Secretary designates areas of national need following a required consultation. Four broad areas have been identified as national needs:

1. Computer and Information Sciences: Cybersecurity, secure computer programming, and artificial intelligence.

2. Rebuilding the Nation's Infrastructure: The Administration's *Legislative Outline for Rebuilding Infrastructure in America* [1] identifies a need for public and private investment in rebuilding the Nation's infrastructure. To meet this goal, the Nation needs to expand the prepared workforce to ensure timely planning, delivery, and inspection of infrastructure projects. Therefore, there is a national need to increase the number of professional engineers able to facilitate a wide range of infrastructure projects.

3. National Civic Literacy: Studies of American adults' knowledge of American history and institutions have demonstrated low levels of knowledge and that ''greater civic knowledge trumps a college degree as the leading factor in encouraging active civic

[1] Available at *www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf.*

engagement.'' [2] In order to improve civic engagement, Americans need a clear understanding of American history and the Western traditions that gave rise to the American Republic.

4. Workforce Development: The Nation needs innovative solutions that enable individuals to gain the knowledge and skills necessary to meet workforce demands through shorter-term programs that align with the needs of employers. Professional Science Master's (PSM) degrees provide such a solution within graduate education. To better meet the Nation's needs in computer and information sciences and in engineering, PSM programs are included as terminal degree programs chosen for these areas in this competition.

Priority: This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 648.33(a) and Appendix to part 648—Academic Areas).

Absolute Priority: For FY 2018 and any subsequent year for which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

The absolute priority is:

Graduate Assistance in Areas of National Need.

A project must provide fellowships in one or more of the following areas of national need, in an interdisciplinary program of study involving at least two of these areas, or for a multidisciplinary project. A multidisciplinary project is one that requests fellowships for more than a single academic department in one or more of the following areas, and in which each department's program of study is independent.

A. For the following academic areas, the project must provide fellowships for programs that lead either to a PSM degree or a doctoral degree.

1. Computer and Information Sciences. A degree or a degree with specialization in one or more of the following areas:

- Cybersecurity (the interdiscipline of ''Computer and Information Sciences, General'' and ''Computer Systems Analysis'').
- Secure computer programming (the interdiscipline of ''Computer and Information Sciences, General'' and ''Computer Programming'').
- Artificial Intelligence (the interdiscipline of ''Computer Programming,'' ''Information Sciences and Systems,'' and ''Computer Engineering'').

2. Professional Engineering. A degree or a degree with specialization in one or more of the following areas:

- Aerospace, Aeronautical, and Astronautical Engineering.
- Architectural Engineering.
- Chemical Engineering.
- Civil Engineering.
- Computer Engineering.
- Electrical, Electronic, and Communications Engineering.
- Industrial/Manufacturing Engineering.
- Mechanical Engineering.
- Naval Architecture and Marine Engineering.
- Petroleum Engineering.
- Systems Engineering.
- Engineering Design.
- Engineering/Industrial Management.
- Materials Science.
- Polymer/Plastics Engineering.

B. For the following academic areas, the project must provide fellowships to students who plan to pursue the highest possible degree available in their course of study at the institution in a program that provides a master's degree, professional degree, or other post-baccalaureate degree in, or a doctorate that includes, one or more of the following specializations:

- American Political Development, Foundations of Western Civilization, American History and Institutions, or the American Founding (subsets of ''Area Studies'').
- Constitutional Law (a subset of ''Law and Legal Studies'').

Program Authority: 20 U.S.C. 1135.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 648.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply for this program.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants, including funds redistributed as graduate fellowships to individual fellows.

Estimated Available Funds: $18,357,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $149,250–$398,000.

Estimated Average Size of Awards: $248,750.

Estimated Number of Awards: 74.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Stipend Level: For the 2018–19 academic year, the institution must pay the fellow a stipend at a level of support equal to that provided by the National Science Foundation Graduate Research Fellowship Program, except that this amount must be adjusted as necessary so as not to exceed the fellow's demonstrated level of financial need as stated under part F of title IV of the Higher Education Act of 1965, as amended.

Institutional Payment: For the 2018–19 academic year, the institutional payment is $15,750 per fellow. This amount was determined by adjusting the previous academic year's institutional payment of $15,426 per fellow by the U.S. Department of Labor's Consumer Price Index for the 2017 calendar year.

III. Eligibility Information

1. *Eligible Applicants:*

(a) Any academic department of an IHE that provides a course of study that—

(i) Leads to a graduate degree in an area of national need; and

(ii) Has been in existence for at least four years at the time of an application for a grant under this competition; or

(b) An academic department of an IHE that—

(i) Satisfies the requirements of paragraph (a) of this section; and

(ii) Submits a joint application with one or more eligible non-degree-granting institutions that have formal arrangements for the support of doctoral

[2] National Civic Literacy Board (2011). Enlightened Citizenship: How Civic Knowledge Trumps a College Degree in Promoting Active Civic Engagement. Available at: *www.americancivicliteracy.org/2011/summary_summary.html.*

dissertation research with one or more degree-granting institutions.

Note: Students are not eligible to apply for grants under this program.

2. a. *Cost Sharing or Matching:* An institution must provide, from non-Federal funds, an institutional matching contribution equal to at least 25 percent of the grant amount received. (See 34 CFR 648.7.)

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. (See 34 CFR 648.20(b)(5).)

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Other:* For requirements relating to selecting fellows, see 34 CFR 648.40.

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program. Please note that, under 34 CFR 79.8(a), we have shortened the standard 60-day intergovernmental review period in order to make awards by the end of FY 2018.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 648.64. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* Applications that do not follow the page limit and formatting recommendations will not be penalized. The application narrative, Part II of the application, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend the following page limits and standards:

- A project narrative in a single discipline or for an interdisciplinary course of study should be limited to no more than 40 pages.
- A project narrative for a multidisciplinary project should be limited to no more than 40 pages for each academic department.
- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins.
- Double-space all text in the application project narrative, and single-space titles, headings, footnotes, quotations, references, and captions.
- Use a 12-point font.
- Use an easily readable font such as Times New Roman, Courier, Courier New, or Arial.
- Limit appendices to the following: Two-page version of a curriculum vitae, per faculty member; a course listing; letters of commitment showing institutional support; a bibliography; and one additional optional appendix relevant to the support of the proposals, recommended not to exceed five pages.

The recommended page limit does not include Part I, the Application for Federal Assistance (SF 424) and the Department of Education Supplemental Information for the SF 424 Form; the one-page abstract; the GAANN Statutory Assurances Form; the GAANN Budget Spreadsheet(s) Form; the Appendices; Part III, the Assurances and Certifications; or an optional two-page table of contents.

V. Application

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 648.31 and are as follows:

(a) *Meeting the purposes of the program* (7 points). The Secretary reviews each application to determine how well the project will meet the purposes of the program, including the extent to which—

(1) The applicant's general and specific objectives for the project are realistic and measurable;

(2) The applicant's objectives for the project seek to sustain and enhance the capacity for teaching and research at the institution and at State, regional, or national levels;

(3) The applicant's objectives seek to institute policies and procedures to ensure the enrollment of talented graduate students from traditionally underrepresented backgrounds; and

(4) The applicant's objectives seek to institute policies and procedures to ensure that it will award fellowships to individuals who satisfy the requirements of 34 CFR 648.40.

(b) *Extent of need for the project* (5 points). The Secretary considers the extent to which a grant under the program is needed by the academic department by considering—

(1) How the applicant identified the problems that form the specific needs of the project;

(2) The specific problems to be resolved by successful realization of the goals and objectives of the project; and

(3) How increasing the number of fellowships will meet the specific and general objectives of the project.

(c) *Quality of the graduate academic program* (20 points). The Secretary reviews each application to determine the quality of the current graduate academic program for which project funding is sought, including—

(1) The course offerings and academic requirements for the graduate program;

(2) The qualifications of the faculty, including education, research interest, publications, teaching ability, and accessibility to graduate students;

(3) The focus and capacity for research; and

(4) Any other evidence the applicant deems appropriate to demonstrate the quality of its academic program.

(d) *Quality of the supervised teaching experience* (10 points). The Secretary reviews each application to determine the quality of the teaching experience the applicant plans to provide fellows under this program, including the extent to which the project—

(1) Provides each fellow with the required supervised training in instruction;

(2) Provides adequate instruction on effective teaching techniques;

(3) Provides extensive supervision of each fellow's teaching performance; and

(4) Provides adequate and appropriate evaluation of the fellow's teaching performance.

(e) *Recruitment plan* (5 points). The Secretary reviews each application to determine the quality of the applicant's recruitment plan, including—

(1) How the applicant plans to identify, recruit, and retain students from traditionally underrepresented backgrounds in the academic program for which fellowships are sought;

(2) How the applicant plans to identify eligible students for fellowships;

(3) The past success of the academic department in enrolling talented graduate students from traditionally underrepresented backgrounds; and

(4) The past success of the academic department in enrolling talented graduate students for its academic program.

(f) *Project administration* (8 points). The Secretary reviews the quality of the proposed project administration, including—

(1) How the applicant will select fellows, including how the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, religion, gender, age, or disabling condition;

(2) How the applicant proposes to monitor whether a fellow is making

satisfactory progress toward the degree for which the fellowship has been awarded;

(3) How the applicant proposes to identify and meet the academic needs of fellows;

(4) How the applicant proposes to maintain enrollment of graduate students from traditionally underrepresented backgrounds; and

(5) The extent to which the policies and procedures the applicant proposes to institute for administering the project are likely to ensure efficient and effective project implementation, including assistance to and oversight of the project director.

(g) *Institutional commitment* (15 points). The Secretary reviews each application for evidence that—

(1) The applicant will provide, from any funds available to it, sufficient funds to support the financial needs of the fellows if the funds made available under the program are insufficient;

(2) The institution's social and academic environment is supportive of the academic success of students from traditionally underrepresented backgrounds on the applicant's campus;

(3) Students receiving fellowships under this program will receive stipend support for the time necessary to complete their courses of study, but in no case longer than five years; and

(4) The applicant demonstrates a financial commitment, including the nature and amount of the institutional matching contribution, and other institutional commitments that are likely to ensure the continuation of project activities for a significant period of time following the period in which the project receives Federal financial assistance.

(h) *Quality of key personnel* (5 points). The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The qualifications of the project director;

(2) The qualifications of other key personnel to be used in the project;

(3) The time commitment of key personnel, including the project director, to the project; and

(4) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, religion, gender, age, or disabling condition, except pursuant to a lawful affirmative action plan.

(i) *Budget* (5 points). The Secretary reviews each application to determine the extent to which—

(1) The applicant shows a clear understanding of the acceptable uses of program funds; and

(2) The costs of the project are reasonable in relation to the objectives of the project.

(j) *Evaluation plan* (15 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Relate to the specific goals and measurable objectives of the project;

(2) Assess the effect of the project on the students receiving fellowships under this program, including the effect on persons of different racial and ethnic backgrounds, genders, and ages, and on persons with disabilities who are served by the project;

(3) List both process and product evaluation questions for each project activity and outcome, including those of the management plan;

(4) Describe both the process and product evaluation measures for each project activity and outcome;

(5) Describe the data collection procedures, instruments, and schedules for effective data collection;

(6) Describe how the applicant will analyze and report the data so that it can make adjustments and improvements on a regular basis; and

(7) Include a time-line chart that relates key evaluation processes and benchmarks to other project component processes and benchmarks.

(k) *Adequacy of resources* (5 points). The Secretary reviews each application to determine the adequacy of the resources that the applicant makes available to graduate students receiving fellowships under this program, including facilities, equipment, and supplies.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are in 34 CFR 648.32.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN), or we may send you an email containing a link to access an electronic version of your GAN. We also may notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118 and 34 CFR 648.66. To view the performance report currently required, visit *http://www2.ed.gov/programs/gaann/performance.html.* Please be advised that the posted report requirements are for informational purposes only and do not reflect the actual reporting instrument that you will use should you receive a GAANN grant. The Secretary also may require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please visit *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Grantees will be required to submit a supplement to the Final Performance Report two years after the expiration of their GAANN grant. The purpose of this supplement is to identify and report the educational outcome of each GAANN fellow.

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the following measures will be used by the Department in assessing the performance of the GAANN Program:

(1) The percentage of GAANN fellows completing the terminal degree in the designated areas of national need.

(2) The median time to completion of master's and doctoral degrees for GAANN fellows.

(3) The percentage of GAANN fellows who have placements in faculty or professional positions in the area of their studies within one year of completing the degree.

If funded, you will be required to collect and report data in your project's annual performance report (34 CFR 75.590) on those measures and steps taken toward improving performance toward those outcomes. Consequently, applicants are advised to include these outcome measures in conceptualizing the design, implementation, and evaluation of their proposed projects. These outcome measures should be included in the project evaluation plan, in addition to measures of your progress toward the goals and objectives specific to your project.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 26, 2018.

Diane Auer Jones,

Principal Deputy Under Secretary, delegated to perform the duties of Under Secretary and Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2018–16330 Filed 7–27–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0078]

Agency Information Collection Activities; Comment Request; Paul Douglas Teacher Scholarship Performance Report Form

AGENCY: Department of Education (ED), Office of Postsecondary Education (OPE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 28, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0078. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Darryl Davis, 202–453–7582.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Paul Douglas Teacher Scholarship Performance Report Form.

OMB Control Number: 1840–0787.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 10.

Total Estimated Number of Annual Burden Hours: 120.

Abstract: The Paul Douglas Teacher Scholarship program was designed to issue grants to the states to provide scholarships to outstanding secondary school graduates who demonstrated an interest in teaching careers at the preschool, elementary, or secondary level. Although the program is no longer funded, the annual performance report is necessary to monitor and evaluate the compliance of the remaining state education agencies.

Dated: July 25, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–16211 Filed 7–27–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fund for the Improvement of Postsecondary Education—Pilot Program for Cybersecurity Education Technological Upgrades for Community Colleges

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2018 for the Fund for the Improvement of Postsecondary Education (FIPSE)—Pilot Program for Cybersecurity Education Technological Upgrades for Community Colleges, Catalog of Federal Domestic Assistance (CFDA) number 84.116R.

DATES:

Applications Available: July 30, 2018.

Deadline for Transmittal of Applications: August 29, 2018.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: Pearson Owens, U.S. Department of Education, 400 Maryland Avenue SW, Room 250–12, Washington, DC 20202. Telephone: (202) 453–7997. Email: *pearson.owens@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Pilot Program for Cybersecurity Education Technological Upgrades for Community Colleges is designed to support projects at institutions of higher education (IHEs) that provide technological upgrades for cybersecurity education programs at community colleges.

Priority: This notice includes one absolute priority. We are establishing this priority for the FY 2018 grant competition, and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Collaboration.

Background: The National Science Foundation's Advanced Technological Education (ATE) Program has awarded large grants to three community colleges to operate centers that support the improvement of cybersecurity education at community colleges around the Nation. Those centers are the National CyberWatch Center, based at Prince George's Community College (Largo, MD); the CyberWatch West Center, based at Whatcom Community College (Bellingham, WA); and the Center for Systems Security and Information Assurance (CSSIA), based at Moraine Valley Community College (Palos Hills, IL). Those centers coordinate a large network of affiliated institutions, including more than 100 community colleges.

Priority: To build on the experience and ongoing initiatives of the ATE Program, this priority requires applicants to collaborate with an ATE Program center. An eligible applicant must propose to lead a project to provide technological upgrades for cybersecurity education programs at community colleges that leverages the expertise of the National Science Foundation's ATE Program.

Each eligible applicant must include a signed statement by an authorized official from at least one of the three ATE Program centers: The National CyberWatch Center, the CyberWatch West Center, or CSSIA. The signed statement must certify that the center or centers will provide technical assistance or other aid to the applicant's project.

Note: It is not required for a community college to have an existing relationship with an ATE Program center to meet this absolute priority.

Definition: We are establishing the following definition under section 437(d)(1) of GEPA for FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Community college means an institution that meets the definition in section 312(f) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1058(f)); or an institution of higher education (as defined in section 101 of the HEA (20 U.S.C. 1001)) that awards degrees and certificates, more than 50 percent of which are not bachelor's degrees (or an equivalent) or master's, professional, or other advanced degrees.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and definitions. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under 20 U.S.C. 1138–1138d and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priority and definition under section 437(d)(1) of GEPA. The priority and definition will apply to the FY 2018 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $990,000.

Estimated Range of Awards: $25,000–$100,000 for a 24-month budget period.

Estimated Average Size of Awards: $99,000.

Maximum Award: We will not make an award exceeding $100,000 for a single budget period of 24 months.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* Community colleges that include a signed statement from at least one of the ATE Program centers certifying that the center or centers will provide technical assistance or other aid to the applicant's project.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: Public or private entitites that provide technology or infrastructure services. The grantee may only award subgrants to entities it has identified in an approved application.

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003), and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79.

However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2018.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Note: Hardware to be provided to individual students, such as laptops, tablets, or smartphones, is not an allowable cost under this competition.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 12 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a readable 12-point font such as Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letter of support.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of the selection criteria is 48 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

The selection criteria are as follows:

A. Need for Project (up to 20 points).

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

B. Quality of the Project Design (up to 12 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

C. Adequacy of Resources (up to 12 points).

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

D. Quality of the Project Evaluation Plan (up to 4 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and

appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of internal reviewers will read, prepare a written evaluation of, and score all eligible applications using the selection criteria provided in this notice. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score. The Department may use more than one tier of reviews in evaluating grantees. The Department prepares a rank order of applications based solely on the evaluation of their quality according to the selection criteria.

In the event there are two or more applications with the same final score in the rank order listing, and there are insufficient funds to fully support these applications, the Department will apply a tiebreaker by awarding funds to the applicant with the largest number of students enrolled in cybersecurity education programs in the applicant's most recent academic year.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measure:* The Department will use the following performance measure in assessing the performance of the Pilot Program for Cybersecurity Education Technological Upgrades for Community Colleges grants:

The number of students who enrolled in courses supported by the technological upgrades developed through the grant in the year following completion of the project.

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person

listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 24, 2018.

Diane Auer Jones,

Principal Deputy Under Secretary Delegated To Perform the Duties of Under Secretary and Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2018–16259 Filed 7–27–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Fund for the Improvement of Postsecondary Education—Open Textbooks Pilot Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2018 for the Open Textbooks Pilot program conducted under the Fund for the Improvement of Postsecondary Education (FIPSE), Catalog of Federal Domestic Assistance (CFDA) number 84.116T.

DATES:

Applications Available: July 30, 2018.

Deadline for Transmittal of Applications: August 29, 2018.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

FOR FURTHER INFORMATION CONTACT: Stacey Slijepcevic, U.S. Department of Education, 400 Maryland Avenue SW, Room 268–32, Washington, DC 20202. Telephone: (202) 453–6150. Email: *stacey.slijepcevic@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Open Textbooks Pilot program supports projects at institutions of higher education (IHEs) that create new open textbooks (as defined in this notice) or expand their use of open textbooks while maintaining or improving instruction and student learning outcomes. Applicants are encouraged to develop projects that demonstrate the greatest potential to achieve the highest level of savings for students through sustainable, expanded use of open textbooks in high-enrollment courses (as defined in this notice) or in programs that prepare individuals for in-demand fields.

Background: The growth in college textbook costs is a key component of the overall increase in the cost of attending college. The cost of college textbooks increased 88 percent between 2006 and 2016.[1] In the 2016–17 academic year, the average college student budget for books and supplies was $1,263 for students attending 4-year institutions and $1,458 for students attending 2-year institutions.[2] Increasing textbook costs introduce an additional barrier to college access and completion, particularly for low-income students. In recent years, the development of open textbooks has emerged as a potential solution to increasing college textbook costs. While open textbooks often support general education or introductory courses, the Department seeks to promote degree completion by supporting the development of open textbooks for courses at different levels within an academic program. Therefore, this pilot program emphasizes the expansion of the use of existing open textbooks developed for general education or introductory courses, and the development of open textbooks for several required courses in one or more high-enrollment majors to ensure that students will benefit from cost savings throughout their programs.

There is also a shortage of open textbooks to support instruction in career and technical education, where it is equally important to help students reduce costs. Technical textbooks are among the more expensive books that students must purchase, and they often must be updated frequently to keep pace with changing technologies, which adds to the costs associated with these books. Because of the frequent updates, students are prevented from relying on lower-cost used books. To ensure that students in career and technical education programs have access to low-cost textbooks that are up-to-date, the Department encourages the development of open textbooks that would support students enrolled in high-enrollment programs (as defined in this notice) for career and technical education associate degrees, or career and technical education associate degree programs designed to meet the needs of in-demand occupations and industries (as defined in this notice.

Priorities: This notice includes three absolute priorities and one competitive preference priority.

We are establishing these priorities for the FY 2018 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priorities: These priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet all three of these priorities.

These priorities are:

Absolute Priority 1—Improving Collaboration and Dissemination Through Consortia Arrangements.

An eligible applicant must propose to lead and carry out a consortium project that leverages the expertise and resources of at least three IHEs, including the lead applicant, and that engages employers or workforce stakeholders (as defined in this notice) and/or nonprofit or community organizations, as appropriate, to participate in the project. These entities are described below under *Eligible Applicants.* Applicants must explain how the members of the consortium will work in partnership to develop and implement open textbooks that: (a) Reduce the cost of college for large numbers of students by reducing textbook costs and (b) contain content

[1] Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily,* College tuition and fees increase 63 percent since January 2006 (*https://www.bls.gov/opub/ted/2016/college-tuition-and-fees-increase-63-percent-since-january-2006.htm*).

[2] National Center of Education Statistics, 2017 Digest of Education Statistics, (*https://nces.ed.gov/programs/digest/d17/tables/dt17_330.40.asp?current=yes*).

that aligns student learning objectives with the skills or knowledge required by large numbers of students (at a given institution or nationally) as part of a degree pathway, or in the case of a career and technical postsecondary program, meet industry standards in in-demand industry sectors or occupations (as defined in this notice).

Absolute Priority 2—Addressing Gaps in the Open Textbook Marketplace and Bringing Solutions to Scale.

An applicant must address the issue of gaps in the open textbook marketplace and of how to bring market solutions to scale. An applicant must propose a comprehensive plan to: (a) Identify and assess existing open educational resources in the credential pathway or the subject area or areas proposed, before creating new ones; (b) focus on the creation and expansion of education and training materials that can be taken to scale, within and beyond the participating consortium members, to reach a broad range of students participating in high-enrollment courses or preparing for in-demand occupations (as defined in this notice); (c) create protocols to review any open textbooks created or adapted through the project for accuracy, rigor, and accessibility for students with disabilities; and (d) disseminate information about the results of the project to other IHEs, including promoting the adoption of any open textbooks created or adapted through the project.

Note: Grant funds may be used for professional development to help build capacity and expand the use of open textbooks for any faculty and staff members at IHEs.

Absolute Priority 3—Promoting Degree Completion.

An applicant must propose to build upon existing open textbook materials and/or develop new open textbooks for (a) multiple courses at different levels in a program's course sequence and that are typically required for individuals majoring in one or more high-enrollment programs and/or (b) several courses along the pathway to an associate degree in one or more career and technical education field(s).

The applicant must include plans for: (a) Promoting and tracking the use of open textbooks in postsecondary courses, including an estimate of the projected cost savings for students; (b) assessing the impact of open textbooks on instruction and student learning outcomes, and (c) updating the open textbooks beyond the funded period.

Competitive Preference Priority: This priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Competitive Preference Priority—Using Technology-Based Strategies for Personalized Learning and Continuous Improvement (Up to 10 Points).

To meet this priority, an applicant must propose a project that focuses on improving instruction and student learning outcomes by integrating technology-based strategies, such as artificial intelligence and adaptive learning, with the open textbooks proposed for development to provide personalized learning experiences. These technologies must be capable of supporting ongoing electronic assessments that enable students to monitor their own learning mastery and/or allow instructors to monitor the individual performance of each student in the classes or courses for which the applicant proposes to develop open textbooks.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, definitions, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under new or substantially revised authority and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities, definitions, and other requirements under section 437(d)(1) of GEPA. These priorities, definitions, and requirements will apply to the FY 2018 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Definitions

Open textbook means a textbook that is licensed under a worldwide, non-exclusive, royalty-free, perpetual, and irrevocable license to the public to exercise any of the rights under copyright conditioned only on the requirement that attribution be given as directed by the copyright owner. An open textbook resides in the public domain or has been released under a license that permits their free use, reuse, modification, and sharing with others.

High-enrollment courses means courses that are required for an associate or bachelor's degree at the IHE, that either: (1) Have student enrollments above the average enrollment of courses at the institution or (2) have higher than average enrollments nationally as compared to other academic or career and technical education courses.

High-enrollment program means a degree program or career and technical education postsecondary program at the IHE that either: (1) Has student enrollments above the average enrollment for programs at the institution or (2) has higher than average enrollments nationally as compared to other academic or career and technical education programs.

Workforce stakeholder means an individual or organization with an interest in the employability of others either for self-interest or the interest of other employers.

In-demand industry sector means an industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.

In-demand occupation means an occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

Sector partner means a member of a workforce collaborative, convened by or acting in partnership with a State board or local board, that organizes key stakeholders interconnected by labor markets, technologies, and worker skill needs into a working group that focuses on shared goals and resource needs.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $4,950,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications for this competition.

Estimated Range of Awards: $1,500,000–$4,950,000.

Estimated Average Size of Awards: $2,475,000.

Maximum Award: We will not make an award exceeding $4,950,000 for a single budget period of 48 months.

Estimated Number of Awards: 1–3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants are IHEs as defined in section 101 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1001), that:

(a) Lead the activities of a consortium that is comprised of at least:

i. Three IHEs as defined in section 101 of the HEA, including the lead applicant;

ii. An educational technology or electronic curriculum design expert (which may include such experts that are employed by one or more of the consortium institutions); and

iii. An advisory group of at least five employers, workforce organizations, or sector partners (as defined in this notice); and

(b) Have demonstrated experience in the development and implementation of open educational resources.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to entities listed in the grant application.

IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003), and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the Open Textbook Pilot, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2018.

4. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 60 pages and (2) use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a readable 12-point font such as Times New Roman, Courier, Courier New, or Arial.

The recommended 60 page limit applies only to the application narrative and does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is included in parentheses following the title of the specific selection criterion. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

Points awarded under the competitive preference priority are in addition to any points an applicant earns for all of the selection criteria in this notice. The maximum score that an application may receive under the competitive preference priority and the selection criteria is 110. The selection criteria are as follows:

a. *Significance (up to 20 points).*

The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(2) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

b. *Quality of the Project Design (up to 15 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(3) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

c. *Quality of Project Services (up to 15 points).*

The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups

that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(2) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(3) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

d. *Quality of Project Personnel (up to 5 points).*

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator.

(2) The qualifications, including relevant training and experience, of key project personnel.

e. *Adequacy of Resources (up to 25 points).*

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

f. *Quality of the Management Plan (up to 10 points).*

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

g. *Quality of the Project Evaluation (up to 10 points).*

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of external reviewers will read, prepare a written evaluation of, and score all eligible applications using the selection criteria and the competitive preference priority, if applicable, provided in this notice. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score. The Department may use more than one tier of reviews in evaluating grantees. The Department will prepare a rank order of applications based solely on the evaluation of their quality according to the selection criteria and competitive preference priority points.

In the event there are two or more applications with the same final score in the rank order listing, and there are insufficient funds to fully support each of these applications, the Department will apply the following procedure to determine which application or applications will receive an award:

First Tiebreaker: The first tiebreaker shall be the highest average score for the selection criterion of ''Significance.'' If a tie remains, the second tiebreaker shall be utilized.

Second Tiebreaker: The second tiebreaker shall be the highest average score for the selection criterion ''Adequacy of Resources.'' If a tie remains, the third tiebreaker shall be utilized.

Third Tiebreaker: The third tiebreaker shall be the highest average score for the Competitive Preference Priority ''Using Technology-Based Strategies for Personalized Learning and Continuous Improvement.'' If a tie remains, the fourth tiebreaker shall be utilized.

Fourth Tiebreaker: The applicant that proposes the highest estimate of projected savings that will be achieved for students in response to Absolute Priority 3.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency

previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department will use the following performance measures in assessing the successful performance of the Open Textbooks Pilot program grants:

a. The number of students who enrolled in courses that use open textbooks developed through the grant;

b. The number of students who completed courses which used the open textbooks developed through the grant;

c. Student and faculty evaluations of the quality of the open textbooks compared with other kinds of textbooks they have used, the ease of use of these materials and the cost savings associated with the use of open textbooks;

d. The average cost savings per student;

e. The total cost savings for students who used open textbooks compared to students in the same course of study who used traditional textbooks;

f. The number and percentage of courses among consortium members that adopted the use of open textbooks, where appropriate, as opposed to those that continued to use paper or electronic textbooks; and

g. The number of institutions outside of the consortium that adopted the use of the open textbooks produced through the grant.

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 24, 2018.

Diane Auer Jones,

Principal Deputy Under Secretary, Delegated to Perform the Duties of Under Secretary and Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2018–16264 Filed 7–27–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA has submitted an information collection request as required by the Paperwork Reduction Act of 1995. The information collection requests a three-year extension with changes to Form EIA–846, ''*Manufacturing Energy Consumption Survey*'' (MECS), OMB Control Number 1905–0169. Form EIA–846 collects data from the U.S. manufacturing sector on energy consumption, expenditures, shipments of energy offsite, end use consumption, building characteristics, participation in energy management programs, technologies, and fuel switching capacity.

DATES: Comments regarding this proposed information collection must be received on or before August 29, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as

soon as possible. The Desk Officer may be telephoned at (202) 395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer: Brandon Debruhl, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503. Email: *Brandon_F_DeBruhl@omb.eop.gov*; and to Tom Lorenz, Office of Energy Consumption and Efficiency Statistics, Forrestal Building, EI–22, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585 or by fax at (202) 586–9753, or by email at *Thomas.Lorenz@eia.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Tom Lorenz at the contact information given above or by email at *Thomas.Lorenz@eia.gov.* Form EIA–846 and its instructions are available on the internet at *https://www.eia.gov/survey/form/eia_846/proposed/2018/form.pdf.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1905–0169;

(2) *Information Collection Request Title:* Manufacturing Energy Consumption Survey;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* Form EIA–846 is a self-administered sample survey designed to collect energy consumption and expenditures data from establishments in the manufacturing sector; *i.e.,* North American Industry Classification System (NAICS) codes 31–33. The previous MECS required respondents to complete multiple collection forms depending on an establishment's primary business activity classification under NAICS. The increased use of technology by means of an internet data collection system has allowed the MECS to eliminate the need to have multiple forms;

(4a) *Changes to Information Collection:*

• Questions about Tire-Derived Fuel: EIA will collect data about tire-derived fuel (TDF) in the Waste Oils and Tars, and Waste Byproduct Gases section of the questionnaire starting on page 35 of Form EIA–846A. The new questions will be inserted after questions 138–139, specifically from those industries, Paper (NAICS 322) and Nonmetallic Mineral Products (NAICS 327) that use TDF as an energy source. EIA currently asks respondents to report TDF on the MECS in a section titled, ''Other.'' The change to report TDF as a separate category will reduce respondent uncertainty regarding where to report this information. The questions on TDF are the same questions that have previously been asked about this energy source: Purchases; expenditures; transfers-in; amount produced on-site; whether it's a product/byproduct of another energy source consumed on-site; and fuel consumption. Over the past three MECS cycles, TDF has become a growing energy source within the ''Other'' section and accounts for over half of the energy consumed that is reported in that section. Previous data collection cycles may have undercounted the use of TDF because some establishments did not know where to report their TDF volumes. By directly asking for these data as a separate data element, EIA will improve the coverage and accuracy of the use of this energy source.

• Question 16 about electric generation with less than one-megawatt nameplate capacity was added. EIA will collect data about small-scale (less than one megawatt) distributed electricity generation occurring at U.S. manufacturing establishments. EIA will add a Yes/No question about distributed generation to the electricity section of the MECS to monitor manufacturing establishments that use non-renewable distributed generation. Distributed generation is a subset of ''distributed energy resources'' which are modular, moderately sized generation sources that are used to produce electricity, or combined heat and power (CHP), near the site of end use. EIA expects that generation from non-renewable, small-scale distributed generation (*e.g.,* micro turbines, fuel cells, natural gas generator sets, and diesel generator sets below one megawatt) will increase in the future. This increase in non-renewable, small-scale distributed generation is expected to continue because of a variety of factors, including increased demand for reliable and resilient power, deployment mandates (*e.g.,* renewable portfolio standards), improved technology and decreased cost of distributed generation, low natural gas prices, and high retail electricity rates.

(5) *Annual Estimated Number of Respondents:* 15,000;

(6) *Annual Estimated Number of Total Responses:* 3,750;

(7) *Annual Estimated Number of Burden Hours:* 34,565;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The cost of the burden hours is estimated to be $2,616,225 (34,565 burden hours times $75.69 per hour). EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified as 15 U.S.C. 772(b) and the DOE Organization Act of 1977, Pub. L. 95–91, codified at 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC, on July 17, 2018.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2018–16250 Filed 7–27–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–186–000]

PATH Allegheny Transmission Company, LLC; Notice of Petition for Declaratory Order

Take notice that on July 23, 2018, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2017), PATH Allegheny Transmission Company, LLC and its subsidiaries, PATH Allegheny Virginia Transmission Corporation (PATH–VA) and PATH Allegheny Maryland Transmission Corporation (PATH–MD), (together, PATH AYE) filed a petition requesting the Commission issue a declaratory order determining that PATH AYE's distribution of paid-in capital to its ultimate parent company—FirstEnergy Corp., will not violate section 305(a) of the Federal Power Act,[1] 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

[1] 16 U.S.C. 825d(a) (2012).

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 August 22, 2018.

Dated: July 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16231 Filed 7–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. 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.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP15–558–000	7–16–2018	[1] Mass Mailing
Exempt:		
1. P–2809–034	7–10–2018	State of Maine Department of Marine Resources

[1] Twenty Seven letters have been sent to FERC Commissioners under this docket number.

Dated: July 24, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–16219 Filed 7–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–187–000]

PATH West Virginia Transmission Company, LLC; Notice of Petition for Declaratory Order

Date: July 24, 2018.

Take notice that on July 23, 2018, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2017), PATH West Virginia Transmission Company, LLC (Petitioner), filed a petition for a declaratory order requesting that the Commission find that its distributions of paid-in capital to its parent companies FirstEnergy Corp. and American Electric Power Company, Inc. will not violate section 305(a) of the Federal Power Act,[1] 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.

[1] 16 U.S.C. 825d(a) (2012).

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 August 22, 2018.

Dated: July 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16234 Filed 7–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–26–000]

Notice of Availability of the Environmental Assessment for the Proposed Texas Eastern Transmission, LP, Lambertville East Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Lambertville East Expansion Project, proposed by Texas Eastern Transmission, LP (Texas Eastern) in the above-referenced docket. Texas Eastern requests authorization to replace two existing natural gas-fired turbine compressor engines and appurtenant facilities at their existing Lambertville Compressor Station in Hunterdon County, New Jersey.

The EA assesses the potential environmental effects of the construction and operation of the Lambertville East 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 Lambertville East Expansion Project includes abandonment by removal of the following facilities at Texas Eastern's existing Lambertville Compressor Station:

- Two 5,100 horsepower Clark DC–990 natural gas-fired turbine compressor units and associated building, coolers, and auxiliary piping and equipment;
- four retired reciprocating compressor units [1] and associated building, coolers, and auxiliary piping and equipment;
- an existing warehouse; and
- auxiliary and control buildings.

Additionally, the proposed project includes construction and operation of the following new facilities at the Lambertville Compressor Station:

- A new compressor building to house two new Solar Taurus 70 natural gas-fired turbine compressor units rated at 8,600 horsepower each and associated piping and equipment;
- electrical control and auxiliary buildings, replacement warehouse buildings, and an electrical generator building;
- appurtenant facilities;
- yard piping modifications; and
- new plant roads and reconfiguration of existing plant roads.

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, groups, and commenters. 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 EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on August 23, 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 (CP18–26–000) with your submission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature 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). Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant 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 in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP18–26). 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 all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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[1] The four existing reciprocating compressor units were retired in 2011 as part of Texas Eastern's Advanced Notification filing in Docket No. CP11–143–000.

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: July 24, 2018.

Kimberly D. Bose

Secretary.

[FR Doc. 2018–16233 Filed 7–27–18; 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: EC18–124–000.
Applicants: Atlantic City Electric Company, Public Service Electric and Gas Company, Delmarva Power & Light Company, Potomac Electric Power Company, PECO Energy Company, PPL Electric Utilities Corporation, UGI Utilities Inc., Baltimore Gas and Electric Company.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Atlantic City Electric Company, et al.
Filed Date: 7/23/2018.
Accession Number: 20180723–5216.
Comment Date: 5 p.m. ET 8/13/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–343–008; ER13–342–012; ER16–700–001; ER16–701–001.
Applicants: CPV Maryland, LLC, CPV Shore, LLC, CPV Towantic, LLC, CPV Valley, LLC.
Description: Amendment to June 30, 2017 Market Power Update of CPV Maryland, LLC, et. al.
Filed Date: 7/23/18.
Accession Number: 20180723–5233.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: ER17–706–004.
Applicants: GridLiance West LLC.
Description: Compliance filing: GridLiance West 7–23–18 Compliance Filing to be effective 9/14/2017.
Filed Date: 7/23/18.
Accession Number: 20180723–5172.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: ER18–1169–001.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 2018–07–23 Commitment Cost Enhancements Phase 3 Compliance to be effective 11/1/2018.
Filed Date: 7/23/18.
Accession Number: 20180723–5194.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: ER18–1778–000.
Applicants: CFE International LLC.
Description: Supplement to June 13, 2018 CFE International LLC tariff filing (certified translations for documents cited in the affidavit of Dr. Agustin J. Ros and Ms. Judy W. Chang).
Filed Date: 7/20/2018.
Accession Number: 20180720–5210.
Comment Date: 5 p.m. ET 8/10/2018.

Docket Numbers: ER18–1952–001.
Applicants: Gulf Power Company.
Description: Tariff Amendment: Gulf Power Amendment to Market-Based Rate Filing to be effective 12/30/2018.
Filed Date: 7/24/18.
Accession Number: 20180724–5118.
Comments Due: 5 p.m. ET 8/14/18.

Docket Numbers: ER18–1953–001.
Applicants: Gulf Power Company.
Description: Tariff Amendment: Amendment to July 3, 2018 OATT Filing to be effective 12/30/2018.
Filed Date: 7/24/18.
Accession Number: 20180724–5115.
Comments Due: 5 p.m. ET 8/14/18.

Docket Numbers: ER18–1954–001.
Applicants: Gulf Power Company.
Description: Tariff Amendment: Amendment to July 3, 2018 NITSA Filing to be effective 12/30/2018.
Filed Date: 7/24/18.
Accession Number: 20180724–5117.
Comments Due: 5 p.m. ET 8/14/18.

Docket Numbers: ER18–2052–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: WAPA Work Performance Agreement for Pleasant Valley Pumping Plant (SA 59) to be effective 7/24/2018.
Filed Date: 7/23/18.
Accession Number: 20180723–5212.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: ER18–2053–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Second Revised ISA No. 3917, Queue No. Y1—047/Y2–060/Z2–103/AD1–110 to be effective 6/22/2018.
Filed Date: 7/23/18.
Accession Number: 20180723–5186.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: ER18–2054–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2018–07–23_Attachment X GIP and GIA revisions relative to EL18–17–000 to be effective 7/24/2018.
Filed Date: 7/23/18.
Accession Number: 20180723–5209.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: ER18–2055–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 1154R14 Associated Electric Cooperative NITSA and NOA to be effective 7/1/2018.
Filed Date: 7/24/2018.
Accession Number: 20180724–5016.
Comment Date: 5 p.m. ET 8/14/2018.

Docket Numbers: ER18–2056–000.
Applicants: CenterPoint Energy Houston Electric, LLC.
Description: § 205(d) Rate Filing: TFO Tariff Interim Rate Revision to Conform with PUCT-Approved Rate—April 2018 to be effective 4/27/2018.
Filed Date: 7/24/18.
Accession Number: 20180724–5061.
Comments Due: 5 p.m. ET 8/14/18.

Docket Numbers: ER18–2057–000.
Applicants: CenterPoint Energy Houston Electric, LLC.
Description: § 205(d) Rate Filing: TFO Tariff Interim Rate Revision to Conform with PUCT-Approved Rate—July 2018 to be effective 7/11/2018.
Filed Date: 7/24/18.
Accession Number: 20180724–5063.
Comments Due: 5 p.m. ET 8/14/18.

Docket Numbers: ER18–2058–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Attachment AE to Change Market Settlement Timelines to be effective 5/1/2019.
Filed Date: 7/24/2018.
Accession Number: 20180724–5073.
Comment Date: 5:00 p.m. ET 8/14/18.

Docket Numbers: ER18–2059–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2018–07–24_SA 3138 Pioneer-DEI Interconnection Agreement to be effective 6/20/2018.
Filed Date: 7/24/2018.
Accession Number: 20180724–5096.
Comment Date: 5:00 p.m. ET 8/14/18.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's

Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 24, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–16218 Filed 7–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14879–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications: Go With the Flow Hydro Power, LLC

On June 8, 2018, Go With the Flow Hydro Power, LLC (Go With the Flow) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Go With the Flow Hydroelectric Project (project) to be located on the Umatilla River about 8.7 river miles upstream from the confluence with the Columbia River, and 2.1 miles west southwest of Hermiston in Umatilla county, Oregon. On July 11, 2018, the applicant filed an amended permit application for the project. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project will be at the site of the existing, abandoned Jim Boyd Hydroelectric Project (P–7269). The license for the Jim Boyd Project was terminated in 2011, and Go With the Flow has purchased these facilities. The proposed run-of-river project will involve rehabilitation and upgrade of the following existing facilities: A 3.5-foot-high concrete diversion weir; a canal intake with trashracks and fish screens; A 5,350-foot-long power canal; four 5-foot-diameter, 280-foot-long steel penstocks; a powerhouse with 4 turbine/generators with rated capacity of 300 kilowatts (kW) each for a total capacity of 1,200 kW; a 60-foot-wide, 20 foot-long concrete-lined tailrace; a 0.25-mile-long, 12.47 kilovolt transmission line; and access roads.

The estimated averaged annual generation of the project would be 3 gigawatt-hours and would be conveyed from the powerhouse to the existing Pacific Power and Light Company substation.

Applicant Contact: Mark Sigl, Go With the Flow Hydro Power, LLC, 8021 Firestone Way, Antelope, CA 95843, phone (916) 812–5051.

FERC Contact: Kim Nguyen, (202) 502–6105.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14879–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibary.asp.* Enter the docket number (P–14879) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 24, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–16232 Filed 7–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed fiscal year 2019 base charge and rates for electric service.

SUMMARY: Western Area Power Administration (WAPA) is proposing to calculate formula rates for fiscal year (FY) 2019 Boulder Canyon Project (BCP) electric service. The expiration of the FY 2018 base charge and rates on September 30, 2018, requires this action. The proposed base charge will provide sufficient revenue to recover all annual costs and repay investment obligations within the allowable period. The proposed base charge and rates are scheduled to become effective on October 1, 2018, and will remain in effect through September 30, 2019. Publication of this **Federal Register** notice will initiate the public process.

DATES: The consultation and comment period begins today and will end October 29, 2018. WAPA will present a detailed explanation of the proposed FY 2019 base charge and rates at a public information forum that will be held on August 29, 2018, from 10:00 a.m. to 12:00 p.m. Mountain Standard Time (MST) in Phoenix, Arizona. WAPA will also host a public comment forum that will be held on September 28, 2018, from 10:00 a.m. to 12:00 p.m. MST in Phoenix, Arizona. Written comments will be accepted any time during the consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at WAPA's Desert Southwest Customer Service Regional Office located at 615 South 43rd Avenue, Phoenix, Arizona 85009. Send written comments to Mr. Ronald E. Moulton, Regional Manager and Senior Vice President, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, Arizona 85005–6457, or email *dswpwrmrk@wapa.gov.* WAPA will post information about the rate process and written comments received on its website at: *http://www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.* Written comments must be received by the end of the consultation and comment period to be considered by WAPA in its decision process.

As access to federal facilities is controlled, any U.S. citizen wishing to attend a public forum at WAPA must

present an official form of picture identification (ID), such as a U.S. driver's license, U.S. passport, U.S. government ID, or U.S. military ID at the time of the meeting. Foreign nationals should contact Ms. Tina Ramsey, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, at (602) 605–2565 or email at *ramsey@wapa.gov* in advance of a forum to obtain the necessary form for admittance to the Desert Southwest Customer Service Regional Office.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Ramsey, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, Arizona 85005–6457, (602) 605–2565, or email *ramsey@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Hoover Dam, authorized by the Boulder Canyon Project Act (45 Stat. 1057, December 21, 1928), sits on the Colorado River along the Arizona-Nevada border. Hoover Dam's power plant has 19 generating units (two for plant use) and an installed capacity of 2,078.8 megawatts (4,800 kilowatts for plant use). High-voltage transmission lines and substations deliver this power to southern Nevada, Arizona, and southern California, where it is marketed and sold by WAPA in collaboration with the Bureau of Reclamation (Reclamation).

The rate-setting methodology for BCP calculates an annual base charge rather than a unit rate for power. Though WAPA determines a unit rate for comparative purposes, BCP contractors are billed the base charge in proportion to their allocation of BCP power.

Rate Schedule BCP–F10 was confirmed and approved by the Federal Energy Regulatory Commission (FERC) for a five-year period ending September 30, 2022.[1] Rate Schedule BCP–F10 requires the base charge and rate formulas be calculated annually based on current financial and hydrology data. The base charge is designed to recover an annual revenue requirement that includes investment repayment, interest, operations, maintenance and replacements, payments to states, and Hoover Dam visitor services. The total costs are offset by projected revenue from water sales, the Hoover Dam visitor services, ancillary services, and late fees. The annual revenue requirement is the base charge for electric service divided equally between capacity and energy. The annual composite rate is the base charge divided by annual energy sales.

COMPARISON OF BASE CHARGE AND RATES

	Existing FY 2018	Proposed FY 2019	Amount change	Percent change
Base Charge ($)	$76,910,193	$69,741,657	− $7,168,536	− 9.3
Composite Rate (mills/kWh)	19.98	18.92	− 1.06	− 5.3
Energy Rate (mills/kWh)	9.99	9.46	− 0.53	− 5.3
Capacity Rate ($/kW-Mo)	$1.99	$1.88	− $0.11	− 5.4

The **Federal Register** notice initiating the FY 2018 public process proposed a one-time $15 million working capital collection for Reclamation for the new 50-year marketing period beginning October 1, 2017, which caused an increase to the base charge for FY 2018.[2] At the time, WAPA anticipated a corresponding $15 million reduction to the base charge for FY 2019. During the FY 2018 public process, Reclamation and WAPA worked collaboratively with BCP customers to address customer concerns about the increase in the base charge resulting from the working capital collection. Reclamation and WAPA moderated the impact of the base charge increase by lowering some costs in FY 2018 and deferring other costs to FY 2019. The final result was a $7.2 million increase to the base charge rather than the $15 million increase originally proposed.

The proposed FY 2019 base charge is decreasing $7.2 million from the FY 2018 base charge. This change is attributed to deferred costs, adjusted non-power revenue projections, and working capital. Reclamation's costs for operations, maintenance and replacements, and visitor services are increasing $2.7 million primarily as a result of deferrals from FY 2018, while WAPA's costs remain relatively flat. Non-power revenue projections are decreasing $5.1 million due to decreased tourism projections while the Hoover Dam Visitor Center and elevators are being renovated. The $15 million working capital for the new marketing period was collected in FY 2018 and no further collections are necessary in FY 2019.

Reclamation and WAPA will continue to review projections to further reduce the proposed FY 2019 base charge, thereby benefitting all BCP customers. A lower base charge will also help offset the impact of financial obligations from the previous marketing period, referred to as transitional items, assessed to new customers independent of the base charge calculation. Any resulting changes to the proposed FY 2019 base charge will be presented at the public information forum.

The proposed FY 2019 composite and energy rates decreased 5.3 percent and the capacity rate decreased 5.4 percent compared to the FY 2018 rates. The percentage decrease between the proposed base charge and rates differs due to energy and capacity projections.

This proposal, to be effective October 1, 2018, is preliminary and subject to change based on modifications to forecasts before publication of the final base charge and rates.

Legal Authority

The proposed formulas for electric service and the base charge and rates constitute a major rate adjustment, as defined by 10 CFR 903.2(e); therefore WAPA will hold public information and public comment forums for this rate adjustment, pursuant to 10 CFR 903.15 and 903.16. WAPA will review and consider all timely public comments and amend or adjust the proposal as appropriate. Proposed rates will be forwarded to the Deputy Secretary of Energy for approval.

WAPA is proposing this action in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section

[1] EF18–1–000 (June 6, 2018).

[2] 82 FR 27814 (September 18, 2017).

9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the BCP.

By Delegation Order No. 00–037.00B effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in rate adjustments (10 CFR 903) were published on September 18, 1985 (50 FR 37835).

Availability of Information

All studies, comments, letters, memorandums, and other documents WAPA prepares or uses to develop the proposed base charge and rates will be available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, located at 615 South 43rd Avenue, Phoenix, Arizona 85009. Many of these documents and supporting information are available on WAPA's website at: *http://www.wapa.gov/regions/DSW/Rates/Pages/boulder-canyon-rates.aspx.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: July 20, 2018.

Mark A. Gabriel,

Administrator.

[FR Doc. 2018–16248 Filed 7–27–18; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0562]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 28, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0562.

Title: Section 76.916, Petition for Recertification.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents and Responses: 10 respondents; 15 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Total Annual Burden: 150 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.916 provides that a franchising authority wishing to assume jurisdiction to regulate basic cable service and associated rates after its request for certification has been denied or revoked, may file a petition for recertification with the Commission. The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification. Oppositions to petitions may be filed within 15 days after the petition is filed. Replies may be filed within seven days of filing of oppositions.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2018–16199 Filed 7–27–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

DATES: The agency must receive comments on or before September 28, 2018.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, 202–418–2054.

SUPPLEMENTARY INFORMATION: The following applicants filed AM or FM proposals to change the community of license: MARION R. WILLIAMS, WAKE(AM), Fac. ID No. 53057, Channel 1500 kHz, From VALPARAISO, IN, To HOBART, IN, BP–20180504ABA; MARSHFIELD BROADCASTING CO., INC., WMEX(AM), Fac. ID No. 12789, Channel 1510 kHz, From BOSTON, MA, To QUINCY, MA, BP–20180615AAH; REVIVAL CHRISTIAN MINISTRIES, INC., WSGG(FM), Fac. ID No. 92857, Channel 207A, From NORFOLK, CT, To CANAAN, CT, BPED–20180430AAI; RIVER RAT RADIO, LLC, NEW(FM), Fac. ID No. 198736, Channel 269C2, From BAGDAD, AZ, To CIENEGA SPRINGS, AZ, BMPH–20180530AAZ; PHARIS BROADCASTING, INC., KHGG–FM, Fac. ID No. 12231, Channel 278A, From WALDRON, AR, To MANSFIELD, AR, BPH–20180619AAZ; PHARIS BROADCASTING, INC., KQBK(FM), Fac. ID No. 71701, Channel 284C2, From BOONEVILLE, AR, To WALDRON, AR, BPH–20180619ABA; and BRYAN A. KING, KOTY(FM), Fac. ID No. 83100, Channel 240C3, From MERTZON, TX, To CHRISTOVAL, TX, BPH–20180709AAU.

The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW, Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.*

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2018–16152 Filed 7–27–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of Intent To Terminate Receiverships

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'' or ''Receiver''), as Receiver for the institutions listed below, intends to terminate its receivership for said institutions.

Fund	Receivership name	City	State	Date of receiver appointment
4637	First National Bank of Keystone	Keystone	WV	9/1/1999
10446	Security Exchange Bank	Marietta	GA	6/15/2012

The liquidation of the assets for each receivership has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors. Based upon the foregoing, the Receiver has determined that the continued existence of the receiverships will serve no useful purpose. Consequently, notice is given that the receiverships shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of any of the receiverships, such comment must be made in writing, identify the receivership to which the comment pertains, and be sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201. No comments concerning the termination of the above-mentioned receiverships will be considered which are not sent within this time frame.

Dated at Washington, DC, on July 25, 2018.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2018–16185 Filed 7–27–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request (OMB No. 3064–0185)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, pursuant to the mandatory reporting requirements of the Paperwork Reduction Act of 1995 (OMB No. 3064–0185), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection.

DATES: Comments must be submitted on or before September 28, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *https://www.FDIC.gov/regulations/laws/federal.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Jennifer Jones (202–898–6768), Counsel, MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant Office of Management and Budget (OMB) control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jennifer Jones, Counsel, 202–898–6768, *jennjones@fdic.gov,* MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Resolution Plans Required for Insured Depository Institutions With $50 Billion or More in Total Assets.

OMB Number: 3064–0185.

Form Number: None.

Affected Public: Large and Highly Complex Depository Institutions.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Frequency of response	Total annual estimated burden (hours)
Contingent Resolution Plan (CIDI Subsidiaries of Regional Bank Holding Companies and CIDI Subsidiaries of U.S. GSIFIs).	Reporting	Mandatory	4	1	7,200	On Occasion	28,800
Contingent Resolution Plan—Annual Update (CIDI Subsidiaries of Regional Bank Holding Companies)*.	Reporting	Mandatory	28	1	6,613	Annual	185,164
Contingent Resolution Plan—Annual Update (CIDI Subsidiaries of U.S. GSIFIs)*.	Reporting	Mandatory	9	1	39,843	Annual	358,587
Notice of Material Change (CIDI Subsidiaries of Regional Bank Holding Companies and CIDI Subsidiaries of U.S. GSIFIs).	Reporting	Mandatory	1	2	120	On Occasion	240
Total Hourly Burden	.....	.....	.....	.....	.....	.....	572,791

*Because submissions have been required no more frequently than biennially, the burden associated with the Annual Update has been multiplied by ⅔ to represent two Annual Update filings over the three-year period contemplated by this notice and renewal.

General Description of Collection: Section 360.10 of the FDIC's regulations (12 CFR 360.10 or the Rule) requires certain insured depository institutions (IDIs) to submit a Resolution Plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets, and minimizes the amount of any loss to be realized by the institution's creditors. An IDI with $50 billion or more in total assets (*i.e.,* a covered IDI or CIDI) is required to submit periodically to the FDIC a contingent plan for the resolution of such institution in the event of its failure.

The Rule established the requirements for submission and content of a Resolution Plan, as well as procedures for review by the FDIC. After the initial submission, the Rule requires plan submissions on an annual basis (Annual Update) unless the FDIC determines to change the submission date. A CIDI must notify the FDIC of any event, occurrence, change in conditions or circumstances or other change which results in, or reasonably could be foreseen to have, a material effect on the CIDI's resolution plan.

The Rule is intended to address the continuing exposure of the banking industry to the risks of insolvency of large and complex IDIs that can be mitigated with proper resolution planning. The Interim Final Rule, which preceded the Rule, became effective January 1, 2012, and remained in effect until it was superseded by the Rule on April 1, 2012.

The annual burden for this information collection is estimated to be 572,791 hours. This represents an increase of 281,305 hours from the current burden estimate of 291,486 hours. This increase is not due to any new requirements imposed by the FDIC. Rather, it is due to FDIC's reassessment of the burden hours associated with responding to the existing requirements of the Rule and to guidance, feedback, and additional requests for information by the FDIC as part of the iterative resolution planning process. The revised estimates are informed by feedback received from the CIDIs over the past year. Because submissions have been required no more frequently than biennially, the burden associated with the Annual Update has been multiplied by ⅔ to represent two Annual Update filings over the three-year period contemplated by this notice and renewal.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, on July 25, 2018.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2018–16186 Filed 7–27–18; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 83 FR 35476

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, July 31, 2018 at 10:00 a.m.

CHANGES IN THE MEETING:

This meeting will also discuss:

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Deputy Secretary of the Commission.

[FR Doc. 2018–16325 Filed 7–26–18; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, August 2, 2018 at 10:00 a.m.

PLACE: 1050 First Street NE, Washington, DC (12th Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes for June 28, 2018

Draft Advisory Opinion 2018–08: Issa

Draft Advisory Opinion 2018–10: United Utah Party Candidate Committee

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dayna C. Brown, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

Dayna C. Brown,

Secretary and Clerk of the Commission.

[FR Doc. 2018–16399 Filed 7–26–18; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2018–N–07]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning an information collection known as ''Minority and Women Inclusion,'' which has been assigned control number 2590–0014 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on July 31, 2018.

DATES: Interested persons may submit comments on or before August 29, 2018.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov.* Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Minority and Women Inclusion, (No. 2018–N–07)' '' by any 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 the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Minority and Women Inclusion, (No. 2018–N–07)''.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Sylvia Martinez, Principal Policy Analyst, Office of Minority and Women Inclusion, by email at *Sylvia.Martinez@fhfa.gov* or by telephone at (202) 649–3301; or Eric Raudenbush, Associate General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Federal Housing Finance Agency (FHFA) is seeking comments on its collection of information regarding the minority and gender classification of individuals serving on the boards of directors of the Federal Home Loan Banks (Banks) and of the Office of Finance under FHFA's regulations on Minority and Women Inclusion (MWI), codified at 12 CFR part 1223, which it will be submitting for renewal of the OMB control number under the PRA.

A. Need for and Use of the Information Collection

The Federal Home Loan Bank System (Bank System) consists of eleven regional Banks and the Office of Finance, which issues and services the Banks' debt securities. The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible non-member entities. Each Bank is structured as a regional cooperative that is owned and controlled by member financial institutions located within its district, which are also its primary customers. The Bank Act vests the management of each Bank in a board of directors that consists of two types of directors: (1) Member directors, who are drawn from the officers and directors of member institutions located in the Bank's district and who are elected to represent members in a particular state in that district; and (2) independent directors, who are unaffiliated with any of the Bank's member institutions, but who reside in the Bank's district and are elected on an at-large basis.[1] The Office of Finance is also governed by a board of directors, which consists of the presidents of the eleven Banks and five independent directors.[2]

Section 1319A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) requires that each of the Banks establish an Office of Minority and Women Inclusion (OMWI) to be responsible for all matters relating to diversity in its management, employment, and business activities, in accordance with requirements established by FHFA.[3] Section 1319A also requires that each Bank implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of women and minorities ''at all levels'' of its business and activities, and submit an annual report to FHFA detailing actions taken to achieve those goals.[4]

FHFA's MWI regulations implement those statutory requirements and also extend the requirements to the Office of Finance. The regulations require generally that each Bank and the Office of Finance ''develop, implement, and maintain policies and procedures to ensure, to the maximum extent possible, in balance with financially safe and sound business practices, the inclusion and utilization of minorities, women, individuals with disabilities, and minority-, women-, and disabled-owned businesses in all business and activities and at all levels of the regulated entity, including in management, employment, procurement, insurance, and all types of contracts.'' [5] In recognition of the fact that each Bank is required by statute to promote diversity and inclusion ''at all levels'' of its business and activities, the MWI regulations further require that the Banks' policies and procedures (as well as those of the Office of Finance) ''[e]ncourage the consideration of

[1] *See* 12 U.S.C. 1427(a)(1), (b), (d).

[2] *See* 12 CFR 1273.7(a).

[3] *See* 12 U.S.C. 4520(a).

[4] *See* 12 U.S.C. 4520(b), (d).

[5] *See* 12 CFR 1223.21(b).

diversity in nominating or soliciting nominees for positions on boards of directors and engage in recruiting and outreach directed at encouraging individuals who are minorities, women, and individuals with disabilities to seek or apply for employment with the regulated entity.''[6]

In conformity with the statutory requirements, FHFA's MWI regulations require that each Bank and the Office of Finance submit to FHFA an annual report describing, among other things, its efforts to promote diversity at all levels of management and employment, and the results of those efforts.[7] In order to provide a quantitative basis upon which to assess the results of those efforts, FHFA's regulations require that each Bank and the Office of Finance set forth in in their respective annual reports the demographic data reported on the EEO–1 form, which they are required to file annually with the Equal Employment Opportunity Commission (EEOC).[8] The EEO–1 form requires that each respondent provide race, ethnicity, and gender information for its employees, broken down into various job categories. Because the EEO–1 form does not require that a respondent provide information on board directors, FHFA cannot use the EEO–1 data to assess the effectiveness of the Bank System's efforts to ''encourage the consideration of diversity in nominating or soliciting nominees for positions on boards of directors.''

Therefore, in order to enable FHFA to assess those efforts, the MWI regulations separately require that the annual reports set forth ''[d]ata showing for the reporting year by minority and gender classification, the number of individuals on the board of directors of each Bank and the Office of Finance,'' using the same racial and ethnic classifications that are used on the EEO–1 form (which comply with OMB's ''Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting'').[9] The regulation requires that each Bank and the Office of Finance collect that data ''through an information collection requesting each director's voluntary self-identification of his or her minority and gender classification without personally identifiable information.''

FHFA uses the information collected under this control number to assess the effectiveness of the policies and procedures that each Bank and the Office of Finance is required to implement to promote diversity in all of its business and activities ''at all levels'' and, specifically, to encourage diversity in the nomination and solicitation of nominees for members of its boards of directors. FHFA also uses the information to establish a baseline to analyze future trends related to the diversity of the boards of directors of the Banks and the Office of Finance and to assess the effectiveness of the strategies developed by the Banks and the Office of Finance for promoting, developing, and retaining diverse board talent.

B. Burden Estimate

FHFA estimates the total annual hour burden imposed upon respondents by this information collection to be 20 hours. This is based on estimates that 200 Bank and Office of Finance Directors will respond annually, with each response taking an average of 0.1 hours (6 minutes) (200 respondents × 0.1 hours = 20 hours).

C. Comments Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice and request for public comments regarding this information collection in the **Federal Register** on May 16, 2018.[10] The 60-day comment period closed on July 16, 2018. FHFA received no comments.

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: July 24, 2018.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2018–16230 Filed 7–27–18; 8:45 am]

BILLING CODE 8070–01–P

[6] *See* 12 CFR 1223.21(b)(7).

[7] *See* 12 CFR 1223.22(a).

[8] *See* 12 CFR 1223.23(b)(1). As required by 29 CFR 1602.7, each Bank and the Office of Finance annually files an EEO–1 form with the EEOC.

[9] *See* 12 CFR 1223.23(b)(10)(i).

[10] *See* 83 FR 22684 (May 16, 2018).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On April 27, 2018, the Board, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to extend for three years, without revision, the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019), which is currently an approved collection of information. The Board is publishing this proposal on behalf of the agencies. The comment period for this proposal ended on June 26, 2018, and no comments were received. The Board is giving notice that it is sending the collection to OMB for review.

DATES: Comments must be submitted on or before August 29, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.

You may submit comments, which should refer to ''FFIEC 019,'' by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include the reporting form number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW Washington, DC 20551.

All public comments are available from the Board's website at *www.federalreserve.gov/generalinfo/*

foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed extension without revision of the FFIEC 019 discussed in this notice, please contact the agency staff member whose name appears below. In addition, a copy of the FFIEC 019 form can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board is proposing to extend for three years, without revision, the FFIEC 019.

Report Title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 019.

OMB Control Number: 7100–0213.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Respondents: All branches and agencies of foreign banks domiciled in the United States with total direct claims on foreign residents in excess of $30 million.

Estimated Number of Respondents: 156.

Estimated Average Burden per Response: 10 hours.

Estimated Total Annual Burden: 6,240 hours.

Type of Review: Extension of currently approved collection.

I. General Description of Report

This information collection is required pursuant to sections 7 and 13 of the International Banking Act (12 U.S.C. 3105 and 3108) for the Board, sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817 and 1820) for the FDIC, and the National Bank Act (12 U.S.C. 161) as applied through section 4 of the International Banking Act (12 U.S.C. 3102) for the OCC. The FFIEC 019 is given confidential treatment consistent with 5 U.S.C. 552(b)(4) and (b)(8).

Abstract

The FFIEC 019 report must be filed by each U.S. branch or agency of a foreign bank that has total direct claims on foreign residents in excess of $30 million. The branch or agency reports its total exposure (1) to residents of its home country, and (2) to the other five foreign nations to which its exposure is largest and is at least $20 million. The home country exposure must be reported regardless of the size of the total claims for that nation.

Each respondent must report by country, as appropriate, the information on its direct claims (assets such as deposit balances with banks, loans, or securities), indirect claims (which include guarantees), and total adjusted claims on foreign residents, as well as information on commitments. The respondent also must report information on claims on related non-U.S. offices that are included in total adjusted claims on the home country, as well as a breakdown for the home country and each other reported country of adjusted claims on unrelated foreign residents by the sector of borrower or guarantor, and by maturity (in two categories: One year or less, and over one year). The Federal Reserve System collects and processes this report on behalf of all three agencies.

II. Current Actions

On April 27, 2018, the Board requested comment for 60 days on a proposal to extend for three years, without revision, the FFIEC 019 report (83 FR 18564). The Board did not receive any comments on the proposal and is now submitting a request to OMB for review and approval to extend for three years, without revision, the FFIEC 019 report.

III. Request for Comment

The FFIEC 019 has remained substantially the same, including with respect to the reporting scope and thresholds, since its original adoption in May 1997. Although the agencies are not proposing any revisions to the FFIEC 019, they are interested in respondents' views on potential revisions they should consider in future proposals. This includes views on whether and how to adjust the $20 million minimum threshold for reporting a non-home foreign country exposure and whether to change the number of non-home foreign countries over that threshold that are reported.

Public comment is requested on all aspects of this notice. Comment is also specifically invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted to the Board in response to this notice will be shared with the other agencies. All comments will become a matter of public record.

Board of Governors of the Federal Reserve System, July 24, 2018.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2018–16173 Filed 7–27–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No.: 0970–0036]

Submission for OMB Review; Comment Request

Title: ORR–6, ORR Requirements for Refugee Cash Assistance; and Refugee Medical Assistance (45 CFR part 400).

Description: As required by section 412(e) of the Immigration and Nationality Act, the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is requesting the information from Form ORR–6 to determine the effectiveness of the State cash and medical assistance, and social services programs. State-by-State Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) utilization rates derived from Form ORR–6 are calculated for use in formulating program initiatives,

priorities, standards, budget requests, and assistance policies. ORR regulations require that State Refugee Resettlement and Wilson-Fish agencies, and local and Tribal governments complete Form ORR–6 in order to participate in the above-mentioned programs.

Respondents: State governments, Replacement Designees, and Wilson/Fish Alternative Projects.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–6 Performance Report	59	2	15	1,770

Estimated Total Annual Burden Hours: 1,770.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–15987 Filed 7–27–18; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0547]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 29, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0744. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Survey on the Occurrence of Foodborne Illness Risk Factors in Selected Retail and Foodservice Facility Types

OMB Control Number 0910–0744—Extension

I. Background

From 1998 to 2008, FDA's National Retail Food Team conducted a study to measure trends in the occurrence of foodborne illness risk factors, preparation practices, and employee behaviors most commonly reported to the Centers for Disease Control and Prevention as contributing factors to foodborne illness outbreaks at the retail level. Specifically, data was collected by FDA Specialists in retail and foodservice establishments at 5-year intervals (1998, 2003, and 2008) to observe and document trends in the occurrence of the following foodborne illness risk factors:

- Food from Unsafe Sources,
- Poor Personal Hygiene,
- Inadequate Cooking,
- Improper Holding/Time and Temperature, and
- Contaminated Equipment/Cross-Contamination.

FDA developed reports summarizing the findings for each of the three data collection periods (1998, 2003, and 2008) (Refs. 1 to 3). Data from all three data collection periods were analyzed to detect trends in improvement or regression over time and to determine whether progress had been made toward the goal of reducing the occurrence of foodborne illness risk factors in selected retail and foodservice facility types (Ref. 4).

Using this 10-year survey as a foundation, in 2013 to 2014 FDA initiated a new study in full service and fast food restaurants. This study will span 10 years with a data collection currently being conducted in 2017 to 2018 and another data collection planned for 2021 to 2022 (the subject of this information collection request extension).

TABLE 1—DESCRIPTION OF THE FACILITY TYPES INCLUDED IN THE SURVEY

Facility type	Description
Full Service Restaurants	A restaurant where customers place their order at their table, are served their meal at the table, receive the service of the wait staff, and pay at the end of the meal.
Fast Food Restaurants	A restaurant that is not a full service restaurant. This includes restaurants commonly referred to as quick service restaurants and fast casual restaurants.

The purpose of the study is to:

- Assist FDA with developing retail food safety initiatives and policies focused on the control of foodborne illness risk factors;
- Identify retail food safety work plan priorities and allocate resources to enhance retail food safety nationwide;
- Track changes in the occurrence of foodborne illness risk factors in retail and foodservice establishments over time; and
- Inform recommendations to the retail and foodservice industry and State, local, tribal, and territorial regulatory professionals on reducing the occurrence of foodborne illness risk factors.

The statutory basis for FDA conducting this study is derived from the Public Health Service Act (PHS Act) (42 U.S.C. 243, section 311(a)). Responsibility for carrying out the provisions of the PHS Act relative to food protection was transferred to the Commissioner of Food and Drugs in 1968 (21 CFR 5.10(a)(2) and (4)). Additionally, the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 301 *et seq.*) and the Economy Act (31 U.S.C. 1535) require FDA to provide assistance to other Federal, State, and local government bodies.

The objectives of the study are to:

- Identify the least and most often occurring foodborne illness risk factors and food safety behaviors/practices in retail and foodservice facility types during each data collection period;
- Track improvement and/or regression trends in the occurrence of foodborne illness risk factors during the 10-year study period;
- Examine potential correlations between operational characteristics of food establishments and the control of foodborne illness risk factors;
- Examine potential correlations between elements within regulatory retail food protection programs and the control of foodborne illness risk factors; and
- Determine the extent to which food safety management systems and the presence of a certified food protection manager impact the occurrence of foodborne illness risk factors.

The methodology to be used for this information collection is described as follows. To obtain a sufficient number of observations to conduct statistically significant analysis, FDA will conduct approximately 400 data collections in each facility type. This sample size has been calculated to provide for sufficient observations to be 95 percent confident that the compliance percentage is within 5 percent of the true compliance percentage.

A geographical information system database containing a listing of businesses throughout the United States provides the establishment inventory for the data collections. FDA samples establishments from the inventory based on the descriptions in table 1. FDA does not intend to sample operations that handle only prepackaged food items or conduct low-risk food preparation activities. The ''FDA Food Code'' contains a grouping of establishments by risk, based on the type of food preparation that is normally conducted within the operation (Ref. 5). The intent is to sample establishments that fall under risk categories 2 through 4.

FDA has approximately 25 Retail Food Specialists (Specialists) who serve as the data collectors for the 10-year study. The Specialists are geographically dispersed throughout the United States and possess technical expertise in retail food safety and a solid understanding of the operations within each of the facility types to be surveyed. The Specialists are also standardized by FDA's Center for Food Safety and Applied Nutrition personnel in the application and interpretation of the FDA Food Code (Ref. 5).

Sampling zones have been established that are equal to the 150-mile radius around a Specialist's home location. The sample is selected randomly from among all eligible establishments located within these sampling zones. The Specialists are generally located in major metropolitan areas (*i.e.,* population centers) across the contiguous United States. Population centers usually contain a large concentration of the establishments FDA intends to sample. Sampling from the 150-mile radius sampling zones around the Specialists' home locations provides three advantages to the study:

1. It provides a cross section of urban and rural areas from which to sample the eligible establishments.
2. It represents a mix of small, medium, and large regulatory entities having jurisdiction over the eligible establishments.
3. It reduces overnight travel and therefore reduces travel costs incurred by the Agency to collect data.

The sample for each data collection period is evenly distributed among Specialists. Given that participation in the study by industry is voluntary and the status of any given randomly selected establishment is subject to change, substitute establishments have been selected for each Specialist for cases where the restaurant facility is misclassified, closed, or otherwise unavailable, unable, or unwilling to participate.

Prior to conducting the data collection, Specialists contact the State or local jurisdiction that has regulatory responsibility for conducting retail food inspections for the selected establishment. The Specialist verifies with the jurisdiction that the facility has been properly classified for the purposes of the study and is still in operation. The Specialist ascertains whether the selected facility is under legal notice from the State or local regulatory authority. If the selected facility is under legal notice, the Specialist will not conduct a data collection, and a substitute establishment will be used. An invitation is extended to the State or local regulatory authority to accompany the Specialist on the data collection visit.

A standard form is used by the Specialists during each data collection. The form is divided into three sections: Section 1—''Establishment Information''; Section 2—''Regulatory Authority Information''; and Section 3—''Foodborne Illness Risk Factor and Food Safety Management System Assessment.'' The information in Section 1—''Establishment Information'' of the form is obtained during an interview with the establishment owner or person in charge by the Specialist and includes a standard set of questions.

The information in Section 2—''Regulatory Authority Information'' is

obtained during an interview with the program director of the State or local jurisdiction that has regulatory responsibility for conducting inspections for the selected establishment. Section 3 includes three parts: Part A for tabulating the Specialists' observations of the food employees' behaviors and practices in limiting contamination, proliferation, and survival of food safety hazards; Part B for assessing the food safety management system being implemented by the facility; and Part C for assessing the frequency and extent of food employee hand washing. The information in Part A is collected from the Specialists' direct observations of food employee behaviors and practices. Infrequent, nonstandard questions may be asked by the Specialists if clarification is needed on the food safety procedure or practice being observed. The information in Part B is collected by making direct observations and asking followup questions of facility management to obtain information on the extent to which the food establishment has developed and implemented food safety management systems. The information in Part C is collected by making direct observations of food employee hand washing. No questions are asked in the completion of Section 3, Part C of the form.

FDA collects the following information associated with the establishment's identity: Establishment name, street address, city, state, zip code, county, industry segment, and facility type. The establishment identifying information is collected to ensure the data collections are not duplicative. Other information related to the nature of the operation, such as seating capacity and number of employees per shift, is also collected. Data will be consolidated and reported in a manner that does not reveal the identity of any establishment included in the study.

FDA has collaborated with the Food Protection and Defense Institute to develop a web-based platform in FoodSHIELD to collect, store, and analyze data for the Retail Risk Factor Study. This platform is accessible to State, local, territorial, and tribal regulatory jurisdictions to collect data relevant to their own risk factor studies. For the 2015 to 2016 data collection, FDA piloted the use of hand-held technology for capturing the data onsite during the data collection visits. The tablets that were made available for the data collections were part of a broader Agency initiative focused on internal uses of hand-held technology. The tablets provided for the data collection presented several technical and logistical challenges and increased the time burden associated with the data collection as compared to the manual entry of data collections. FDA continues to assess the feasibility for fully incorporating use of hand-held technology in subsequent data collections during the 10-year study period.

When a data collector is assigned a specific establishment, he or she conducts the data collection and enters the information into the web-based data platform. The interface will support the manual entering of data, as well as the ability to directly enter information in the database via a web browser.

The burden for the 2021 to 2022 data collection is as follows. For each data collection, the respondents will include: (1) The person in charge of the selected facility (whether it be a fast food or full service restaurant) and (2) the program director (or designated individual) of the respective regulatory authority. To provide the sufficient number of observations needed to conduct a statistically significant analysis of the data, FDA has determined that 400 data collections will be required in each of the two restaurant facility types. Therefore, the total number of responses will be 1,600 (400 data collections × 2 facility types × 2 respondents per data collection).

The burden associated with the completion of Sections 1 and 3 of the form is specific to the persons in charge of the selected facilities. It includes the time it will take the person in charge to accompany the data collector during the site visit and answer the data collector's questions. The burden related to the completion of Section 2 of the form is specific to the program directors (or designated individuals) of the respective regulatory authorities. It includes the time it will take to answer the data collectors' questions and is the same regardless of the facility type.

In the **Federal Register** of February 7, 2018 (83 FR 5433), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received two comments.

(Comment 1) We received comments related to FDA's authority for collaboration with State and local governments regarding food safety at the retail level.

(Response 1) The statutory basis for FDA conducting this survey is the PHS Act, which requires that FDA provide assistance to State and local governments relative to the prevention and suppression of communicable diseases. Responsibility for carrying out the provisions of the PHS Act relative to food protection was transferred to the Commissioner of Food and Drugs in 1968 (21 CFR 5.10(a)(2) and (4)). Additionally, the FD&C Act (21 U.S.C. 301 *et seq.*) and the Economy Act (31 U.S.C. 1535) require FDA to provide assistance to other Federal, State, and local government bodies.

(Comment 2) The Academy of Nutrition and Dietetics (the Academy) commented that they support the proposed information collection for the survey on the occurrence of foodborne illness risk factors in various settings. The Academy provided comments pertaining to the following general areas of the study:

a. Question as to whether 90 minutes is adequate for surveying larger facilities.

b. Request FDA evaluate the impact of conducting surveys during non-peak hours of operation.

c. Suggest that the use of gloves is not adequately addressed in the survey.

d. Recommend adding a food allergy component.

e. Encourage continued efforts to simplify and standardize expiration dates.

Related to foodservice operations at the retail level, the Academy provided the following comments:

a. Suggest that FDA consider conducting the survey by using local inspectors who already inspect facilities for other purposes.

b. Suggest that educational efforts should be culturally guided, provided in multiple languages, and include photos or illustrations to facilitate remediation.

c. FDA consider modifying the survey to account for new foods and new means of conveying food.

(Response 2) FDA thanks the submitter for their comments and appreciates their support. Regarding general areas of the study, FDA provides the following responses:

a. The current 10-year study estimates 90 minutes as the average time needed to adequately collect necessary information, taking into account both small and large facilities. This average time is consistent with the amount of time burden estimated for the previous data collection periods and provides a sufficient timeframe to observe food safety practices and procedures that are the focus of the study.

b. Based on the methodology of the study, the information collection is performed during hours of operation of the randomly selected facility. Data collections are scheduled at times that provide the best opportunity to observe food preparation activities.

c. Information collection related to handwashing and no bare hand contact with ready to eat foods, which may include use of gloves, is based on assessment of observations against the most current addition of the FDA Model Food Code. Provisions of the FDA Food Code identify when handwashing and no bare hand contact with ready to eat food are required during food preparation and service. The current FDA Food Code does not recognize the use of hand antiseptics in lieu of handwashing during food preparation and service.

d. The study is collecting information regarding the knowledge of the person in charge related to food allergens and training of food service employees on allergy awareness as it relates to their assigned duties in their facility.

e. The scope of this data collection focuses on foodborne illness risk factors and does not include assessment of expiration dates of manufactured foods as part of this research assessment.

Related to foodservice operations at the retail level, FDA provides the following responses:

a. This type of research requires a standardized design and methodology to ensure that the occurrences of the foodborne illness risk factors are uniformly assessed. Retail Food Specialists are standardized by Center for Food Safety and Applied Nutrition and have a strong working knowledge of retail food industry. State and local regulators are encouraged to accompany the data collectors during the data collection.

b. The research from this study facilitates the development of culturally guided, multi-language education outreach materials that can be shared with regulatory and industry partners.

c. The study design accounts for a variety of food conveyances in the retail food setting. The study includes four major segments of the retail and foodservice industries that account for over a million varied and diverse types of operations in the United States:

- Restaurants
- Healthcare Facilities
- Schools (K–12)
- Retail Food Stores

To calculate the estimate of the hours per response, FDA will use the average data collection duration for the same facility types during the 2013 to 2014 data collection. FDA estimates that it will take the persons in charge of full service restaurants and fast food restaurants 104 minutes (1.73 hours) and 82 minutes (1.36 hours), respectively, to accompany the data collectors while they complete Sections 1 and 3 of the form. In comparison, for the 2013 to 2014 data collection, the burden estimate was 106 minutes (1.76 hours) in full service restaurants and 73 minutes (1.21 hours) in fast food restaurants. FDA estimates that it will take the program director (or designated individual) of the respective regulatory authority 30 minutes (0.5 hours) to answer the questions related to Section 2 of the form. This burden estimate is unchanged from the last data collection. Hence, the total burden estimate for a data collection in a full service restaurant, including the responses of both the program director and the person in charge, is 134 minutes (104 + 30) (2.23 hours). The total burden estimate for a data collection in a fast food restaurant, including the responses of both the program director and the person in charge, is 112 minutes (82 + 30) (1.86 hours).

Based on the number of entry refusals from the 2013 to 2014 baseline data collection, we estimate a refusal rate of 2 percent for the data collections within restaurant facility types. The estimate of the time per non-respondent is 5 minutes (0.08 hours) for the person in charge to listen to the purpose of the visit and provide a verbal refusal of entry.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Number of non-respondents	Number of responses per non-respondent	Total annual non-responses	Average burden per response	Total hours
2021–2022 Data Collection (Fast Food Restaurants)—Completion of Sections 1 and 3.	400	1	400	.....	.....	.....	1.36	544
2021–2022 Data Collection (Full Service Restaurants)—Completion of Sections 1 and 3.	400	1	400	.....	.....	.....	1.73	692
2021–2022 Data Collection-Completion of Section 2—All Facility Types.	800	1	800	.....	.....	.....	0.5 (30 minutes)	400
2021–2022 Data Collection-Entry Refusals—All Facility Types.	.....	.....	.....	16	1	16	0.08 (5 minutes)	1.28
Total Hours	.....	.....	.....	.....	.....	.....	.....	1,637.28

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden for this information collection has not changed since the last OMB approval.

II. References

The following references are on display in the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday, they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. ''Report of the FDA Retail Food Program Database of Foodborne Illness Risk Factors'' (2000). Available at: *https://wayback.archive-it.org/7993/20170406023019/https://www.fda.gov/downloads/Food/GuidanceRegulation/UCM123546.pdf.*
2. ''FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (2004).'' Available at: *https://wayback.archive-it.org/7993/20170406023011/https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/UCM423850.pdf.*
3. ''FDA Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (2009).'' Available at: *https://wayback.archive-it.org/7993/20170406023004/https://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/*

FoodborneIllnessRiskFactorReduction/ucm224321.htm.
4. FDA National Retail Food Team. ''FDA Trend Analysis Report on the Occurrence of Foodborne Illness Risk Factors in Selected Institutional Foodservice, Restaurant, and Retail Food Store Facility Types (1998–2008).'' Available at: *https://wayback.archive-it.org/7993/20170406022950/https://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodborneIllnessRiskFactorReduction/ucm223293.htm.*
5. ''FDA Food Code.'' Available at: *https://www.fda.gov/FoodCode.*

Dated: July 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16189 Filed 7–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–0007]

Medical Device User Fee Rates for Fiscal Year 2019

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2019. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Medical Device User Fee Amendments of 2017 (MDUFA IV), authorizes FDA to collect user fees for certain medical device submissions and annual fees both for certain periodic reports and for establishments subject to registration. This notice establishes the fee rates for FY 2019, which apply from October 1, 2018, through September 30, 2019. To avoid delay in the review of your application, you should pay the application fee before or at the time you submit your application to FDA. The fee you must pay is the fee that is in effect on the later of the date that your application is received by FDA or the date your fee payment is recognized by the U.S. Treasury. If you want to pay a reduced small business fee, you must qualify as a small business before making your submission to FDA; if you do not qualify as a small business before making your submission to FDA, you will have to pay the higher standard fee. Please note that the establishment registration fee is not eligible for a reduced small business fee. As a result, if the establishment registration fee is the only medical device user fee that you will pay in FY 2019, you should not submit a Small Business Certification Request. This document provides information on how the fees for FY 2019 were determined, the payment procedures you should follow, and how you may qualify for reduced small business fees.

FOR FURTHER INFORMATION CONTACT:

For information on Medical Device User Fees: Visit FDA's website at: *https://www.fda.gov/ForIndustry/UserFees/MedicalDeviceUserFee/ucm20081521.htm.*

For questions relating to the MDUFA Small Business Program, please visit CDRH's website: https://www.fda.gov/medicaldevices/deviceregulationandguidance/howtomarketyourdevice/premarketsubmissions/ucm577696.htm.

For questions relating to this notice: David Haas, Office of Financial Management, Food and Drug Administration, 8455 Colesville Rd. (COLE–14202I), Silver Spring, MD 20993–0002, 240–402–9845.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the FD&C Act (21 U.S.C. 379j) establishes fees for certain medical device applications, submissions, supplements, notices, and requests (for simplicity, this document refers to these collectively as ''submissions'' or ''applications''); for periodic reporting on class III devices; and for the registration of certain establishments. Under statutorily defined conditions, a qualified applicant may receive a fee waiver or may pay a lower small business fee (see 21 U.S.C. 379j(d) and (e)).

Under the FD&C Act, the fee rate for each type of submission is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol (PDP), or a biologics license application (BLA)). The FD&C Act specifies the base fee for a premarket application for each year from FY 2018 through FY 2022; the base fee for a premarket application received by FDA during FY 2019 is $300,000. From this starting point, this document establishes FY 2019 fee rates for certain types of submissions, and for periodic reporting, by applying criteria specified in the FD&C Act.

The FD&C Act specifies the base fee for establishment registration for each year from FY 2018 through FY 2022; the base fee for an establishment registration in FY 2019 is $4,548. There is no reduction in the registration fee for small businesses. Each establishment that is registered (or is required to register) with the Secretary of Health and Human Services under section 510 of the FD&C Act (21 U.S.C. 360) because such establishment is engaged in the manufacture, preparation, propagation, compounding, or processing of a device is required to pay the annual fee for establishment registration.

II. Revenue Amount for FY 2019

The total revenue amount for FY 2019 is $190,654,875, as set forth in the statute prior to the inflation adjustment (see 21 U.S.C. 379j(b)(3)). MDUFA directs FDA to use the yearly total revenue amount as a starting point to set the standard fee rates for each fee type. The fee calculations for FY 2019 are described in this document.

Inflation Adjustment

MDUFA specifies that the $190,654,875 is to be adjusted for inflation increases for FY 2019 using two separate adjustments—one for payroll costs and one for non-payroll costs (see 21 U.S.C. 379j(c)(2)). The base inflation adjustment for FY 2019 is the sum of one plus these two separate adjustments, and is compounded as specified in the statute (see 21 U.S.C. 379j(c)(2)(C) and 379j(c)(2)(B)).

The component of the inflation adjustment for payroll costs is the average annual percent change in the cost of all personnel compensation and benefits (PC&B) paid per full-time equivalent position (FTE) at FDA for the first 3 of the 4 preceding FYs, multiplied by 0.60, or 60 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 1 summarizes the actual cost and FTE data for the specified FYs, and provides the percent change from the previous FY and the average percent change over the first 3 of the 4 FYs preceding FY 2019. The 3-year average is 2.4152 percent (rounded).

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE

Fiscal year	2015	2016	2017	3-Year average
Total PC&B	$2,232,304,000	$2,414,728,159	$2,581,551,000	

TABLE 1—FDA PC&BS EACH YEAR AND PERCENT CHANGE—Continued

Fiscal year	2015	2016	2017	3-Year average
Total FTE	15,484	16,381	17,022	
PC&B per FTE	$144,168	$147,408	$151,660	
Percent change from previous year	2.1136	2.2474	2.8845	2.4152

The payroll adjustment is 2.4152 percent multiplied by 60 percent, or 1.4491 percent.

The statute specifies that the component of the inflation adjustment for non-payroll costs for FY 2019 is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC–MD–VA–WV; Not Seasonally Adjusted; All Items; Annual Index) for the first 3 of the preceding 4 years of available data multiplied by 0.40, or 40 percent (see 21 U.S.C. 379j(c)(2)(C)).

Table 2 provides the summary data and the 3-year average percent change in the specified CPI for the Baltimore-Washington area. These data are published by the Bureau of Labor Statistics and can be found on their website at: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA311SA0,CUUSA311SA0.*

TABLE 2—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN BALTIMORE-WASHINGTON AREA CPI

Fiscal year	2015	2016	2017	3-Year average
Annual CPI	155.353	157.180	159.202	
Annual Percent Change	0.3268	1.1760	1.2864	
3-Year Average Percent Change in CPI				0.9297

The non-pay adjustment is 0.9297 percent multiplied by 40 percent, or 0.3719 percent.

Next, the payroll adjustment (1.4491 percent or 0.014491) is added to the non-payroll adjustment (0.3719 percent or 0.003719), for a total of 1.8210 percent (or 0.018210). To complete the inflation adjustment, 1 (100 percent or 1.0) is added for a total base inflation adjustment of 1.018210 for FY 2019.

MDUFA IV provides for this inflation adjustment to be compounded for FY 2019 and each subsequent fiscal year (see 21 U.S.C. 379j(c)(2)(B)(ii)). The base inflation adjustment for FY 2019 (1.018210) is compounded by multiplying it by the compounded applicable inflation factor from FY 2018 (1.054618). To complete the compounded inflation adjustment for FY 2019, the FY 2018 compounded adjustment (1.054618) is multiplied by the FY 2019 base inflation adjustment (1.018210) to reach the applicable inflation adjustment of 1.073823 (rounded) for FY 2019. We then multiply the total revenue amount for FY 2019 ($190,654,875) by 1.073823, yielding an inflation adjusted total revenue amount of $204,730,000 (rounded to the nearest thousand dollars).

III. Fees for FY 2019

Under the FD&C Act, all submission fees and the periodic reporting fee are set as a percent of the standard (full) fee for a premarket application (see 21 U.S.C. 379j(a)(2)(A)).

A. Inflation Adjustment

MDUFA specifies that the base fees of $300,000 (premarket application) and $4,548 (establishment registration) are to be adjusted for FY 2019 using the same methodology as that for the total revenue inflation adjustment in section II (see 21 U.S.C. 379j(c)(2)(D)(i)). Multiplying the base fees by the compounded inflation adjustment of 1.073823 yields inflation adjusted base fees of $322,147 (premarket application) and $4,884 (establishment registration).

B. Further Adjustments

After the applicable inflation adjustment to fees is done, FDA may increase, if necessary to achieve the inflation adjusted total revenue amount, the base fee amounts on a uniform proportionate basis (see 21 U.S.C. 379j(c)(2)(D)(ii)). If necessary after this adjustment, FDA may further increase the base establishment registration fees to generate the inflation adjusted total revenue amount (see 21 U.S.C. 379j(c)(3)).

C. Calculation of Fee Rates

Table 3 provides the last 3 years of fee-paying submission counts and the 3-year average. These numbers are used to project the fee-paying submission counts that FDA will receive in FY 2019. Most of the fee-paying submission counts are published in the MDUFA Financial Report to Congress each year.

TABLE 3—THREE-YEAR AVERAGE OF FEE-PAYING SUBMISSIONS

Application type	FY 2015 actual	FY 2016 actual	FY 2017 actual	3-Year average
Full Fee Applications	42	37	40	40
Small Business	7	10	7	8
Panel-Track Supplement	22	17	27	22
Small Business	3	1	2	2
De Novo Classification Request [1]			24	24
Small Business [1]			31	31
180-Day Supplements	143	116	184	148
Small Business	15	16	36	22
Real-Time Supplements	204	179	195	193
Small Business	28	27	20	25
510(k)s	2,768	2,599	3,141	2,836
Small Business	1,037	1,005	1,125	1,056

TABLE 3—THREE-YEAR AVERAGE OF FEE-PAYING SUBMISSIONS—Continued

Application type	FY 2015 actual	FY 2016 actual	FY 2017 actual	3-Year average
30-Day Notice	920	929	1,080	976
Small Business	71	76	82	76
513(g) (21 U.S.C. 360c(g)) Request for Classification Information	75	68	98	80
Small Business	33	46	41	40
Annual Fee for Periodic Reporting [2]	554	582	429	522
Small Business [2]	73	75	37	62
Establishment Registration	25,363	26,046	27,268	26,226

[1] Three-year average for De Novo is based on estimate for FY 2019.
[2] Includes collection of quarter 4 billing for FY 2017 during FY 2018.

The information in table 3 is necessary to estimate the amount of revenue that will be collected based on the fee amounts. Table 4 displays the FY 2019 base fees set in statute (column one) and the inflation adjusted base fees (per calculations in section III.A.) (column two). Using the inflation adjusted fees and the 3-year averages of fee paying submissions, collections are projected to total $207,708,611, which is $2,978,611 higher than the inflation adjusted total revenue amount. The fees in column two are those we are establishing in FY 2019, which are the standard fees.

TABLE 4—FEES NEEDED TO ACHIEVE NEW FY 2019 REVENUE TARGET

Application type	FY 2019 statutory fees (base fees)	FY 2019 inflation adjusted statutory base fees (standard fees)	FY 2019 revenue from adjusted fees
Full Fee Applications	$300,000	$322,147	$12,885,880
Small Business	75,000	80,537	644,296
Panel-Track Supplement	225,000	241,610	5,315,420
Small Business	56,250	60,403	120,806
De Novo Classification Request	90,000	96,644	2,319,456
Small Business	22,500	24,161	748,991
180-Day Supplements	45,000	48,322	7,151,656
Small Business	11,250	12,081	265,782
Real-Time Supplements	21,000	22,550	4,352,150
Small Business	5,250	5,638	140,950
510(k)s	10,200	10,953	31,062,708
Small Business	2,550	2,738	2,891,328
30-Day Notice	4,800	5,154	5,030,304
Small Business	2,400	2,577	195,852
513(g) Request for Classification Information	4,050	4,349	347,920
Small Business	2,025	2,175	87,000
Annual Fee for Periodic Reporting	10,500	11,275	5,885,550
Small Business	2,625	2,819	174,778
Establishment Registration	4,548	4,884	128,087,784
Total			207,708,611

The standard fee (adjusted base amount) for a premarket application, including a BLA, and for a premarket report and a BLA efficacy supplement, is $322,147 for FY 2019. The fees set by reference to the standard fee for a premarket application are:

- For a panel-track supplement, 75 percent of the standard fee;
- For a de novo classification request, 30 percent of the standard fee;
- For a 180-day supplement, 15 percent of the standard fee;
- For a real-time supplement, 7 percent of the standard fee;
- For an annual fee for periodic reporting concerning a class III device, 3.5 percent of the standard fee;
- For a 510(k) premarket notification, 3.4 percent of the standard fee;
- For a 30-day notice, 1.6 percent of the standard fee; and
- For a 513(g) request for classification information, 1.35 percent of the standard fee.

For all submissions other than a 30-day notice, and a 513(g) request for classification information, the small business fee is 25 percent of the standard (full) fee for the submission (see 21 U.S.C. 379j(d)(2)(C) and (e)(2)(C)). For a 30-day notice, and a 513(g) request for classification information, the small business fee is 50 percent of the standard (full) fee for the submission (see 21 U.S.C. 379j(d)(2)(C)).

The annual fee for establishment registration, after adjustment, is set at $4,884 for FY 2019. There is no small business rate for the annual establishment registration fee; all establishments pay the same fee.

Table 5 summarizes the FY 2019 rates for all medical device fees.

TABLE 5—MEDICAL DEVICE FEES FOR FY 2019

Application fee type	Standard fee (as a percent of the standard fee for a premarket application)	FY 2019 standard fee	FY 2019 small business fee
Premarket application (a PMA submitted under section 515(c)(1) of the FD&C Act (21 U.S.C. 360e(c)(1)), a PDP submitted under section 515(f) of the FD&C Act (21 U.S.C. 360e(f), or a BLA submitted under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262)).	Base fee specified in statute.	$322,147	$80,537
Premarket report (submitted under section 515(c)(2) of the FD&C Act)	100	322,147	80,537
Efficacy supplement (to an approved BLA under section 351 of the PHS Act)	100	322,147	80,537
Panel-track supplement	75	241,610	60,403
De novo classification request	30	96,644	24,161
180-day supplement	15	48,322	12,081
Real-time supplement	7	22,550	5,638
510(k) premarket notification submission	3.40	10,953	2,738
30-day notice	1.60	5,154	2,577
513(g) request for classification information	1.35	4,349	2,175
Annual Fee Type			
Annual fee for periodic reporting on a class III device	3.50	11,275	2,819
Annual establishment registration fee (to be paid by the establishment engaged in the manufacture, preparation, propagation, compounding, or processing of a device, as defined by 21 U.S.C. 379i(13)).	Base fee specified in statute.	4,884	4,884

IV. How To Qualify as a Small Business for Purposes of Medical Device Fees

If your business, including your affiliates, has gross receipts or sales of no more than $100 million for the most recent tax year, you may qualify for reduced small business fees. If your business, including your affiliates, has gross sales or receipts of no more than $30 million, you may also qualify for a waiver of the fee for your first premarket application (*i.e.* PMA, PDP, or BLA) or premarket report. If you want to pay the small business fee rate for a submission or you want to receive a waiver of the fee for your first premarket application or premarket report, you should submit the materials showing you qualify as a small business at least 60 days before you send your submission to FDA. FDA will review your information and determine whether you qualify as a small business eligible for the reduced fee and/or fee waiver. If you make a submission before FDA finds that you qualify as a small business, you must pay the standard (full) fee for that submission.

If your business qualified as a small business for FY 2018, your status as a small business will expire at the close of business on September 30, 2018. You must re-qualify for FY 2019 in order to pay small business fees during FY 2019.

If you are a domestic (U.S.) business, and wish to qualify as a small business for FY 2019, you must submit the following to FDA:

1. A completed MDUFA Small Business Certification Request For a Business Headquartered in the U.S. (Form FDA 3602). Form FDA 3602 is provided in the FDA Forms database: *https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM573420.pdf.*

2. A signed certified copy of your Federal (U.S.) Income Tax Return for the most recent tax year. The most recent tax year will be 2018, except:

If you submit your MDUFA Small Business Certification Request for FY 2019 before April 15, 2019, and you have not yet filed your return for 2018, you may use tax year 2017.

If you submit your MDUFA Small Business Certification Request for FY 2019 on or after April 15, 2019, and have not yet filed your 2018 return because you obtained an extension, you may submit your most recent return filed prior to the extension.

3. For each of your affiliates, either:

• If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year, or

• If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected. The business must also submit a statement signed by the head of the business's firm or by its chief financial officer that the business has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the business has no affiliates.

If you are a foreign business, and wish to qualify as a small business for FY 2019, you must submit the following:

1. A completed MDUFA Foreign Small Business Certification Request For a Business Headquartered Outside the United States (Form FDA 3602A). Form FDA 3602A is provided in the FDA Forms database: *https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM573423.pdf.*

2. A National Taxing Authority Certification, completed by, and bearing the official seal of, the National Taxing Authority of the country in which the firm is headquartered. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates of the gross receipts or sales collected.

3. For each of your affiliates, either:

• If the affiliate is a domestic (U.S.) business, a certified copy of the affiliate's Federal (U.S.) Income Tax Return for the most recent tax year (2018 or later), or

• If the affiliate is a foreign business and cannot submit a Federal (U.S.) Income Tax Return, a National Taxing Authority Certification completed by, and bearing the official seal of, the National Taxing Authority of the

country in which the firm is headquartered. The National Taxing Authority is the foreign equivalent of the U.S. Internal Revenue Service. This certification must show the amount of gross receipts or sales for the most recent tax year, in both U.S. dollars and the local currency of the country, the exchange rate used in converting the local currency to U.S. dollars, and the dates for the gross receipts or sales collected. The business must also submit a statement signed by the head of the business's firm or by its chief financial officer that the applicant has submitted certifications for all of its affiliates, identifying the name of each affiliate, or that the business has no affiliates.

V. Procedures for Paying Application Fees

If your application or submission is subject to a fee and your payment is received by FDA between October 1, 2018, and September 30, 2019, you must pay the fee in effect for FY 2019. The later of the date that the application is received in the reviewing center's document room or the date the U.S. Treasury recognizes the payment determines whether the fee rates for FY 2018 or FY 2019 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee to ensure that FDA links the fee with the correct application. (Note: Do not send your user fee check to FDA with the application.)

A. Secure a Payment Identification Number (PIN) and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment

Log into the User Fee System at: *https://userfees.fda.gov/OA_HTML/mdufmaCAcdLogin.jsp.* Complete the Medical Device User Fee cover sheet. Be sure you choose the correct application submission date range. (Two choices will be offered until October 1, 2018. One choice is for applications and fees that will be received on or before September 30, 2018, which are subject to FY 2018 fee rates. A second choice is for applications and fees received on or after October 1, 2018, which are subject to FY 2019 fee rates.) After completing data entry, print a copy of the Medical Device User Fee cover sheet and note the unique PIN located in the upper right-hand corner of the printed cover sheet.

B. Electronically Transmit a Copy of the Printed Cover Sheet With the PIN

When you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Applicants are required to set up a user account and password to assure data security in the creation and electronic submission of cover sheets.

C. Submit Payment for the Completed Medical Device User Fee Cover Sheet

1. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a web-based payment system, for online electronic payment. You may make a payment via electronic check or credit card after submitting your cover sheet. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* Note: Only full payments are accepted. No partial payments can be made online. Once you search for your invoice, select ''Pay Now'' to be redirected to Pay.gov. Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S bank accounts as well as U.S. credit cards.

2. If paying with a paper check:

- All paper checks must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. If needed, FDA's tax identification number is 53–0196965.
- Please write your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) on your check.
- *Mail the paper check and a copy of the completed cover sheet to:* Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

If you prefer to send a check by a courier, the courier may deliver the check to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery).

3. If paying with a wire transfer:

- Please include your application's unique PIN (from the upper right-hand corner of your completed Medical Device User Fee cover sheet) in your wire transfer. Without the PIN, your payment may not be applied to your cover sheet and review of your application may be delayed.
- The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee it is required that you add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a wire transfer: U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33.

FDA records the official application receipt date as the later of the following: (1) The date the application was received by the FDA Document Control Center for the reviewing Center or (2) the date the U.S. Treasury recognizes the payment. It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA.

D. Submit Your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee cover sheet to the address located at *https://www.fda.gov/cdrhsubmissionaddress.*

VI. Procedures for Paying the Annual Fee for Periodic Reporting

You will be invoiced at the end of the quarter in which your PMA Periodic Report is due. Invoices will be sent based on the details included on your PMA file. You are responsible for ensuring FDA has your current billing information, and you may update your contact information for the PMA by submitting an amendment to the pending PMA or a supplement to the approved PMA.

1. The preferred payment method is online using electronic check (ACH also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express). Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay* (*Note:* Only full payments are accepted. No partial payments can be made online). Once you search for your invoice, select ''Pay Now'' to be redirected to Pay.gov. Note that electronic payment options are based on the balance due. Payment by

credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

2. If paying with a paper check:

The check must be in U.S. currency from a U.S. bank and made payable to the Food and Drug Administration. If needed, FDA's tax identification number is 53–0196965.

• Please write your invoice number on the check.

• *Mail the paper check and a copy of the invoice to:* Food and Drug Administration, P.O. Box 979033, St. Louis, MO 63197–9000. (Please note that this address is for payments of application and annual report fees only and is not to be used for payment of annual establishment registration fees.)

To send a check by a courier, the courier must deliver the check and printed copy of the cover sheet to: U.S. Bank, Attn: Government Lockbox 979033, 1005 Convention Plaza, St. Louis, MO 63101. (*Note:* This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery).

3. When paying by a wire transfer it is required that the invoice number is included, without the invoice number the payment may not be applied. If the payment amount is not applied the invoice amount would be referred to collections. The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee it is required that you add that amount to the payment to ensure that the invoice is paid in full.

Use the following account information when sending a wire transfer: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33.

VII. Procedures for Paying Annual Establishment Registration Fees

To pay the annual establishment registration fee, firms must access the Device Facility User Fee (DFUF) website at *https://userfees.fda.gov/OA_HTML/furls.jsp.* (FDA has verified the website address, but FDA is not responsible for any subsequent changes to the website address after this document publishes in the **Federal Register**.) Create a DFUF order and you will be issued a PIN when you place your order. After payment has been processed, you will be issued a payment confirmation number (PCN). You will not be able to register your establishment if you do not have a PIN and a PCN. An establishment required to pay an annual establishment registration fee is not legally registered in FY 2019 until it has completed the steps below to register and pay any applicable fee (see 21 U.S.C. 379j(g)(2)).

Companies that do not manufacture any product other than a licensed biologic are required to register in the Blood Establishment Registration (BER) system. FDA's Center for Biologics Evaluation and Research (CBER) will send establishment registration fee invoices annually to these companies.

A. Submit a DFUF Order With a PIN From FDA Before Registering or Submitting Payment

To submit a DFUF Order, you must create or have previously created a user account and password for the user fee website listed previously in this section. After creating a user name and password, log into the Establishment Registration User Fee FY 2019 store. Complete the DFUF order by entering the number of establishments you are registering that require payment. When you are satisfied that the information in the order is accurate, electronically transmit that data to FDA according to instructions on the screen. Print a copy of the final DFUF order and note the unique PIN located in the upper right-hand corner of the printed order.

B. Pay For Your DFUF Order

Unless paying by credit card, all payments must be in U. S. currency and drawn on a U.S. bank.

1. If paying by credit card or electronic check (ACH or eCheck):

The DFUF order will include payment information, including details on how you can pay online using a credit card or electronic check. Follow the instructions provided to make an electronic payment.

2. If paying with a paper check:

The check must be in U.S. currency and drawn on a U.S. bank, and mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. (*Note:* This address is different from the address for payments of application and annual report fees and is to be used only for payment of annual establishment registration fees.)

If a check is sent by a courier that requests a street address, the courier can deliver the check to: U.S. Bank, Attn: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery contact U.S. Bank at 314–418–4013. This telephone number is only for questions about courier delivery).

Please make sure that both of the following are written on your check: (1) the FDA post office box number (P.O. Box 979108) and (2) the PIN that is printed on your order. Include a copy of your printed order when you mail your check.

3. If paying with a wire transfer:

Wire transfers may also be used to pay annual establishment registration fees. To send a wire transfer, please read and comply with the following information:

Include your order's unique PIN (in the upper right-hand corner of your completed DFUF order) in your wire transfer. Without the PIN, your payment may not be applied to your facility and your registration may be delayed.

The originating financial institution may charge a wire transfer fee. If the financial institution charges a wire transfer fee it is required that you add that amount to the payment to ensure that the invoice is paid in full. Use the following account information when sending a wire transfer: U.S. Dept. of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No. 75060099, Routing No. 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

C. Complete the Information Online To Update Your Establishment's Annual Registration for FY 2019, or To Register a New Establishment for FY 2019

Go to the Center for Devices and Radiological Health's website at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/HowtoMarketYourDevice/RegistrationandListing/default.htm* and click the ''Access Electronic Registration'' link on the left side of the page. This opens up a new page with important information about the FDA Unified Registration and Listing System (FURLS). After reading this information, click on the ''Access Electronic Registration'' link in the middle of the page. This link takes you to an FDA Industry Systems page with tutorials that demonstrate how to create a new FURLS user account if your establishment did not create an account in FY 2018. Manufacturers of licensed biologics should register in the BER system at *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/EstablishmentRegistration/BloodEstablishmentRegistration/default.htm.*

Enter your existing account ID and password to log into FURLS. From the FURLS/FDA Industry Systems menu,

click on the Device Registration and Listing Module (DRLM) of FURLS button. New establishments will need to register and existing establishments will update their annual registration using choices on the DRLM menu. When you choose to register or update your annual registration, the system will prompt you through the entry of information about your establishment and your devices. If you have any problems with this process, email: *reglist@cdrh.fda.gov* or call 301–796–7400 for assistance. (Note: This email address and this telephone number are for assistance with establishment registration only; they are not to be used for questions related to other aspects of medical device user fees.) Problems with the BER system should be directed to *https://www.accessdata.fda.gov/scripts/email/cber/bldregcontact.cfm* or call 240–402–8360.

D. Enter Your DFUF Order PIN and PCN

After completing your annual or initial registration and device listing, you will be prompted to enter your DFUF order PIN and PCN, when applicable. This process does not apply to establishments engaged only in the manufacture, preparation, propagation, compounding, or processing of licensed biologic devices. CBER will send invoices for payment of the establishment registration fee to such establishments.

Dated: July 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16178 Filed 7–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0549]

Prescription Polyethylene Glycol 3350; Denial of a Hearing and Order Withdrawing Approval of Abbreviated New Drug Applications; Temporary Stay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice that the effective date of an April 2, 2018, order denying requests for a hearing and withdrawing approval of abbreviated new drug applications (ANDAs) for certain prescription laxatives with the active ingredient polyethylene glycol 3350 (PEG 3350) is stayed until November 2, 2018.

DATES: FDA is staying the effective date of the April 2, 2018, order withdrawing approval of ANDAs for certain prescription laxatives with the active ingredient PEG 3350 until November 2, 2018.

ADDRESSES: For access to the docket, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Julie Finegan, Office of Scientific Integrity, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4218, Silver Spring, MD 20993–0002, 301–796–8618.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 2, 2018 (83 FR 13994), FDA denied requests for hearing and issued an order withdrawing approval of ANDAs for certain prescription laxatives with the active ingredient PEG 3350. The effective date of the order was May 2, 2018. Between April 6, 2018, and April 13, 2018, FDA received petitions for stay under § 10.35 (21 CFR 10.35) on behalf of four ANDA holders: Breckenridge Pharmaceutical, Inc. and Nexgen Pharma, Inc. (hereafter Breckenridge/Nexgen) who submitted a joint petition; Lannett Company, Inc.; and Paddock Laboratories, Inc. (collectively the ANDA holders). Breckenridge/Nexgen, Lannett, and Paddock petitioned FDA to stay its order withdrawing the approval of their ANDAs for prescription PEG 3350 and argued that all four criteria for a mandatory stay under § 10.35(e) were met. Bayer Healthcare, LLC, (Bayer) which holds an approved New Drug Application for MiraLAX, an over-the-counter laxative containing PEG 3350, responded. Bayer argued that the petitioners failed to meet any of the factors in § 10.35(e).[1]

By a letter dated April 16, 2018, the Acting Chief Scientist, pursuant to authority delegated by the Commissioner, concluded that the ANDA holders had not met the criteria for a mandatory stay under § 10.35(e). The Acting Chief Scientist granted a temporary, discretionary stay of the effective date of the order until November 2, 2018. As described in the April 16, 2018, letter, based upon information submitted by the ANDA holders and not disputed by Bayer, it would likely be difficult for manufacturers of OTC PEG 3350 products to compensate for the removal of prescription PEG 3350 products within 30 days. The letter explained that public health interests would not be served should the 30-day effective date negatively impact the availability of PEG 3350, particularly given that the basis of the withdrawal of the ANDA products is not an issue of safety or efficacy. The April 16, 2018, letter additionally noted that FDA has provided lengthier time frames to phase out manufacturing and distribution of affected products in other cases. While the Acting Chief Scientist rejected the petitioners' arguments that financial hardship and harm to reputation resulting from the withdrawal order rise to the level of irreparable injury necessary for a mandatory stay under § 10.35(e), she agreed that there may some validity to the petitioner's concerns of harm to their business interests as a result of the 30-day effective date. The Acting Chief Scientist concluded that it is in the public interest and in the interest of justice to stay the effective date of the April 2, 2018, order until November 2, 2018.

The parties' submissions and the Agency's orders are available at *https://www.regulations.gov* and with the Dockets Management Staff (see **ADDRESSES**).

FDA is providing notice of the decision to grant a temporary stay in accordance with § 10.35(f).

Dated: July 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16148 Filed 7–27–18; 8:45 am]

BILLING CODE 4164–01–P

[1] On April 30, 2018, Bayer filed a submission titled ''Request for Clarification of FDA Granting of a Petition for Stay of Action.'' Bayer requested that FDA clarify that the stay allowed new manufacturing only until May 2, 2018, with shipment of product permitted until November 2, 2018. Breckenridge/Nexgen responded to Bayer's request for clarification and argued that Bayer's submission should have been a petition for reconsideration and that it failed to meet the standards required for reconsideration. Regardless of whether Bayer's submission should have been a petition for reconsideration, FDA's letter granting the stay provides that the order is stayed until November 2, 2018, without the limitations Bayer now requests.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1095]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization.

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by August 29, 2018, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by August 29, 2018. Nominations will be accepted for current vacancies and for those that will or may occur through September 30, 2018.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process and consumer representative nominations should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002, or by Fax: 301–847–8640.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002, or by Fax: 301–847–8640. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff (ACOMS), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002, 301–796–8220, *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate contact person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Moon Hee V. Choi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–2894, *MoonHee.Choi@fda.hhs.gov*.	Anesthetic and Analgesic Drug Products Advisory Committee.
Lauren Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2426, Silver Spring, MD 20993–0002, 301–796–2721, *Lauren.Tesh@fda.hhs.gov*.	Antimicrobial Advisory Committee.
Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2438, Silver Spring, MD 20993–0002, 301–796–9005, *Kalyani.Bhatt@fda.hhs.gov*.	Bone, Reproductive, and Urological Drugs Advisory Committee.
Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–4043, *Jennifer.Shepherd@fda.hhs.gov*.	Cardiovascular and Renal Drugs Advisory Committee; Medical Imaging Advisory Committee.
Cindy Chee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2430, Silver Spring, MD 20993–0002, 301–796–0889, *Cindy.Chee@fda.hhs.gov*.	Pharmacy Compounding Advisory Committee.
Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G610, Silver Spring, MD 20993–0002, 301–796–6875, *Patricio.Garcia@fda.hhs.gov*.	Clinical Chemistry and Clinical Toxicology Devices Panel; Gastroenterology and Urology Devices Panel.
Evella Washington, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G640, Silver Spring, MD 20993–0002, 301–796–6683, *Evella.Washington@fda.hhs.gov*.	Ear, Nose, and Throat Devices Panel.
Pamela Scott, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5572, Silver Spring, MD 20993–0002, 301–796–5433, *Pamela.Scott@fda.hhs.gov*.	Medical Devices Dispute Resolution Panel.
Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G642, Silver Spring, MD 20993–0002, 301–796–0400, *Aden.Asefa@fda.hhs.gov*.	Microbiology Devices Panel; Radiology Devices Panel.
Sara Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G616, Silver Spring, MD 20993–0002, 301–796–7047, *Sara.Anderson@fda.hhs.gov*.	Orthopaedic and Rehabilitation Devices Panel.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Anesthetic and Analgesic Drug Products Advisory Committee—Knowledgeable in the fields of anesthesiology, surgery, epidemiology or statistics, and related specialties..	1—Voting	Immediately.
Antimicrobial Advisory Committee—Knowledgeable in the fields of infectious disease, internal medicine, microbiology, pediatrics, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Bone, Reproductive, and Urological Drugs Advisory Committee—Knowledgeable in the fields of obstetrics, gynecology, endocrinology, pediatrics, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Cardiovascular and Renal Drugs Advisory Committee—Knowledgeable in the fields of cardiology, hypertension, arrhythmia, angina, congestive heart failure, diuresis, and biostatistics.	1—Voting	Immediately.
Medical Imaging Advisory Committee—Knowledgeable in the fields of nuclear medicine, radiology, epidemiology, statistics, and related specialties.	1—Voting	Immediately.
Pharmacy Compounding Advisory Committee—Knowledgeable in the fields of pharmaceutical compounding, pharmaceutical manufacturing pharmacy, medicine, and other related specialties.	1—Voting	September 30, 2018.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctors of medicine or philosophy with experience in clinical chemistry (*e.g.*, cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Nonvoting	Immediately.
Gastroenterology and Urology Devices Panel—Gastroenterologists, urologists, and nephrologists.	1—Nonvoting	Immediately.
Radiology Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	1—Nonvoting	Immediately.
Ear, Nose and Throat Devices Panel—Experts in otology, neurology, and audiology	1—Nonvoting	Immediately.
Medical Devices Dispute Resolution—Experts with broad, cross-cutting scientific, clinical, analytical, or mediation skills.	1—Nonvoting	Immediately.
Microbiology Devices Panel—Clinicians with expertise in infectious disease, *e.g.*, pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, *e.g.*, hepatologists; molecular biologists.	1—Nonvoting	Immediately.
Orthopaedic and Rehabilitation Devices Panel—Orthopedic surgeons (joint spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians..	1—Nonvoting	Immediately.

I. Functions and General Description of the Committee Duties

A. Anesthetic and Analgesic Drug Products Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in anesthesiology and surgery.

B. Antimicrobial Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

C. Bone, Reproductive, and Urological Drugs Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics, gynecology, and related specialties.

D. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

E. Medical Imaging Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

F. Pharmacy Compounding Advisory Committee

Provides advice on scientific, technical, and medical issues concerning drug compounding by pharmacists and licensed practitioners.

G. Certain Panels of the Medical Devices Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises on the classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and

make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner of Food and Drugs on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) Demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or resume. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete resume or curriculum vitae for each nominee and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Nomination Portal (see **ADDRESSES**), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16161 Filed 7–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–N–1069; FDA–2017–N–6931; FDA–2011–N–0362; FDA–2011–N–0279; FDA–2011–N–0672; FDA–2014–N–0913; FDA–2017–N–0493; and FDA–2011–N–0781]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Blood Establishment Registration and Product Listing for Manufacturers of Human Blood and Blood Products and Licensed Devices; Form FDA 2830	0910–0052	6/30/2021
Current Good Manufacturing Practices and Related Regulations for Blood and Blood Components; and Requirements for Donation Testing, Donor Notification, and ''Lookback''	0910–0116	6/30/2021
Current Good Manufacturing Practices for Finished Pharmaceuticals and Medical Gases	0910–0139	6/30/2021
Prescription Drug Marketing	0910–0435	6/30/2021
Prominent and Conspicuous Mark of Manufacturers on Single-Use Devices	0910–0577	6/30/2021
Guidance FDA and Industry Procedures for Section 513(g) Requests for Information under the Federal Food, Drug, and Cosmetic Act	0910–0705	6/30/2021
Utilization of Adequate Provision Among Low to Non-Internet Users	0910–0853	6/30/2021
Record Retention Requirements for the Soy Protein/Coronary Heart Disease Health Claim	0910–0428	7/31/2021

Dated: July 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16156 Filed 7–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2605]

Center for Devices and Radiological Health: Experiential Learning Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration's (FDA) Center for Devices and Radiological Health (CDRH or Center) is announcing the 2019 Experiential Learning Program (ELP). This training is intended to provide CDRH and other FDA staff with an opportunity to understand laboratory practices, quality system management, patient perspective/input, and challenges that impact the medical device development life cycle. The purpose of this document is to invite medical device industry, academia, and health care facilities, and others to participate in this formal training program for CDRH and other FDA staff, or to contact CDRH for more information regarding the ELP.

DATES: Submit electronic proposals for participation in the ELP at *ELP@fda.hhs.gov* within the dates provided at the ELP website at *https://www.fda.gov/scienceresearch/sciencecareeropportunities/ucm380676.htm.*

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'' or submit electronic proposals to *ELP@fda.hhs.gov*).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All comments received must include the Docket No. FDA–2018–N–2605 for ''Center for Devices and Radiological Health: Experiential Learning Program.'' Received comments will be placed in the docket and are publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your requests only as a written/paper submission, or submit electronically to *ELP@fda.hhs.gov.* You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of requests. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your requests and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of requests to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts

and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christian Hussong, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3283, Silver Spring, MD 20993–0002, 240–402–2246, or ELP Management, *ELP@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CDRH is responsible for ensuring the safety and effectiveness of medical devices marketed in the United States. Additionally, CDRH assures patients and providers have timely and continued access to high-quality, safe and effective medical devices. Continuing our 2016 and 2017 priorities of Partnering with Patients and Promoting a Culture of Quality and Organizational Excellence, adding our 2018–2020 Strategic Priorities of Simplicity, Collaborative Communities and Employee Engagement, Opportunity, and Success, overlaid by our constant strive for patient safety and innovation highlights our need to understand the perspective of our stakeholders. The Center encourages applicants to consider including opportunities to discuss innovation, patient perspective, patient safety, incorporating quality system design and management, simplification principles, and utilization of collaborative communities in their proposal(s) as they contribute to the success of the device development life cycle.

CDRH is committed to advancing regulatory science, providing industry with predictable, consistent, transparent, and efficient regulatory pathways, and helping to ensure consumer confidence in medical devices marketed in the United States and throughout the world. The ELP is intended to provide CDRH and other FDA staff with an opportunity to understand the laboratory and manufacturing practices, quality system management, patient perspective/input, simplification principles, and other challenges and how they impact the medical device development life cycle. ELP is a collaborative effort to enhance communication with our stakeholders to facilitate medical device reviews. The Center is committed to understanding current industry practices, innovative technologies, regulatory impacts and needs, and how patient perspective/input, safety and quality systems management advance the development and evaluation of medical devices, and monitoring the performance of marketed devices.

These formal training visits are not intended for FDA to inspect, assess, judge, or perform a regulatory function (*e.g.,* compliance inspection), but rather, they are an opportunity to provide CDRH and other FDA staff a better understanding of the products they review, and how they are developed. Additionally, it is to understand challenges related to quality systems development and management and simplification in processes, patient preferences and safety, in the product life cycle, and how medical devices fit into the larger health care system. CDRH is formally requesting participation from industry, academia, and clinical facilities, medical device incubators and accelerators, health technology assessment groups, and those that have previously participated in the ELP or other FDA site visit programs.

Additional information regarding the CDRH ELP, including current areas of interest, submission dates, a sample site visit request, and an example of a site visit agenda, is available on CDRH's website at: *https://www.fda.gov/scienceresearch/sciencecareeropportunities/ucm380676.htm.*

II. CDRH ELP

A. Areas of Interest

In the ELP training program, groups of CDRH and other FDA staff will observe operations in the areas of research, device development, Digital Health, incorporating patient information and reimbursement, manufacturing, quality management principles, and health care facilities. The areas of interest for visits include various topics identified by managers at CDRH and other areas within FDA. These areas of interest are listed on the ELP website and are intended to be updated quarterly.

To submit a proposal addressing one of the Center's areas of interest, visit the link for the table of areas of interest at: *https://www.fda.gov/ScienceResearch/ScienceCareerOpportunities/UCM380676.htm.*

Once you have determined an area of interest to address in your ELP proposal, follow the instructions in section III to complete the site visit request template and agenda provided at: *https://www.fda.gov/downloads/ScienceResearch/ScienceCareerOpportunities/UCM392988.pdf* and at: *https://www.fda.gov/downloads/ScienceResearch/ScienceCareerOpportunities/UCM487190.pdf.*

Submit all proposals at *ELP@fda.hhs.gov* within the dates provided at the ELP website at: *https://www.fda.gov/scienceresearch/sciencecareeropportunities/ucm380676.htm.*

B. Site Selection

CDRH and FDA will be responsible for its own staff travel expenses associated with the site visits. CDRH and FDA will not provide funds to support the training provided by the site to the ELP. Selection of potential facilities will be based on CDRH and FDA's priorities for staff training and resources available to fund this program. In addition to logistical and other resource factors, all sites must have a successful compliance record with FDA or another Agency with which FDA has a memorandum of understanding (if applicable). If a site visit involves a visit to a separate physical location of another firm under contract with the site, that firm must agree to participate in the ELP and must also have a satisfactory compliance history, and must be listed in the proposal along with a Facility Establishment Identifier number, if applicable.

III. Request To Participate

Information regarding the CDRH ELP, including a sample request and an example of a site visit agenda, and submission dates is available on CDRH's website at: *https://www.fda.gov/scienceresearch/sciencecareeropportunities/ucm380676.htm.* Proposals to participate should be submitted at *ELP@fda.hhs.gov,* within the dates provided at the ELP website at: *https://www.fda.gov/scienceresearch/sciencecareeropportunities/ucm380676.htm.*

Dated: July 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–16177 Filed 7–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the next meeting of the

Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 (Committee). The meeting is open to the public and will be held in the Washington, DC metropolitan area. The Committee is working to accomplish its mission to provide independent advice to the Secretary of the U.S. Department of Health and Human Services or a designated representative for the implementation of *Healthy People* 2030.

DATES: The Committee will meet on September 6, 2018, from 8:30 a.m. to 5:00 p.m. Eastern Time (ET), and September 7, 2018, from 8:30 a.m. to 3:00 p.m. ET.

ADDRESSES: The meeting will be held at the 20 F Street Conference Center, located at 20th F Street NW, Washington, DC 20001. To register to attend the meeting, please visit the Healthy People website at *https://www.healthypeople.gov.*

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8255 (telephone), (240) 453–8281 (fax). Additional information is available on the Healthy People website at *https://www.healthypeople.gov.*

SUPPLEMENTARY INFORMATION:

Appointed Committee Members: The names and biographies of the appointed Committee members are available at *https://www.healthypeople.gov/2020/about/history-development/healthy-people-2030-advisory-committee.*

Purpose of Meeting: In accordance with Federal Advisory Committee Act and to promote transparency of the process, deliberations of the Committee will occur in a public forum. At this meeting, the Committee will continue its deliberations from the last public meeting.

Background: The Committee, a federal advisory committee, is charged with issuing recommendations for the Secretary regarding the implementation of national health promotion and disease prevention objectives for 2030. The Committee will discuss the nation's health promotion and disease prevention objectives and will provide recommendations to improve health status and reduce health risks for the nation by the year 2030. The Committee will develop recommendations for implementing Healthy People 2030, including recommendations for engaging stakeholders in the implementation and achievement of the objectives. Through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade and new knowledge of current data, trends, and innovations to develop the next iteration of national health promotion and disease prevention objectives to improve the health of the nation. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives that meet a broad range of health needs, encourage collaboration across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities.

Meeting Agenda: The meeting agenda is available at the Healthy People website at *http://www.healthypeople.gov.* The Committee will develop further its recommendations regarding: Stakeholder engagement; the roles of health equity, complex systems science and modeling, and summary measures in Healthy People 2030; and activities for implementing Healthy People 2030.

Public Participation at Meeting: Members of the public are invited to attend the Committee meeting. There will be no opportunity for oral public comments during the Committee meeting. However, written comments are welcome throughout the entire development process of the national health promotion and disease prevention objectives for 2030 and may be emailed to *HP2030@hhs.gov.* To attend the Committee meeting, individuals must pre-register at the Healthy People website at *http://www.healthypeople.gov.* Registrations must be completed by 5:00 p.m. E.T., on August 31, 2018. Space for the meeting is limited and registration will be accepted until maximum room capacity is reached. A waiting list will be maintained should registrations exceed room capacity. Individuals on the waiting list will be contacted as additional space for the meeting becomes available. Registration questions may be directed to *HealthyPeople@norc.org.*

Authority: 42 U.S.C. 217a. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: July 25, 2018.

Donald Wright,

Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion).

[FR Doc. 2018–16238 Filed 7–27–18; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7006–N–13]

60-Day Notice of Proposed Information Collection: Voucher Management System (VMS), Section 8 Budget and Financial Forms

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 28, 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 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–

8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

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: Voucher Management System (VMS), Section 8 Budget and Financial Forms.

OMB Approval Number: 2577–0282.

Type of Request: Reinstatement, without change, of a previously approved collection.

Form Number: Financial Forms: HUD–52672, 52681, 52681–B, 52663 and 52673. Originally, the HCV Financials were included in OMB Collection 2577–0169. Regulatory References 982.157 and 982.158. PHAs that administer the HCV program are required to maintain financial reports in accordance with accepted accounting standards in order to permit timely and effective audits. The HUD–52672 (Supporting Data for Annual Contributions Estimates Section 8 Housing Assistance Payments Program) and 52681 (Voucher for Payment of Annual Contributions and Operating Statement Housing Assistance Payments Program) financial records identify the amount of annual contributions that are received and disbursed by the PHA and are used by PHAs that administer the five-year Mainstream Program, MOD Rehab, and Single Room Occupancy. Form HUD–52663 (Suggested Format for Requisition for Partial Payment of Annual Contributions Section 8 Housing Assistance Payments Program) provides for PHAs to indicate requested funds and monthly amounts. Form HUD–52673 (Estimate of Total Required Annual Contributions Section 8 Housing Assistance Payments Program) allows PHAs to estimate their total required annual contributions. The required financial statements are similar to those prepared by any responsible business or organization.

The automated form HUD–52681–B (Voucher for Payment of Annual Contributions and Operating Statement Housing Assistance Payments Program Supplemental Reporting Form) is entered by the PHA into the Voucher Management System (VMS) on a monthly basis during each calendar year to track leasing and HAP expenses by voucher category, as well as data concerning fraud recovery, Family Self-Sufficiency escrow accounts, PHA-held equity, etc. The inclusion, change, and deletion of the fields mentioned below will improve the allocation of funds and allow the PHAs and the Department to realize a more complete picture of the PHAs' resources and program activities, promote financial accountability, and improve the PHAs' ability to provide assistance to as many households as possible while maximizing budgets. In addition, the fields will be crucial to the identification of actual or incipient financial problems that will ultimately affect funding for program participants. The automated form HUD–52681–B is also utilized by the same programs as the manual forms.

Description of the need for the information and proposed use: The Voucher Management System (VMS) supports the information management needs of the Housing Choice Voucher (HCV) Program and management functions performed by the Financial Management Center (FMC) and the Financial Management Division (FMD) of the Office of Public and Indian Housing and the Real Estate Assessment Center (PIH–REAC). This system's primary purpose is to provide a central system to monitor and manage the Public Housing Agency (PHAs) use of vouchers and expenditure of program funds, and is the base for budget formulation and budget implementation. The VMS collects PHAs' actual cost data that enables HUD to perform and control cash management activities; the costs reported are the base for quarterly HAP and Fee obligations and advance disbursements in a timely manner, and reconciliations for overages and shortages on a quarterly basis.

Respondents (i.e., affected public): Public Housing Authorities.

Estimated Number of Respondents: 3,110.

Estimated Number of Responses: 28,960.

Frequency of Response: Monthly.

Average Hours per Response: 1.5.

Total Estimated Burdens: 57,540.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	3,110	12	28,960	1.5	57,540	$30	$1,726,200

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Dated: July 20, 2018.

Merrie Nichols-Dixon,

Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2018–16147 Filed 7–27–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–40]

30-Day Notice of Proposed Information Collection: Evaluation of the Supportive Services Demonstration

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* August 29, 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: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 28, 2018 at 83 FR 8691.

A. Overview of Information Collection

Title of Information Collection: Evaluation of the Supportive Services Demonstration.

OMB Approval Number: 2528—New.

Type of Request: New.

Form Number: NA.

Description of the need for the information and proposed use: The U.S. Department of Housing and Urban Development (HUD) has contracted with Abt Associates Inc. to conduct an evaluation of HUD's Supportive Services Demonstration (SSD), also referred to as Integrated Wellness in Supportive Housing (IWISH). The SSD is a three-year demonstration sponsored by HUD to test the impact of a new model of housing-based supportive services on the healthcare utilization and housing stability of low-income older adults. The goal of the SSD model is to help older adults in HUD-assisted housing to age in place successfully. The SSD model funds a full-time Resident Wellness Director (RWD) and part-time Wellness Nurse (WN) to work in HUD-assisted housing developments that either predominantly or exclusively serve households headed by people aged 62 or over. These services are not typically available in HUD-assisted housing developments for this population and are anticipated to positively impact outcomes.

Eligible HUD-assisted properties applied for the demonstration and were randomly assigned to one of three groups: A ''treatment group'' that received grant funding to hire a RWD and WN and implement the SSD model (40 properties); an ''active control'' group that did not receive grant funding but received a stipend to participate in the evaluation (40 properties); and a ''passive control'' group that received neither grant funding nor a stipend (44 properties). The random assignment permits an evaluation that quantifies the impact of the SSD model by comparing outcomes at the 40 treatment group properties to outcomes at the 84 properties in the active and passive control groups.

Under contract with HUD's Office of Policy Development and Research, Abt Associates Inc. will conduct a two-part evaluation—a process study to describe the implementation of the demonstration and an impact study to measure the impact of the SSD model on residents' use of healthcare services and housing stability. The evaluation features analysis of administrative data and the following types of baseline data collection from human subjects: (1) An initial questionnaire with housing and wellness staff (RWD, Service Coordinator, and/or property management) at each of the 40 treatment properties and the 40 active control properties; (2) interviews with housing and wellness staff (RWDs, WNs, Service Coordinators, and property management) at each of the 40 treatment properties and the 40 active control properties; (3) 24 focus groups with residents and caregivers of residents. The purpose of these activities is to collect data from multiple perspectives about implementation experience with the demonstration, the strengths and weakness of the model, and how resident wellness and service coordination activities compare across treatment and control properties. The evaluation will also incorporate data collected by The Lewin Group as part of the implementation of the demonstration. Information on the SSD information collection was published in the **Federal Register** on January 9, 2017 (FR–5915–N–14).

Respondents (i.e., Affected Public): Resident Wellness Directors; Wellness Nurses; Service Coordinators; housing property staff; HUD-assisted residents (aged 62 and over); and caregivers of HUD-assisted residents.

Total Estimated Burdens: The estimated average burden for the initial questionnaire is 1.5 hours per person per questionnaire. The questionnaire will take up to 60 minutes to complete, with an additional 30 minutes for scheduling and preparation. There will be one to two respondents from each property. The respondents for the initial questionnaire are Resident Wellness Directors, Service Coordinators, and housing property staff. The estimated number of respondents for the initial questionnaire is 120 and the estimated burden is 180 hours.

The estimated average burden for the interviews is 2.5 hours. The interviews will take up to two hours, with an additional 30 minutes for scheduling and preparation. The respondents for the interviews are Resident Wellness Directors, Wellness Nurses, Service Coordinators, and housing property staff. There will be between one and four interview respondents per property for an estimated number of respondents of 220 and an estimated burden of 550 hours.

The estimated average burden for each focus group with residents is 1.75 hours. The focus group discussion will last up to 90 minutes, with an additional 15 minutes at the start for participants to complete the consent process and orient themselves to the group. The respondents for the resident focus groups are residents aged 62 and over of HUD-assisted properties. There will be an average of 10 participants per focus group and 21 focus groups, for a total of 210 respondents and 368 burden hours.

The estimated average burden for the caregiver focus group is 1.75 hours. The focus group discussion will take up to 90 minutes, with an additional 15 minutes at the start for participants to complete the consent process and orient themselves to the group. The respondents for the caregiver focus groups are the informal caregivers (mostly friends and family) of residents aged 62 and over of HUD-assisted properties. There will be an average of 10 participants per focus group and three focus groups, for a total of 30 respondents and 53 burden hours.

Exhibit A–2 provides the total estimated hour and cost burden of the information collection. The ''Initial Questionnaire'' category in Exhibit A–2 includes three data collection instruments: Initial Questionnaire for

Treatment Properties; Initial Questionnaire for Active Control Properties with a Service Coordinator; and Initial Questionnaire for Active Control Properties without a Service Coordinator. The ''Interviews'' category includes five data collection instruments: Interview Guide for Resident Wellness Directors at Treatment Properties; Interview Guide for Wellness Nurses at Treatment Properties; Interview Guide for Housing Property Staff at Treatment Properties; Interview Guide for Service Coordinators at Active Control Properties; and Interview Guide for Housing Property Staff at Active Control Properties. The ''Focus Groups with Residents'' category includes three data collection instruments: Moderator Guide for Focus Groups with IWISH Participants; Moderator Guide for Focus Groups with IWISH Non-Enrollees; and Moderator Guide for Focus Groups with Residents of Active Control Properties. The ''Focus Groups with Caregivers'' category includes one data collection instrument: Moderator Guide for Focus Groups with Caregivers of IWISH Participants.

ESTIMATED HOUR AND COST BURDEN OF INFORMATION COLLECTION

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hour	Hourly cost per response	Annual cost
Initial Questionnaire	120.00	1.00	120.00	1.50	180.00	$34.04	$6,127.20
Interviews	220.00	1.00	220.00	2.50	550.00	34.04	18,722.00
Focus Groups with Residents	210.00	1.00	210.00	1.75	367.50	7.90	2,903.25
Focus Groups with Caregivers	30.00	1.00	30.00	1.75	52.50	27.70	1,454.25
Total	580.00				1,151.00		29,206.70

The total estimated annual cost for this information collection is $29,206.70.

To estimate the cost per hour for the questionnaire and interview respondents, we use the most recent (May 2016) Bureau of Labor Statistics, Occupational Employment Statistics median hourly wage for selected occupations classified by Standard Occupational Classification (SOC) codes and added 31.7 percent to account for benefits costs. (According to the Bureau of Labor Statistics' Employer Costs for Employee Compensation data from September 2017, benefit costs averaged 31.7 percent of employer costs for employee compensation across all job categories.)

The hourly cost per response for the initial questionnaire, $34.04, is a weighted average of the estimated hourly cost for RWDs, service coordinators, and property managers. To estimate hourly wage rates for resident wellness directors and service coordinators, we used the occupation code Healthcare Social Workers (21–1022) with a median hourly wage of $25.85 and an estimated cost with benefits of $34.04. For property managers, we used the occupation code Property, Real Estate, and Community Association Managers (11–940) with a median hourly wage of $27.70 and an estimated cost with benefits of $34.04.

The hourly cost per response for the interviews, $34.04, is a weighted average of the estimated hourly cost for RWDs, service coordinators, property managers, and WNs. As discussed above, the estimated hourly cost for resident wellness directors and service coordinators is $34.04 and the estimated hourly cost for property managers is $34.04. For WNs, we used the occupation code Registered Nurses (29–1141) with a median hourly wage of $34.04 and an estimated cost with benefits of $34.04.

The hourly cost for the focus groups with residents is $7.90. Most of the properties in the SSD are funded through HUD's Supportive Housing for the Elderly (Section 202) program. According to HUD's Picture of Subsidized Households for 2016. (*https://www.huduser.gov/portal/datasets/assthsg.html*), the average household income for Section 202 residents is $13,311. Some 98 percent of households have something other than wages or welfare benefits as their major source of income, in most cases Social Security benefits. To estimate the hourly cost for the residents participating in focus groups, we translated the average monthly Social Security benefit for retired workers, which in 2017 was $1,369 (*https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf*) into an hourly rate of $7.90 per hour (by multiplying by 12 months and dividing by 2,080 hours).

The hourly cost for the focus groups with caregivers is $27.70. To estimate hourly costs for the caregivers participating in focus groups, we used the median annual household income from the 2016 American Community Survey, $57,617, and divided it by 2,080 hours to arrive at an hourly rate of $27.70.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 18, 2018.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–16145 Filed 7–27–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7006–N–11]

60-Day Notice of Proposed Information Collection: ONAP Training and Technical Assistance Evaluation Form

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 28, 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 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

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: ONAP Training and Technical Assistance Evaluation Form.

OMB Approval Number: Pending OMB Approval.

Type of Request: New Collection.

Form Number: Form HUD–5879.

Description of the Need for the Information and Proposed Use: The Native American Housing Assistance and Self-Determination Reauthorization Act (NAHASDA) authorizes funding for the Indian Housing Block Grant (IHBG) program that supports the development, management, and operation of affordable homeownership and rental housing; infrastructure development; and other forms of housing assistance intended for low-income persons. Federally-recognized Native American and Alaska Native tribes, tribally-designated housing entities, and the Department of Hawaiian Home Lands are eligible to receive IHBG funds. HUD's Office of Native American Programs (ONAP) administers the IHBG program and offers contracted training and technical assistance to IHBG recipients on program requirements. ONAP's Notice of Funding Availability for training and technical assistance services includes the requirement for the contractor(s) to use an OMB-approved evaluation form at all ONAP-sponsored events. At the end of each training and technical assistance event, participants are invited to voluntarily complete the Training and Technical Assistance Evaluation Form (form HUD–5879) to assess training and technical assistance effectiveness and solicit ideas for improvement. Form HUD–5879 is a one-page survey instrument and does not collect any personally identifiable information, including a participant's name.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–5879	40	200	8,000	.2	1,600	$36	$57,600
Total	40	200	8,000	.2	1,600	36	57,600

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: July 2, 2018.

Merrie Nichols-Dixon, Director,

Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2018–16141 Filed 7–27–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6078–N–02]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning July 1, 2018, is 3

percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2018, is 3⅛ percent.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street SW, Room 5148, Washington, DC 20410–8000; telephone (202) 402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 2018, is 3⅛ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 3⅛ percent for the 6-month period beginning July 1, 2018. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the latter 6 months of 2018.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan. 1, 2006.
4⅞	Jan. 1, 2006	July 1, 2006.
5⅜	July 1, 2006	Jan. 1, 2007.
4¾	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4½	Jan. 1, 2008	July 1, 2008.
4⅝	July 1, 2008	Jan. 1, 2009.
4⅛	Jan. 1, 2009	July 1, 2009.
4⅛	July 1, 2009	Jan. 1, 2010.
4¼	Jan. 1, 2010	July 1, 2010.
4⅛	July 1, 2010	Jan. 1, 2011.
3⅞	Jan. 1, 2011	July 1, 2011.
4⅛	July 1, 2011	Jan. 1, 2012.
2⅞	Jan. 1, 2012	July 1, 2012.
2¾	July 1, 2012	Jan. 1, 2013.
2½	Jan. 1, 2013	July 1, 2013.
2⅞	July 1, 2013	Jan. 1, 2014.
3⅝	Jan. 1, 2014	July 1, 2014.
3¼	July 1, 2014	Jan. 1, 2015.
3	Jan. 1, 2015	July 1, 2015.
2⅞	July 1, 2015	Jan. 1, 2016.
2⅞	Jan. 1, 2016	July 1, 2016.
2½	July 1, 2016	Jan. 1, 2017.
2¾	Jan. 1, 2017	July 1, 2017.
2⅞	July 1, 2017	Jan. 1, 2018.
2¾	Jan. 1, 2018	July 1, 2018.
3⅛	July 1, 2018	Jan. 1, 2019.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended Section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under Section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning July 1, 2018, is 3 percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR

50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 24, 2018.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2018–16255 Filed 7–27–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS01000.L58530000.EQ0000.241A; N–95402; 12–08807; MO#4500118043; TAS:15X5232]

Notice of Realty Action: Classification for Lease and/or Conveyance for Recreation and Public Purposes of Public Lands (N–95402) for a School in the Southwest Portion of the Las Vegas Valley, Clark County, NV

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM), Las Vegas Field Office, has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes Act (R&PP), as amended, approximately 15 acres of public land in the Las Vegas Valley, Clark County, Nevada. The Clark County School District proposes to use the land for an elementary school that will help meet future educational needs in the southwestern part of the Las Vegas Valley.

DATES: Interested parties may submit written comments regarding the proposed classification for lease and conveyance of the land until September 13, 2018.

ADDRESSES: Mail written comments to the BLM Las Vegas Field Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130, fax to 775–515–5010, Attn: Vivian Browning, or email to *vbrowning@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Vivian Browning at the above address, telephone: 702–515–5013, email: *vbrowning@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 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 business hours.

SUPPLEMENTARY INFORMATION: The parcel is located south of Mountains Edge Parkway off El Capitan Way in southwest Las Vegas and is legally described as:

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 29, SW¼NW¼SE¼,
W½SE¼NW¼SE¼.

The area described contains 15 acres in Clark County, Nevada.

The Clark County School District has filed an R&PP application to develop the above-described land as an elementary school. The project will consist of five school buildings, parking for school staff, public parking, busing routes with student pick-up and drop-off points, kindergarten classrooms with a fenced-off play area, areas for basketball courts, ball fields, bike racks, shaded rest areas, a botanical learning area, a turf play area, playgrounds, a tetherball court area, and utilities. Additional detailed information pertaining to this publication, plan of development, and site plan is available for review at the BLM Las Vegas Field Office at the above address.

The Clark County School District is a political subdivision of the State of Nevada, and is, therefore, a qualified applicant under the R&PP Act.

Subject to limitations prescribed by law and regulation, prior to patent issuance, the holder of any right-of-way grant within the lease area may be given the opportunity to amend the right-of-way grant for conversion to a new term, including perpetuity, if applicable.

The land identified is not needed for any Federal purpose. The lease and/or conveyance is consistent with the BLM Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The Clark County School District has not applied for more than the 640-acre limitation for public purpose uses in a year and has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b).

The lease and conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits for the same under applicable law and such regulations as the Secretary of the Interior may prescribe; and

3. The parcel is subject to valid existing rights.

Any lease and conveyance will also contain any terms or conditions required by law (including, but not limited to, any terms or conditions required by 43 CFR 2741.4), and will contain an appropriate indemnification clause protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or operations on the leased/patented lands. It will also contain any other terms and conditions deemed necessary and appropriate by the Authorized Officer.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit written comments on the suitability for classification of the land as a school project in the City of Las Vegas. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and Federal programs. Interested parties may also submit written comments regarding the specific use proposed in the application and plan of development, and whether the BLM followed proper administrative procedures in reaching the decision to lease and convey under the R&PP Act.

Before including your address, phone number, emails 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. Only written comments submitted to the Field Manager, BLM Las Vegas Field Office, will be considered properly filed. Any adverse comments will be reviewed as protests, by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action.

In the absence of any adverse comments, the decision will become effective on September 13, 2018. The lands will not be available for lease and conveyance until after the decision becomes effective.

Authority: 43 CFR 2741.5.

Vanessa L. Hice,

Assistant Field Manager, Division of Lands, Las Vegas Field Office.

[FR Doc. 2018–16228 Filed 7–27–18; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTL060000 L14400000.FR0000 18XL1109AF; MO#4500114300; MTM 108768]

Notice of Realty Action: Recreation and Public Purposes Act Classification, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined certain public lands in Teton County, Montana, and found them suitable for classification for conveyance to the Montana Department of Fish, Wildlife and Parks (MT FWP) under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, and the Taylor Grazing Act.

DATES: Submit written comments regarding this proposed classification on or before September 13, 2018. Absent any adverse comments, the classification takes effect on September 28, 2018.

ADDRESSES: Mail written comments to the Bureau of Land Management, Field Manager, Lewistown Field Office, Bynum Reservoir R&PP, 920 Northeast Main, Lewistown, MT 59457. Detailed information is available for review during business hours, 8 a.m. to 4:30 p.m. Mountain Time, Monday through Friday, except during Federal holidays, at the BLM Lewistown Field Office. Comments also may be hand delivered to the BLM Lewistown Field Office, or faxed to (406) 538–1958. The BLM will not consider comments received via telephone calls or email.

FOR FURTHER INFORMATION CONTACT: Debbie Tucek, Realty Specialist, telephone: 406–538–1900; email: *dtucek@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 80 acres of land proposed for conveyance to MT FWP must conform to the plat of survey. The legal description of the lands proposed for conveyance is set forth below. The MT FWP has not applied for more than the 6,400-acre limitation for recreation uses in a year, nor more than 640 acres for each of the programs involving public resources other than recreation.

The MT FWP has submitted a statement in compliance with the regulations at 43 CFR 2741.4(b), and proposes to use the land for recreation purposes. Existing facilities include a boat ramp, restroom facilities, and primitive campsites to enhance fishing and other recreational pursuits.

The legal description of the lands examined and identified as suitable for conveyance under the R&PP Act is:

Principal Meridian, Montana

T. 26 N, R. 6 W,
Sec. 31, NE¼SE¼; and
Sec. 32, SE¼SW¼.

The lands described aggregate approximately 80 acres in Teton County, Montana. The lands are not needed for any Federal purposes.

Conveyance of the lands for recreational purposes is consistent with the BLM Headwaters Resource Management Plan, dated July 1984, and would be in the national interest.

All interested parties will receive a copy of this notice once it is published in the **Federal Register**. A copy of the **Federal Register** notice with information about this proposed realty action will be published in a newspaper of local circulation once a week for 3 consecutive weeks. The regulations at 43 CFR subpart 2741 that address the requirements and procedures for conveyances under the R&PP Act do not require a public meeting.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including location under the mining laws, except for conveyance under the R&PP Act and leasing under the mineral leasing laws. The segregative effect of this classification will terminate upon patent, or will automatically expire 18 months after issuance of this notice if the lands under application are not conveyed.

The conveyance of the land, when issued, will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945).

2. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.

3. All mineral deposits in the land so patented, and the right to prospect for, mine and remove such deposits from the same under applicable law and regulations as established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights.

4. Valid existing rights.

5. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupations on the patented lands.

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

7. Right-of-way MTGF 005233 issued to Teton Cooperative Reservoir Company for a reservoir, canal, and ditch.

8. A reversionary provision stating that the land conveyed shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his delegate, the patentee or its successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, the lands have not been used for the purpose for which the lands were conveyed for a 5-year period, or the patentee has failed to follow the approved development plan or management plan. Interested persons may submit comments involving the suitability of the land for recreation, including fishing and dispersed camping. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested persons may submit comments regarding the specific use proposed in the application and plan of development and management, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for conveyance to MT FWP for recreation, including dispersed camping and fishing sites.

Any adverse comments will be reviewed by the BLM State Director or

other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. The lands will not be offered for conveyance until after the classification becomes effective.

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

(Authority: 43 CFR 2741.5)

Brett A. Blumhardt,

Acting Field Manager, Lewistown Field Office, Montana/Dakotas Bureau of Land Management.

[FR Doc. 2018–16229 Filed 7–27–18; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVSO3000. L54400000. EU0000. LVCLF1805630.18X; MO# TBA TAS: 18XL5017AR]

Notice of Intent To Amend the Las Vegas Resource Management Plan and Prepare an Environmental Assessment; Notice of Segregation and Notice of Realty Action; Classification and Proposed Modified Competitive Sales of Public Land in Pahrump, Nye County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent and Notice of Realty Action.

SUMMARY: In compliance with section 203 of the Federal Land Policy and Management Act (FLPMA), as amended, and the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management's (BLM) Pahrump Field Office proposes to amend the 1998 Las Vegas Resource Management Plan (RMP) and prepare an Environmental Assessment (EA) to identify approximately 621 acres of public land for sale. The EA will also evaluate the proposed sale of these acres through two modified competitive sealed bid sales of public land for not less than the appraised fair market value (FMV). Publication of this notice in the **Federal Register** segregates the subject lands from all appropriation under the public land laws, including the general mining laws, and from the mineral leasing and geothermal leasing laws, except the sales provisions of FLPMA.

DATES: Interested parties may submit written comments regarding the RMP Amendment during the 30-day scoping period initiated by publication of this notice in the **Federal Register** and ending August 29, 2018. Interested parties may submit written comments regarding the Notice of Realty Action for the proposed land sale during the 45-day comment period initiated by publication of this notice in the **Federal Register**, and ending September 13, 2018. All dates related to the bid process are contained the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may submit comments on issues and planning criteria related to the plan amendment and realty action by any of the following methods:

- *Email*: *ssapp@blm.gov.*
- *Fax:* (702) 515–5010, Attn: Shevawn Sapp.
- *Mail:* BLM, Attn: Shevawn Sapp, Pahrump Field Office, 4701 N. Torrey Pines Dr., Las Vegas, NV, 89130–2301.

Documents, including, but not limited to, the draft plan amendment and supporting EA, pertinent to this proposal will be available at the above address.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to the mailing list, send requests to one of the following:

- Shevawn Sapp, Realty Specialist, at telephone (702) 515–5063;
- *Email: ssapp@blm.gov;*
- *Mailing Address:* 4701 North Torrey Pines Drive, Las Vegas, NV 89130–2301.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 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 business hours.

SUPPLEMENTARY INFORMATION: Spring Mountain Raceway, LLC has requested that the BLM dispose of public land by direct sale or modified competitive sale within the Town of Pahrump for approximately 621 acres. The public land directly abuts property owned by Spring Mountain Raceway, LLC, along State Route 160 near Gamebird Road in Nye County. The Nye County Board of Commissioners supports the proposal. The BLM Pahrump Field Office intends to prepare an RMP amendment with an associated EA for the Las Vegas RMP. This Notice of Intent (NOI) includes a proposed two-phase modified competitive sealed bid sale, announces the beginning of the scoping process for the RMP amendment and a temporary segregation from appropriation under the public land laws, including the mining law, and mineral leasing and geothermal leasing laws, subject to valid existing rights. Because the Las Vegas RMP does not specifically include or identify the sale parcels for disposal, a land-use plan amendment is required.

The proposed sales would be conducted in two phases, with phase one anticipated in January 2019 and phase two anticipated in the summer of 2019. The first phase includes the proposed sale of approximately 553 acres. The second phase includes the remaining 68 acres, which also require cadastral survey before they may be sold. When ready, the Draft RMP Amendment and EA will be available for a 30-day public comment period, on BLM's website at *https://go.usa.gov/xn7nT* and may be announced in local news outlets as well. Sealed bids for the phase-one modified competitive sale may be mailed or delivered to the BLM Pahrump Field Office, at the address above, beginning January 10, 2019 and ending January 17, 2019. Sealed bids must be received at the BLM Office no later than 4:30 p.m. Pacific Time on January 17, 2019. The BLM will open the sealed bids for the phase one sale on January 18, 2019 at the BLM Pahrump Field Office at 10 a.m. Pacific Time. Sealed bids for the phase-two modified competitive sale may be mailed or delivered to the BLM Pahrump Field Office, at the address below, beginning August 16, 2019. Sealed bids must be received no later than 4:30 p.m. Pacific Time, August 23, 2019, in accordance with the sale procedures. The BLM will open the sealed bids for the phase-two sale on August 30, 2019 at the BLM Pahrump Field Office at 10 a.m. Pacific Time.

The segregation will terminate: (i) Upon publication in the **Federal Register** of a termination of the segregation; or (ii) At the end of two years from the date of this publication in the **Federal Register**, whichever occurs first.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and to guide the planning process. The preliminary issue for the plan amendment and proposed disposal area identified by BLM personnel; Federal, state, and local agencies; and interested stakeholders is desert tortoise habitat. The public land proposed for sale directly abuts property owned by Spring Mountain Raceway, LLC, along

State Route 160 near Gamebird Road in Nye County. The land is described as:

Mount Diablo Meridian, Nevada

T. 20 S., R. 54 E.,

Sec. 27, SW¼, that part lying outside of the utility corridor;

Sec. 28, E½NE¼NE¼SW¼, NE¼SE¼NE¼SW¼,

S½SE¼NE¼SW¼, NE¼SE¼SW¼, E½SW¼SE¼SW¼, SE¼SE¼SW¼, and SE¼;

Sec. 34, lots 2, 3, and 4, those parts lying South of the utility corridor, lots 5 thru 8, NE1/4NW1/4, that part lying South the utility corridor, SE¼NW¼, and E½SW¼.

The area combined contains approximately 621 acres +/− according to the official plats of surveys of said land, on file with the BLM, and areas determined using GIS maps.

The BLM determined that a modified competitive method of sale would be the appropriate method for disposal of these parcels. These sales meet the criteria found in 43 CFR 2710.0–3(a)(2) because these disposals serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on other lands. The authorized officer has identified Spring Mountain Raceway, LLC, as the designated bidder for these parcels. The use of the modified-competitive sale method is consistent with 43 CFR 2711.3–2(a) because the authorized officer has determined it is necessary in order to assure equitable distribution of land among purchasers or to recognize equitable considerations or public policies.

Only written comments will be considered properly filed. Submit comments to the address in the **ADDRESSES** section. Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Information concerning the sales, appraisals, reservations, sale procedures and conditions, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, maps delineating the proposed sale parcels, mineral potential report, the EA, and other environmental documents will be available for review at the BLM Pahrump Field Office, or by calling (702) 515–5000, and asking to speak to a member of the Pahrump Realty Team.

In accordance with 43 CFR 2710.0–6(c)(3)(ii) and 43 CFR 2711.3–2(a)(1)(i), modified competitive sale procedures are appropriate to protect on-going uses and to assure compatibility of the possible uses with adjacent lands. Conveyance of the sale parcels will be subject to valid existing rights and encumbrances of record, including, but not limited to, rights-of-way (ROW) for roads and public utilities. The patents will include appropriate indemnification clauses protecting the United States from claims arising out of the patentee's use occupancy or occupations on the patented lands. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition, or potential uses of the parcels of land proposed for sale. The Pahrump Field Office will also publish a copy of this notice once a week for three consecutive weeks in the Pahrump Valley Times prior to both the phase-one and phase-two sales.

Segregation: Publication of this notice in the **Federal Register** segregates the subject lands from all appropriations under the public land laws, including the general mining laws and from the mineral leasing and geothermal leasing laws, except sale under FLPMA. The segregation will terminate: (i) Upon publication in the **Federal Register** of a termination of the segregation; or (ii) At the end of two years from the date of this publication in the **Federal Register**, whichever occurs first. On publication of this notice and until completion of the sales, the BLM is no longer accepting land-use applications affecting the parcels identified for sale. However, land-use applications may be considered after completion of the phase-two sale if the parcels are not sold. The parcels may be subject to land-use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcels. Encumbrances of record that may appear in the BLM public files for the parcels proposed for sale are available for review during business hours, 8 a.m. to 4:30 p.m., Pacific Time, Monday through Friday at the BLM Pahrump Field Office except during Federally recognized holidays. The parcels are subject to limitations prescribed by law and regulation, and prior to patent issuances, a holder of any ROW within the parcels may be given the opportunity to amend the ROW for conversion to a new term, including perpetuity, if applicable, or an easement. In accordance with regulations at 43 CFR 2807.15(b), the BLM notified the valid existing ROW holders by letter of their ability to convert their ROWs to perpetual ROWs or easements.

Once the Decision Record is filed, amending the RMP and approving the proposed sales, the modified competitive sales will occur in two phases. Phase one will dispose public land for which the existing cadastral survey is adequate. Phase two will dispose the remaining public land in the RMP amendment area after the cadastral survey for the parcels has been completed.

The patents if issued, would be subject to the following terms, conditions, and reservations:

1. All minerals deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights;

2. A ROW is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

3. The parcels are subject to valid existing rights;

4. The parcels are subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans; and

5. Appropriate indemnification clauses protecting the United States from claims arising out of the lessee's/patentee's use, occupancy, or occupations on the leased/patented lands.

Pursuant to the requirements established by Section 120(h) of CERCLA, 42 U.S.C. 9620(h), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyances of the parcels will not be on a contingency basis. However, to the extent required by law, the parcels are

subject to the requirements of Section 120(h) of the CERCLA.

Sale procedures: All sale procedures apply to both the phase one and phase two sales. The approximate sale acreage is 553 acres for phase one and 68 acres for phase two. The FMV for both the phase one and phase two sales will be available on BLM's website at *https://go.usa.gov/xn7nT* no later than 30 days prior to the respective sale. The designated bidder must appoint an authorized representative for these sales by submitting, in writing, a notarized document that also identifies the level of capacity given to the authorized representative. The authorized representative will have the opportunity to meet and accept the high bid as the purchase price of the parcels. Should the authorized representative refuse to meet the high bid, the party submitting the high bid will be declared the successful bidder in accordance with regulations at 43 CFR 2711.3–2(c). Consistent with 43 CFR 2711.3–2(e), acceptance or rejection of any offer to purchase shall be in accordance with the procedures set forth in 43 CFR 2711.3–1(f) and (g). Sealed bids will be presented for the sale parcels for both phase one and phase two. Sealed bid envelopes must be clearly marked on the front lower left corner with: ''SEALED BID BLM LAND SALE'' and the identification number for the sale parcel. The phase one sale envelope should be marked ''BLM SERIAL NUMBER N–95802.'' The phase two sale envelope should be marked ''BLM SERIAL NUMBER N–96616.'' Each sealed bid shall state the highest bid amount and be accompanied by a cashier's check, certified check, or U.S. postal money order, and made payable in U.S. dollars to ''Department of the Interior—Bureau of Land Management'' for not less than 20 percent of the amount bid. Personal or company checks will not be accepted. The sealed bid envelope shall also include a completed and signed Certificate of Eligibility and supporting documentation. The Certificate of Eligibility can be found at the Pahrump Field Office or for an electronic form, please contact the Pahrump Field Office, as specified in the **ADDRESSES** section, above. Pursuant to regulations 43 CFR 2711.2, bidders must be (1) United States citizens 18 years of age or older; (2) A corporation subject to the laws of any State or of the United States; (3) An entity including, but not limited to associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or (4) A State, State instrumentality, or political subdivision authorized to hold real property. United States citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Sealed bids for phase one will be opened and recorded to determine the high bidder on January 18, 2019 at the Pahrump Field Office at 10:00 a.m., Pacific Time. Sealed bids for phase two will be opened and recorded to determine the high bidder on August 30, 2019, at the Pahrump Field Office at 10:00 a.m., Pacific Time. Pursuant to 43 CFR 2711.3–1(c), if two or more sealed bid envelopes containing valid bids of the same highest auction amount are received, oral bidding will start at the sealed bid amount between the matching sealed bidders. The highest bidder among the qualified bids received for *each* sale will be announced under 43 CFR 2711.3–1(d). The apparent high bidder must submit a deposit of not less than 20 percent of the successful bid by 3:00 p.m. Pacific Time on the day of the sale in the form of a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management.'' Funds must be delivered no later than 3:00 p.m. Pacific Time on the day of the *applicable* sale to the BLM Collection Officers located at the Pahrump Field Office. If the high bidder is unable to consummate the transaction for any reason, the second-highest bid may be considered for award. The BLM will send the successful bidder a high bidder letter with detailed information for full payment.

Within 30 days of the bid opening, the BLM will, in writing, either accept or reject all bids received. No contractual, or other rights against the United States, may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid. Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee. Requests for all escrow instructions must be received by the Pahrump Field Office prior to 30 days before the prospective patentee's scheduled closing date. There are no exceptions. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase, and the full bid price is submitted by the 180th day following the sale. All name changes and supporting documentation must be received at the BLM Pahrump Field Office 30 days from the date on the high bidder letter by 4:30 p.m., Pacific Time. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change on the Certificate of Eligibility to the BLM Pahrump Field Office in writing. The remainder of the full bid price for the parcel must be paid prior to the expiration of the 180th day following the close of the sale. Payment must be submitted in the form of a certified check, postal money order, bank draft or cashier's check made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management.'' Personal or company checks will not be accepted. Arrangements for electronic fund transfer to the BLM for payment of the balance due must be made a minimum of two weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM cannot accept the full bid price after the 180th day of the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing and all other elements for completion of any 1031 Exchange are the bidder's responsibility. The BLM is not a party to any 1031 Exchange. All sales are made in accordance with and subject to the governing provisions of law and applicable regulations. In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons. The parcels, if not sold by modified competitive, sealed bid sale, may be identified for sale at a later date without further legal notice.

In order to determine the FMV, certain assumptions may have been made concerning the attributes and limitations of the land and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions might not be endorsed or approved by units of local government. It is the bidder's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject

lands, including any required dedication of lands for public uses. It is also the bidder's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Bidders should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Any adverse comments regarding the proposed sales will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any valid adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 40 CFR 1501.7, 43 CFR 1610.2, 43 CFR 1610.5, 43 CFR 2400, 43 CFR 2710, 43 CFR 2711 and 43 CFR 2800.

Michael C. Courtney,

Acting Nevada State Director.

[FR Doc. 2018–16226 Filed 7–27–18; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1125]

Certain Height-Adjustable Desk Platforms and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 22, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of Varidesk LLC of Coppell, Texas. On July 3, 12, and 20, 2018, Varidesk filed letters supplementing the complaint. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain height-adjustable desk platforms and components thereof by reason of infringement of certain claims of U.S. Patent No. 9,113,703 (''the '703 patent''); U.S. Patent No. 9,277,809 (''the '809 patent''); U.S. Patent No. 9,554,644 (''the '644 patent''); and U.S. Patent No. 9,924,793 (''the '793 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia Proctor, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 23, 2018, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of products identified in paragraph (2) by reason of infringement of one or more of claims 1–4 and 6–11 of the '703 patent; claims 1–3, 5–18, and 22–28 of the '809 patent; claims 1–15, 19, 21–23, 25–26, and 28–36 of the '644 patent; and claims 1–11 and 20–50 of the '793 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''a desk platform that sits on an existing desk or work surface and can be adjusted to different heights'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Varidesk LLC, 1221 South Belt Line Road, #500, Coppell, Texas 75019.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Albeit LLC, 1351 Broadway Street, San Francisco, CA 94109

ATC Supply LLC, 12604 Canterbury Drive, Plainfield, IL 60585–3000

Shenzhen Atc Network Scienology CO., LTD., Room 1902, Zian Business Building, The Xinan Second Road, Baoan District, Shenzhen, 518000 Guangdong, China

Best Choice Products, 5642 East Ontario Mills Parkway, Ontario, CA 91764

Huizhou Chang He Home Supplies Co., Ltd., Building 2, Tangquan Qiaoxing Tech Ind. Zone, Xiaojinkou Town, Huizhou, 516023 Guangdong, China

Dakota Trading, Inc., 85 Kinderkamack Road, Emerson, NJ 07630

Designa Inc., San Zhou Lang Industrial Park, Airport Road, Nanhai District, Foshan City, 528237 Guangdong, China

Designa Group, Inc., 4901 Moreau Court, El Dorado Hills, CA 95762

Eureka LLC, 4901 Moreau Court, El Dorado Hills, CA 95762

LaMountain International Group LLC, 9125 Santorini Drive, Elk Grove, CA 95758

Amazon Import Inc., 9910 Baldwin Place, El Monte, CA 91731

Hangzhou Grandix Electronics Co., Ltd., Room 1–1804, New Youth Plaza, No. 8 Jiashan Road, Gongshu District, Hangzhou, 310014 Zhejiang, China

Ningbo GYL International Trading Co., Ltd., 228 Mingbin Road, Luoto Area, Zhenhai, Ningbo, 315202 Zhejiang, China

Knape & Vogt Manufacturing Co., 2700 Oak Industrial Drive NE, Grand Rapids, MI 49505

JV Products Inc., 1825 Houret Court, Milpitas, CA 95035
Vanson Distributing, Inc., 1825 Houret Court, Milpitas, CA 95035
Vanson Group, Inc., 1825 Houret Court, Milpitas, CA 95035
S.P. Richards Co. DBA Lorell, 6300 Highlands Parkway SE, Smyrna, GA 30082
Nantong Jon Ergonomic Office Co., Ltd., Building D, Jingyangshumacheng Chongchuan District, Nantong, 226001 Jiangsu, China
Jiangsu Omni Industrial Co., Ltd., No. 9, Yinbai Road, Hanjiang Economic Development Zone, Yangzhou City, 2251217 Jiangsu, China
OmniMax USA, LLC, 7711 County Road 513, Anna, TX 75409
Haining Orizeal Import and Export Co., Ltd., 4th Floor, Building B, Jinhui Plaza, No. 486 South Hai Chang Road, Haining, 314400 Zhejiang, China
Qidong Vision Mounts Manufacturing Co., Ltd., No. 899 Lingfeng Road, HaiHong Industry Park, Qidong, 226220 Jiangsu, China
Hangzhou KeXiang Keji Youxiangongsi, 1174 Binhe Lu, Changhe Jiedao Binjiang Qu, 310052 Hangzhou, China
Smugdesk, LLC, 14839 Proctor Avenue, Suite D, La Puente, CA 91746
Venditio Group, LLC, 4030 Deerpark Boulevard, Suite 200, Elkton, FL 32033
Versa Products Inc., 14105 Avalon Boulevard, Los Angeles, CA 90061
Victor Technology, LLC, 100 East Crossroads Parkway, Suite C, Bolingbrook, IL 60440
CKnapp Sales, Inc. DBA Vivo, 195 East Martin Drive, Goodfield, IL 61742
Wuhu Xingdian Industrial Co., Ltd., No. 168 Xici 5th Road, Mechanical Industrial Zone, Wuhu, 241100 Anhui, China
Wuppessen, Inc., 1730 East Cedar Street, Ontario, CA 91761

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 24, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–16126 Filed 7–27–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1383 (Final)]

Stainless Steel Flanges From China; Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of stainless steel flanges from China that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission instituted this investigation effective August 16, 2017, following receipt of a petition filed with the Commission and Commerce by the Coalition of American Flange Producers on behalf of itself and its individual members, Core Pipe Products, Inc., Carol Stream, Illinois, and Maass Flange Corporation, Houston, Texas. The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of stainless steel flanges from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Effective January 23, 2018, the Commission established a general schedule for the conduct of the final phase of its investigations on stainless steel flanges from China and India,[3] following preliminary determinations by Commerce that imports of the subject stainless steel flanges were subsidized by the governments of China and India. Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 7, 2018 (83 FR 5459). The hearing was held in Washington, DC, on April 10, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission subsequently issued its final affirmative determination regarding subsidized imports from China on May 29, 2018 (83 FR 25714, June 4, 2018). Following notification of a final determination by Commerce that imports of stainless steel flanges from China were being sold at LTFV within the meaning of section 735(a) of the Act (19 U.S.C. 1673d(a)),[4] notice of the supplemental scheduling of the final phase of the Commission's antidumping duty investigation with respect to China was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 25, 2018 (83 FR 29568).

The Commission made this determination pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on July 25, 2018. The views of the Commission are contained in USITC Publication 4807 (July 2018), entitled *Stainless Steel Flanges from China: Investigation No. 731–TA–1383 (Final).*

By order of the Commission.

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] *Stainless Steel Flanges From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 83 FR 26959, June 11, 2018.

[3] *Stainless Steel Flanges from China and India: Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations,* 83 FR 5459, February 7, 2018.

[4] *Stainless Steel Flanges From the People's Republic of China: Final Affirmative Determination of Sales at Less than Fair Value,* 83 FR 26959, June 11, 2018.

Issued: July 25, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–16227 Filed 7–27–18; 8:45 am]

BILLING CODE 7020–02–P

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: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a meeting on October 19, 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.*

DATES: October 19, 2018.

Time: 9:00 a.m.–3:00 p.m.

ADDRESSES: University of Denver, Sturm College of Law, 2255 E Evans Avenue, Room 412, Denver, CO 80210.

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: July 23, 2018.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2018–16162 Filed 7–27–18; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0184]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Comments Requested: 2019 School Crime Supplement (SCS) to the National Crime Victimization Survey (NCVS)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until September 28, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rachel Morgan, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Rachel.Morgan@ojp.usdoj.gov;* telephone: 202–616–1707).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* 2019 School Crime Supplement to the National Crime Victimization Survey (NCVS).

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number for the questionnaire is SCS–1. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The survey will be administered to persons ages 12 to 18 in NCVS sampled households in the United States from January through June 2019. The SCS collects, analyzes, publishes, and disseminates statistics on the students' victimization, perceptions of school environment, and safety at school.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimate of the total number of respondents is 8,567 persons ages 12 to 18. Of the 8,567 SCS respondents, 86% or 7,402 are expected to complete the long SCS interview (entire SCS questionnaire) which will take an estimated 16 minutes (0.27 hours) to complete. The remaining 14% or 1,165 SCS respondents are expected to complete the short interview (*i.e.,* will be screened out for not being in school), which will take an estimated 2.5 minutes (0.04 hours) to complete. Respondents will be asked to respond to this survey only once during the six month period. The burden estimates are based on data from the prior administration of the SCS.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,046 annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 25, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–16195 Filed 7–27–18; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0011]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Update With Changes, of a Previously Approved Collection Which Expires November, 2018: Department of Justice Equitable Sharing Agreement and Certification

AGENCY: Money Laundering and Asset Recovery Section, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Criminal Division, Money Laundering and Asset Recovery Section, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until September 28, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew Colon, Senior Attorney Advisor, Money Laundering and Asset Recovery Section, 1400 New York Avenue NW, Washington, DC 20005 (phone: 202–514–1263).

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Update with changes, of the Department of Justice Equitable Sharing Agreement and Certification, a previously approved collection for which approval will expire on November 30, 2018.

2. *The Title of the Form/Collection:* Department of Justice Equitable Sharing Agreement and Certification.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is not an agency form number. The applicable component within the Department of Justice is the Money Laundering and Asset Recovery Section (''MLARS''), in the Criminal Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

The Attorney General is required by statute to ''assure that any property transferred to a State or local law enforcement agency . . . will serve to encourage further cooperation between the recipient State or local agency and Federal law enforcement agencies.'' 21 U.S.C. 881(e)(3). MLARS ensures such cooperation by requiring that all such ''equitably shared'' funds be used only for law enforcement purposes and not be distributed to other governmental agencies by the recipient law enforcement agencies. By requiring that law enforcement agencies that participate in the Equitable Sharing Program (Program) file an Equitable Sharing Agreement and Certification (ESAC), MLARS can readily ensure compliance with its statutory obligations. The ESAC requires information regarding the receipt and expenditure of Program funds from the participating agency. Accordingly, it seeks information that is exclusively in the hands of the participating agency.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 6,900 state and local law enforcement agencies electronically file the ESAC annually with MLARS. It is estimated that it takes 30 minutes per year to enter the information. All of the approximately 6,500 agencies must fully complete the form each year to maintain compliance and continue participation in the Department of Justice Equitable Sharing Program.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 3,250 hours. It is estimated that respondents will take 30 minutes to complete the form. (6,500 participants × 30 minutes = 3,250 hours).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: July 25, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–16203 Filed 7–27–18; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Distribution of Characteristics of the Insured Unemployed

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Distribution of Characteristics of the Insured Unemployed.'' 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 September 28, 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 free by contacting Sandra Trujillo by telephone at 202–693–2933, TTY 1–877–889–5627 (these are not toll-free numbers), or by email at *Trujillo.Sandra@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, Room S–4524, 200 Constitution Avenue NW, Washington, DC 20210, by email at *Trujillo.Sandra@dol.gov* or by Fax at 202–693–3975.

FOR FURTHER INFORMATION CONTACT: Ronald Wilus by telephone at 202–693–2931 (this is not a toll-free number) or by email at *Wilus.Ronald@dol.gov.*

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 Office of Management and Budget (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.

The Distribution of Characteristics of the Insured Unemployed is a monthly snapshot of the demographic composition of the claimant population in the Unemployment Insurance (UI) system. It is based on those who file a claim in the week containing the 19th day of the month, which reflects unemployment during the week containing the 12th day of the month. This corresponds with the sample frame used by the Bureau of Labor Statistics for the production of labor force statistics they produce. This report serves a variety of socio-economic needs because it provides aggregate data reflecting UI claimants' sex, race/ethnic group, age, industry, and occupation. The Social Security Act, Section 303(a)(6), 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 1205–0009.

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 changes.

Title of Collection: Distribution of Characteristics of the Insured Unemployed.

Form: ETA 203.

OMB Control Number: 1205–0009.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Monthly.

Total Estimated Annual Responses: 636.

Estimated Average Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 212 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Rosemary Lahasky,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2018–16215 Filed 7–27–18; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TUV Rheinland of North America, Inc.: Applications for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the applications of TUV Rheinland of North America, Inc., for expansion of its scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the applications.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 14, 2018.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0042, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2007–0042) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *https://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for

inspection at the OSHA Docket Office. You may also contact Kevin Robinson at the contact information below to obtain a copy of the ICR.

Extension of comment period: Submit requests for an extension of the comment period on or before August 14, 2018 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Applications for Expansion

The Occupational Safety and Health Administration is providing notice that TUV Rheinland of North America, Inc. (TUVRNA), is applying for expansion of its current recognition as an NRTL. TUVRNA requests the addition of four (4) recognized testing and certification sites, and two (2) additional test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

TUVRNA currently has five facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470. A complete list of TUVRNA sites recognized by OSHA is available at *https://www.osha.gov/dts/otpca/nrtl/tuv.html.*

II. General Background on the Applications

TUVRNA submitted two applications, one dated March 30, 2016 (OSHA–2007–0042–0030) and another dated April 19, 2017 (OSHA–2007–0042–0031), to expand its recognition to include the addition of four recognized testing and certification sites located at: TUV Rheinland (Shenzhen) Co., Ltd. 1f East & 2–4F, Cybio Technology Building No. 1, No. 16, Keibei 2nd Road, High-Tech Industrial Park North, Nashan District, 518057 Shenzhen China; TUV Rheinland (Shanghai) Co., Ltd, TUV Rheinland Building No. 177, Lane 777, West Guangzhong Road, Zhabei District, Shanghai 200072, P.R. China; TUV Rheinland Taiwan Ltd., 11F., No 758, Sec. 4, Bade Rd., Songshan Dist., Taipei City 105, Taiwan; and TUV Rheinland Taiwan Ltd., Taichung Branch Office, No. 9, Lane 36, Minsheng Rod., Sec. 3, Daya District, Taichung City 428, Taiwan. TUVRNA's applications also requested the addition of two additional test standards to its scope of recognition. In 2017 OSHA staff performed an on-site review of TUVRNA's testing facilities on August 7–8 at TUV Rheinland Shanghai, August 10–11at TUV Rheinland Shenzhen, August 14–15 at TUV Rheinland Taipei, and August 16, 2017 at TUV Rheinland Taichung, in which the assessors found some nonconformances with the requirements of 29 CFR 1910.7. TUVRNA addressed these issues sufficiently, and OSHA staff preliminarily determined that OSHA should grant the applications for expansion.

Table 1 below lists the appropriate test standards found in TUVRNA's applications for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
NFPA 496	Purged and Pressurized Enclosures for Electrical Equipment.
UL 698A	Industrial and Classification of Mercantile and Bank Burglar-Alarm Systems.

III. Preliminary Finding on the Applications

TUVRNA submitted acceptable applications for expansion of its scope of recognition. OSHA's review of the application files and detailed on-site assessments indicate that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of four sites and these two test standards for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's applications.

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10

days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, listed in **ADDRESSES**. These materials also are available online at *https://www.regulations.gov* under Docket No. OSHA–2007–0042.

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary for Occupational Safety and Health on whether to grant TUVRNA's applications for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the applications. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 24, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018–16214 Filed 7–27–18; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act: Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, August 2, 2018.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street *(All visitors must use Diagonal Road Entrance),* Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. 2018 Mid-Session Budget.
2. Continuation of Federal Credit Union Loan Interest Rate Ceiling.
3. Final Suspension and Debarment Procedures.
4. NCUA Rules and Regulations, Loans to Members.
5. NCUA Rules and Regulations, Risk-Based Capital.

Recess: 11:30 a.m.

TIME AND DATE: 11:45 a.m., Thursday, August 2, 2018.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Supervisory Action. Closed pursuant to Exemption (8).
2. Supervisory Action. Closed pursuant to Exemptions (8), (9)(i)(B) and (9)(ii).
3. Supervisory Action. Closed pursuant to Exemptions (6), (8), (9)(i)(B) and (9)(ii) and (10).

CONTACT PERSON FOR MORE INFORMATION: Gerard Poliquin, Secretary of the Board, Telephone: 703–518–6304.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2018–16340 Filed 7–26–18; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: IMLS "2019–2022 Native American Basic Library Grant Program Notice of Funding Opportunity"

AGENCY: Institute of Museum and Library Services.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. 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 can be properly assessed. This notice proposes the clearance of the IMLS ''2019–2022 Native American Basic Library Grant Program Notice of Funding Opportunity'' for the next three years.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before August 27, 2018.

OMB is particularly interested in comments that help the agency to:

- 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).

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Webb, Director of Grant Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718 Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

Current Actions: IMLS is requesting the approval of the Notice of Funding Opportunity for the following grant program for the next three years. Native American Basic Grants support existing

library operations and maintain core library services, particularly as they relate to the following goals in the Museum and Library Services Act (20 U.S.C. 9141).

1. Expanding services for learning and access to information and educational resources in a variety of formats, in all types of libraries, for individuals of all ages in order to support such individuals' need for education, lifelong learning, workforce development, and digital library skills.

2. Establishing or enhancing electronic and other linkages and improved coordination among and between libraries and entities, as described in 20 U.S.C. 9134(b)(6), for the purpose of improving the quality of and access to library and information services.

3. (a) Providing training and professional development, including continuing education, to enhance the skills of the current library workforce and leadership, and advance the delivery of library and information services.

(b) Enhancing efforts to recruit future professionals to the field of library and information services.

4. Developing public and private partnerships with other agencies and community-based organizations.

5. Targeting library services to individuals of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to individuals with limited functional literacy or information skills.

6. Targeting library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of Title 42) applicable to a family of the size involved.

7. Developing library services that provide all users access to information through local, State, regional, national, and international collaborations and networks.

8. Carrying out other activities consistent with the purposes of the Library Services and Technology subchapter of the IMLS statute (20 U.S.C. 9121).

Indian tribes are eligible to apply for funding under the Native American Library Services Enhancement Grant program. Entities such as libraries, schools, tribal colleges, or departments of education are not eligible applicants, although they may be involved in the administration of this program and their staff may serve as project directors in partnership with an eligible applicant.

For purposes of funding under this program, ''Indian tribe'' means any tribe, band, nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A list of eligible entities is available from the Bureau of Indian Affairs.

To be eligible for this program you must be able to document an existing library that meets, at a minimum, three basic criteria: (1) Regularly scheduled hours, (2) staff, and (3) materials available for library users.

This action is to renew the forms and instructions for the Notice of Funding Opportunities for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2019–2021 IMLS Native American Basic Library Program Notice of Funding Opportunity.

OMB Number: 3137–0093.

Frequency: Once per year.

Affected Public: American Indian tribes recognized by the Secretary of the Interior.

Number of Respondents: 233.

Estimated Average Burden per Response: 10 hours.

Estimated Total Annual Burden: 2330 hours.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Costs: $66,010.

Dated: July 25, 2018.

Kim Miller,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2018–16183 Filed 7–27–18; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: IMLS ''2019–2022 Native Hawaiian Library Grant Program Notice of Funding Opportunity''

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. 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 can be properly assessed. This notice proposes the clearance of the IMLS ''2019–2022 Native Hawaiian Grant Program Notice of Funding Opportunity'' for the next three years.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before August 27, 2018.

OMB is particularly interested in comments that help the agency to:

- 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).

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Webb, Director of Grant Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718, Fax: 202–

653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

Current Actions: IMLS is requesting the approval of the Notice of Funding Opportunity for the following grant program for the next three years. Native Hawaiian grants are competitive grants available to carry out activities, described in 20 U.S.C. 9141, that enhance existing library services or implement new library services. Native Hawaiian Library Services grants are available to nonprofit organizations that primarily serve and represent Native Hawaiians (as the term is defined in 20 U.S.C. 7517). The term ''Native Hawaiian'' refers to an individual who is a citizen of the United States and a descendant of the aboriginal people who, before 1778, occupied and exercised sovereignty in the area that now comprises the State of Hawaii. Successful Native Hawaiian grant projects should result in measureable changes and outcomes, such as increased understanding, interest, and confidence among participants. Successful Native Hawaiian grant projects support the activities described in 20 U.S.C. 9141, for example:

- Support for individuals' needs for education, lifelong learning, workforce development, and digital literacy skills;
- improvement of the quality of and access to library and information services; and
- enhancement of the skills of the current library workforce and leadership.

This action is to renew the forms and instructions for the Notice of Funding Opportunities for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2019–2021 IMLS Native Hawaiian Program Notice of Funding Opportunity.

OMB Number: 3137–0102.

Frequency: Once per year.

Affected Public: Nonprofit organizations that primarily serve and represent Native Hawaiians.

Number of Respondents: 7.

Estimated Average Burden per Response: 40 hours.

Estimated Total Annual Burden: 280 hours.

Total Annualized capital/startup costs: n/a.

Total Annual costs: $7,933.

Dated: July 25, 2018.

Kim Miller,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2018–16184 Filed 7–27–18; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: NSF is announcing plans to request renewed clearance of this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by September 28, 2018, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Title of Collection: Research Performance Progress Report.

OMB Approval Number: 3145–0221.

Expiration Date of Approval: September 30, 2018.

Type of Request: Intent to seek approval to extend an information collection for three years.

Use of the Information: NSF developed the RPPR as a service within *Research.gov.* The service provides a common portal for the research community to manage and submit annual project reports to the National Science Foundation (NSF) and to partner agencies. This service replaced NSF's annual and interim project reporting capabilities which resided in the FastLane System.

Complete information about NSF's implementation of the Research Performance Progress Report (RPPR) may be found at the following website: *http://www.nsf.gov/bfa/dias/policy/rppr/index.jsp.*

Burden on the Public: The Foundation estimates that an average of 6.6 hours is expended for each report submitted. An estimated 120,000 reports are expected during the course of one year for a total of 30,000 public burden hours annually.

Dated: July 25, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–16187 Filed 7–27–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0095 and NRC–2016–0227]

Program-Specific Guidance About Self-Shielded Irradiator Licenses and Program-Specific Guidance About Exempt Distribution Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued Revision 1 to NUREG–1556, Volume 5, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance About Self-Shielded Irradiator Licenses,'' and Volume 8, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance About Exempt Distribution Licenses.'' NUREG–1556, Volumes 5 and 8 have been revised to include information on

updated regulatory requirements, safety culture, security of radioactive materials, protection of sensitive information, and changes in regulatory policies and practices. These volumes are intended for use by applicants, licensees, and the NRC staff.

DATES: NUREG 1556, Volumes 5 and 8, Revision 1, were published in June 2018.

ADDRESSES: Please refer to Docket IDs NRC–2016–0095 (Volume 5, Revision 1) and NRC–2016–0227 (Volume 8, Revision 1) when contacting the NRC about the availability of information regarding these documents. You may obtain publicly-available information related to these documents using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0095 or NRC–2016–0227. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* NUREG–1556, Volumes 5 and 8, Revision 1, are located at ADAMS Accession Numbers ML18176A007 and ML18158A165, respectively. These documents are also available on the NRC's public website at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/* under ''Consolidated Guidance About Materials Licenses (NUREG–1556).''
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Anthony McMurtray, Office of Nuclear Material Safety and Safeguards; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2746; email: *Anthony.McMurtray@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC issued revisions to NUREG–1556, Volumes 5 and 8, to provide guidance to existing materials licensees covered under these types of licenses and to applicants preparing an application for one of these types of materials licenses. These NUREG volumes also provide the NRC staff with criteria for evaluating these types of license applications. The purpose of this notice is to notify the public that the NUREG–1556 volumes listed in this **Federal Register** notice were issued as final reports.

II. Additional Information

The NRC published notices of the availability of the draft report for comment versions of NUREG–1556, Volume 5, Revision 1 in the **Federal Register** on January 27, 2017 (82 FR 8630) and Volume 8, Revision 1 in the **Federal Register** on February 8, 2017 (82 FR 9756). Both of these volumes were published for a public comment period that was at least 37 days. The public comment period closed for Volume 5 on March 10, 2017 and for Volume 8 on March 17, 2017. Public comments and the NRC staff responses to the public comments for NUREG–1556, Volume 5, Revision 1 are available under ADAMS Accession No. ML18157A285. Public comments and the NRC staff responses to the public comments for NUREG–1556, Volume 8, Revision 1 are available under ADAMS Accession No. ML17235B228.

III. Congressional Review Act

These NUREG volumes are rules as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found these NUREG revisions to be major rules as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 25th day of July, 2018.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Director, Division of Materials Safety, Security, State and Tribal Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–16239 Filed 7–27–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9059; NRC–2018–0158]

Water Remediation Technology, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received an application from Water Remediation Technology, LLC for renewal of Materials License No. SUC–1591, which authorizes the licensee to offer a water treatment program to remove uranium from drinking water at community water systems, for another 10-year term. This application, which is still under consideration by the NRC, also requested authorization to expand the scope of WRT's licensed activities to include treatment of uranium in groundwater and surface water resources not used for drinking water. Subsequently, the NRC received a request from WRT to extend the term of the renewed license to 20 years.

DATES: A request for a hearing or petition for leave to intervene must be filed by September 28, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0158 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–2018–0158. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* 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.

FOR FURTHER INFORMATION CONTACT: Christopher Grossman, Office of Nuclear

Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0140, email: *Christopher.Grossman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated December 21, 2016, WRT submitted a license amendment application to renew its Materials License No. SUC–1591 (ADAMS Accession No. ML16358A447) for an additional 10-year term. The NRC originally issued this license on January 25, 2007 (ADAMS Accession No. ML062960465) and subsequently amended the license on March 12, 2009 (ADAMS Accession No. ML090270210). This license was issued under part 40 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic licensing of source material.'' The license, described as a performance-based, multi-site service provider license, allows WRT to utilize its water treatment technology to remove uranium from drinking water treated by community water systems in NRC-regulated States. The license also permits WRT to possess source material generated from these operations. The license's current expiration date is January 25, 2017. However, in accordance with 10 CFR 40.42, the existing license will not expire during the pendency of the NRC staff's review of the renewal application. In addition, WRT's December 21, 2016, application also requested an amendment to expand the scope of its current license to allow it to remove uranium from non-drinking water sources. On April 24, 2017, NRC provided a notice of opportunity for hearing and petition for leave to intervene (82 FR 18939) on WRT's December 16, 2016 application for license renewal and expanded scope authorization. The NRC's review of WRT's December 21, 2016 application currently pends.

At a public meeting between NRC and WRT on January 10, 2018, WRT informed NRC it intended to submit a written request to seek an extension of its license term from 10 years to 20 years (ADAMS Accession No. ML18031B214). By letter dated January 16, 2018, WRT submitted this request to extend the license renewal term from 10 to 20 years (ADAMS Accession No. ML18016B080). As support for its request to extend the license renewal term, WRT identifies a Commission Staff Requirements Memorandum issued on November 9, 2017 (ADAMS Accession No. ML17313B020). The November 9, 2017 Staff Requirements Memorandum approved a staff recommendation set forth in staff paper SECY–17–0086, ''Increasing Licensing Terms for Uranium Recovery Facilities'' (ADAMS Accession No. ML17093A951) to increase the maximum license terms for uranium recovery facilities from 10 to 20 years. The extension of the maximum term applies to both new license applications and license renewal applications.

In considering whether to approve WRT's request to extend the term of its renewed license from 10 to 20 years, the NRC will determine whether WRT's proposed licensed activities, including those pertaining to its request for additional authorization to remove uranium from non-drinking water sources, are bounded by the safety and technical analyses made or referenced by the staff in SECY–17–0086. The staff will make these findings as part of its broader safety and environmental findings for WRT's December 16, 2016, license amendment application. The NRC's findings will be documented in a safety evaluation report and an environmental assessment. The NRC will publish either a notice of a finding of no significant impact or notice of intent to prepare an environmental impact statement, as appropriate, in a future edition of the **Federal Register**.

II. 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 a petition 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. Failure to satisfy these requirements in 10 CFR 2.309(f) will result in an inadmissible contention. Without at least one admissible contention, a petitioner 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.

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 by 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. 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.

III. 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.

Dated at Rockville, Maryland, this 24th day of July 2018.

For the Nuclear Regulatory Commission.

Andrea Kock,

Deputy Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–16188 Filed 7–27–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0006]

Information Collection: 10 CFR Part 95, Facility Security Clearance and Safeguarding of National Security Information and Restricted Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''10 CFR Part 95, Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.''

DATES: Submit comments by August 29, 2018.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0047), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0006 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–2018–0006.
- *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 supporting statement is available in ADAMS under Accession ML1817A268.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''10 CFR Part 95, Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on May 7, 2018 (83 FR 20102).

1. *The title of the information collection:* ''10 CFR Part 95, Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.''
2. *OMB approval number:* 3150–0047.
3. *Type of submission:* Revision.
4. *The form number if applicable:* NRC Form 405F.
5. *How often the collection is required or requested:* On occasion and every 5 years.
6. *Who will be required or asked to respond:* NRC-regulated facilities and their contractors who require access to, and possession of NRC classified information.
7. *The estimated number of annual responses:* 340.
8. *The estimated number of annual respondents:* 189.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 503.
10. *Abstract:* The NRC-regulated facilities and their contractors who are authorized to access and possess classified matter are required to provide information and maintain records to ensure an adequate level of protection is provided to NRC classified information and material.

Dated at Rockville, Maryland, this 24th day of July 2018.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2018–16125 Filed 7–27–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0001]

Sunshine Act Meeting Notice

TIME AND DATE: Weeks of July 30, August 6, 13, 20, 27, September 3, 2018.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 30, 2018

There are no meetings scheduled for the week of July 30, 2018.

Week of August 6, 2018—Tentative

There are no meetings scheduled for the week of August 6, 2018.

Week of August 13, 2018—Tentative

There are no meetings scheduled for the week of August 13, 2018.

Week of August 20, 2018—Tentative

There are no meetings scheduled for the week of August 20, 2018.

Week of August 27, 2018—Tentative

There are no meetings scheduled for the week of August 27, 2018.

Week of September 3, 2018—Tentative

There are no meetings scheduled for the week of September 3, 2018.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated: July 25, 2018.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2018–16278 Filed 7–26–18; 11:15 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before August 29, 2018.

ADDRESSES: Comments should be addressed to Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by telephone at 202–692–1887 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by telephone at 202–692–1887 or email at *pcfr@peacecorps.gov.*

SUPPLEMENTARY INFORMATION:

Title: RPCV Event Bulletin Board.

OMB Control Number: 0420–****.

Type of Request: New.

Affected Public: Individuals.

Respondents' Obligation to Reply: Voluntary.

Burden to the Public:

Estimated Burden (Hours) of the Collection of Information:

a. *Number of Rspondents:* 50.

b. *Frequency of Response:* 10 times.

c. *Completion Time:* 5 minutes.

d. *Annual Burden Hours:* 42 hours.

General Description of Collection: The event information submitted via the form will be used to (1) populate events on the RPCV Events Bulletin Board web page; (2) assess the events for compliance with the Peace Corps statutory authority, regulations, and policy; (3) enable 3GL to better understand and support activities of RPCV groups related to the Third Goal and career; and (4) enable University Programs to better understand and support activities of the Paul. D. Coverdell Fellows partner universities related to RPCV career development.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice was issued in Washington, DC, on July 19, 2018.

Virginia Burke,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2018–16151 Filed 7–27–18; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Request Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before August 29, 2018.

ADDRESSES: Comments should be addressed to Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by telephone at 202–692–1887 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Virginia Burke, FOIA/Privacy Act Officer. Virginia Burke can be contacted by telephone at 202–692–1887 or email at *pcfr@peacecorps.gov.*

SUPPLEMENTARY INFORMATION:

Title: Coverdell World Wise Schools Connections.

OMB Control Number: 0420–****.

Type of Request: New.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

Estimated Burden (Hours) of the Collection of Information:

a. *Number of Respondents:* 1,000.

b. *Frequency of Response:* 1 time.

c. *Completion Time:* 20 minutes.

d. *Annual Burden Hours:* 334 hours.

General Description of Collection: The Peace Corps uses the Coverdell World Wise Schools Connections Forms to collect essential administrative information from educators and group leaders to use to facilitate connection with current/returned Peace Corps Volunteers. These forms are the first point of contact with the participating educator. It is Paul D. Coverdell World Wise Schools' fundamental source of information from educators.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on May 23, 2018.

Virginia Burke,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2018–16150 Filed 7–27–18; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83692; File No. SR–NYSEArca–2018–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change To Adopt a New NYSE Arca Rule 8.900–E and To List and Trade Shares of the Royce Pennsylvania ETF, Royce Premier ETF, and Royce Total Return ETF Under Proposed NYSE Arca Equities Rule 8.900–E

July 24, 2018.

On January 8, 2018, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new NYSE Arca Rule 8.900–E to permit it to list and trade Managed Portfolio Shares. The Exchange also proposed to list and trade shares of Royce Pennsylvania ETF, Royce Premier ETF, and Royce Total Return ETF under proposed NYSE Arca Rule 8.900–E. The proposed rule change was published for comment in the **Federal Register** on January 26, 2018.[3] On March 7, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received five comment letters on the proposed rule change.[6] On April 26, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change.[8] Thereafter, the Commission received two additional comments on the proposed rule change.[9] On July 20, 2018, the Commission designated a longer period for action on the proposed rule change.[10]

On July 20, 2018, the Exchange withdrew the proposed rule change (SR–NYSEArca–2018–04).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16169 Filed 7–27–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82549 (January 19, 2018), 83 FR 3846.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82824, 83 FR 10934 (March 13, 2018). The Commission designated April 26, 2018, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] *See* letters from: (1) Terence W. Norman, Founder, Blue Tractor Group, LLC, dated February 6, 2018; (2) Simon P. Goulet, Co-Founder, Blue Tractor Group, LLC, dated February 13, 2018; (3) Todd J. Broms, Chief Executive Officer, Broms & Company LLC, dated February 16, 2018; (4) Kevin S. Haeberle, Associate Professor of Law, William & Mary Law School, dated February 16, 2018; and (5) Gary L. Gastineau, President, ETF Consultants.com, Inc., dated March 6, 2018. The comment letters are available at: *https://www.sec.gov/comments/sr-nysearca-2018-04/nysearca201804.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 83120, 83 FR 19371 (May 2, 2018).

[9] *See* letters from: (1) Terence W. Norman, Founder, Blue Tractor Group, LLC, dated May 8, 2018 and (2) Kevin S. Haeberle, Associate Professor of Law, William & Mary Law School, dated June 6, 2018. The comment letters are available on the Commission's website at: *https://www.sec.gov/comments/sr-nysearca-2018-04/nysearca201804.htm.*

[10] *See* Securities Exchange Act Release No. 83676. The Commission designated September 23, 2018, as the date by which the Commission must either approve or disapprove the proposed rule change.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83691; File No. SR–LCH SA–2018–003]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Liquidity Risk Management

July 24, 2018.

I. Introduction

On June 4, 2018, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (the ''Proposed Rule Change'') to amend its Risk Management Procedures (the ''Procedures'') to adopt a Liquidity Risk Modelling Framework (the ''Framework''). The proposed rule change was published for comment in the **Federal Register** on June 22, 2018.[3] The Commission has not received any comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The Framework [4] describes the Liquidity Stress Testing framework by which the Collateral and Liquidity Risk Management department (''CaLRM'') of LCH Group Holdings Limited (''LCH Group'') assures that LCH SA has enough cash available to meet any financial obligations, both expected and unexpected, that may arise over the liquidation period for each of the clearing services that LCH SA offers.[5] The Framework compliments other policies and procedures LCH uses to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–83456 (June 18, 2018), 83 FR 29146 (June 22, 2018) (SR–LCH–2018–003) (''Notice'').

[4] Capitalized terms used herein but not otherwise defined have the meaning set forth in the Framework and LCH SA rulebook, which is available at *https://www.lch.com/system/files/media_root/CDSClear_Rule_Book_04.01.2018.pdf.*

[5] Notice, 83 FR at 29146.

LCH SA, a wholly owned subsidiary of LCH Group, manages its liquidity risk pursuant to, among other policies and procedures, the Group Liquidity Risk Policy and the Group Liquidity Plan applicable to each entity within LCH Group.

In addition to its CDSClear service, LCH SA provides clearing services in connection with cash equities and derivatives listed for trading on Euronext (EquityClear), commodity derivatives listed for trading on Euronext (CommodityClear), and tri-party Repo transactions (RepoClear).

manage its liquidity risk, *i.e.,* the risk that LCH SA will not have enough cash available, in extreme but plausible circumstances, to settle margin payments or delivery obligations when they become due, in particular upon the default of a clearing member.[6] Such policies and procedures include, among others: (i) The Group Liquidity Risk Policy; (ii) the Group Liquidity Plan; (iii) the Group Financial Resource Adequacy Plan; (iv) the Group Collateral Risk Policy; (v) the Group Investment Risk Policy; and (vi) the LCH SA Collateral Control Framework.[7] The Framework complements these existing policies and procedures and develops further the Group Liquidity Risk Policy.[8]

The Framework: (i) Identifies LCH SA's sources of liquidity and corresponding liquidity risks; (ii) identifies LCH SA's liquidity requirements with respect to its members and its interoperable central counterparty (''CCP''), Cassa di Compensazione e Garanzia (''CC&G''); [9] (iii) describes the metrics and limits that LCH SA monitors regarding liquidity risk; and (iv) describes the scenarios under which these metrics are computed.[10]

The proposed Framework identifies the main sources of liquidity available to LCH SA, including cash and non-cash collateral, and assigns non-cash collateral to one of three tiers.[11] Tier 1 assets are limited to those securities that are deemed to be of sufficient quality and demand to generate liquidity at little or no loss in the event of a default of a clearing member or a major market stress.[12] LCH SA is able to pledge these securities to the Banque de France to generate cash on the same day.[13] Only Tier 1 assets are included as liquidity resources in liquidity stress testing.[14] Tier 2 assets are those securities that have a market and may be financed but are of lesser quality than Tier 1 assets.[15] Tier 3 assets are deemed to have little or no liquidity value in the event of a default or major market stress or are deemed to be too illiquid to be converted in the timeframe that a CCP would require.[16]

The Framework highlights the three principal categories under which LCH SA would require liquidity: (i) The default of one or more clearing members; (ii) the default of CC&G; and (iii) operational liquidity needs.[17]

Liquidity needs arising from clearing members' defaults are those needs arising from fulfilment of the settlement of the securities of the defaulted clearing member(s); posting of variation margin to non-defaulting members on the positions held by the defaulted clearing member(s); the value of bonds pledged at the Banque de France; haircuts by the European Central Bank on securities posted by the defaulting Clearing Member; and investment losses.[18]

Liquidity needs arising from the default of CC&G are those needs arising from the service closure of the Italian clearing activity, including reimbursement of the margins and default funds related to the Italian clearing activity and cash settlement of the Italian repo positions.[19]

Operational liquidity needs relate to the operational management of LCH SA in a stressed environment that does not lead to a member's default. Such a liquidity requirement may arise from a number of factors, including the need to repay excess cash posted by members, the need to repay margin when margin requirements are reduced, and the substitution of cash collateral and European Central Bank eligible securities.[20]

The proposed Framework describes the metrics used to determine LCH SA's liquidity needs, which are calculated each day over a five-day period. These metrics include: (i) The liquidity coverage ratio; (ii) a monthly rolling average liquidity buffer; (iii) a daily minimum liquidity buffer; and (iv) required cash collateral.[21] Moreover, the Framework describes how the liquidity coverage ratio, monthly rolling average liquidity buffer, and daily minimum liquidity buffer are reported to LCH SA senior management daily.

With respect to the liquidity coverage ratio, the Framework explains how the liquidity coverage ratio is determined for each of the clearing services that LCH SA offers in a Cover 2 scenario, *i.e.,* the liquidity risk arising from the default of at least two clearing group members to which LCH SA has the largest exposures during the 5 days following default.[22] The Cover 2 amount is computed by aggregating the liquidity risks related to clearing members within the same group across all of LCH SA's services.[23] The two largest group members are chosen according to the liquidity needs related to these members.[24] These liquidity requirements are generated by settlement risk, market risk, and ECB haircuts.[25] For the CDSClear service, LCH SA determines the liquidity risk by considering variation margin modelled at member level by applying the most punitive CDS spread widening stress scenario for both ITraxx Main and CrossOver (currently the historical scenario considering the 2007 crisis).[26] The liquidity coverage ratio also considers the provision of liquidity to facilitate settlement including fails, such as delays in posting securities by members. The Framework focuses on the principal risks for which LCH SA must assure that it has sufficient liquidity.[27]

Finally, the Framework describes the reverse stress test that LCH SA runs at least quarterly. The reverse stress test is designed to help determine the limits of LCH SA's liquidity models and of the Framework by modelling extreme market conditions that go beyond what are considered plausible market conditions over a 5-day time horizon.[28] The Framework stresses seven risk factors independently, and also considers these risk factors together in two combined reverse stress test scenarios, the Behavioural and Macro-economic.[29]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the

[6] Notice, 83 FR 29146–29147.

[7] Notice, 83 FR 29147.

[8] *Id.*

[9] LCH SA has an interoperability agreement with CC&G, an Italian CCP, pursuant to which LCH SA's clearing members and CC&G's clearing members are able to benefit from common clearing services without having to join the other CCP. Each CCP is a clearing member of the other one with a particular status when accessing the clearing system of the other counterparty.

[10] Notice, 83 FR 29147.

[11] *Id.* Securities comprising non-cash collateral are comprised of the following components: (i) Margin collateral, *i.e.,* non-cash collateral pledged by clearing members for margin cover; (ii) Collateral and Liquidity Management (''CaLM'') collateral, *i.e.,* direct securities holdings that are part of the CaLRM's investment activities; and (iii) clearing settlement collateral, *i.e.,* collateral resulting from the physical settlement of contracts on behalf of a defaulting clearing member.

[12] Notice, 83 FR 29147.

[13] *Id.*

[14] *Id.*

[15] Notice, 83 FR 29147, n.6.

[16] Notice, 83 FR 29147, n.6.

[17] Notice, 83 FR 29147.

[18] *Id.*

[19] *Id.*

[20] Notice, 83 FR 29147.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] Notice, 83 FR 29147.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

rules and regulations thereunder applicable to such organization.[30] For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[31] and Rules 17Ad–22(e)(7)(i) and (vi) thereunder.[32]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible, and, in general, to protect investors and the public interest.[33]

The Framework would assess the sources of LCH SA's liquidity needs, including the liquidity needs arising from the default of one or more clearing members and liquidity needs arising from LCH SA operating in a stressed environment that does not lead to a member's default. The Framework would also identify the sources of liquidity that LCH SA may use to satisfy those needs, describe the metrics LCH SA would use to quantify those liquidity needs, and the tests and reports LCH SA would use to confirm that its sources of liquidity can satisfy those liquidity needs.

The Commission believes that by setting out in advance the liquidity needs of LCH SA in stressed market conditions, including member defaults and stressed environments not leading to member defaults and identifying sources of liquidity to meet those needs, the Framework would increase the likelihood that LCH SA would have the liquid resources necessary to continue operations in such stressed market conditions. Specifically, the Commission believes that by enabling LCH SA to quantify its liquidity needs and confirm that its sources of liquidity can satisfy those liquidity needs, the Framework would allow LCH SA to determine whether it has sufficient resources to meet all of its current and future liquidity needs. The Commission believes that this would, in turn, enhance LCH SA's ability to avoid any potential disruptions to its operations caused by unmet liquidity needs, especially in stressed market conditions, including member defaults and stressed environments not leading to member defaults.

The Commission therefore believes that the Framework would increase the likelihood that LCH SA can continue to provide clearing services without disruption in times of member default or other stressed market conditions not leading to member default. The Commission finds that this, in turn, would promote the prompt and accurate clearance and settlement of securities transactions by reducing the likelihood of a disruption to LCH SA's operations arising from a liquidity need. Similarly, the Commission believes the Framework would help assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible by increasing the likelihood that LCH SA can avoid disruptions to its operations which could impede access to such securities and funds. For both of these reasons, the Commission also believes that the Framework would, in general, protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in LCH SA's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[34]

B. Consistency With Rule 17Ad–22(e)(7)(i) of the Act

Rule 17Ad–22(e)(7)(i) requires that LCH SA establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by LCH SA, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for LCH SA in extreme but plausible market conditions.[35]

As discussed above, the Framework would assess the sources of LCH SA's liquidity needs, including the liquidity needs arising from the default of one or more clearing members and liquidity needs arising from LCH SA operating in a stressed environment that does not lead to a member's default. The Framework would also identify the sources of liquidity that LCH SA would use to satisfy those needs, describe the metrics LCH SA would use to quantify its liquidity needs, and the tests and reports LCH SA would use to confirm that its sources of liquidity can satisfy those liquidity needs. These metrics would include: (i) The liquidity coverage ratio; (ii) a monthly rolling average liquidity buffer; (iii) a daily minimum liquidity buffer; and (iv) required cash collateral. With respect to the liquidity coverage ratio, the Framework would explain how the liquidity coverage ratio is determined for each of the clearing services that LCH SA offers in a Cover 2 scenario, *i.e.,* the liquidity risk arising from the default of at least two clearing group members to which LCH SA has the largest exposures during the 5 days following default. Finally, the Framework would describe how these metrics are calculated for each day over a maximum 5 day liquidity period and how the liquidity coverage ratio, monthly rolling average liquidity buffer, and daily minimum liquidity buffer would be reported to LCH SA senior management daily.

The Commission believes that the metrics provided by the Framework would enhance LCH SA's ability to measure, monitor, and manage the liquidity risk that arises in or is borne by LCH SA. The Commission believes that, for example, by reviewing its liquidity coverage ratio, monthly rolling average liquidity buffer, and daily minimum liquidity buffer on a daily basis, LCH SA would be able to anticipate future liquidity needs and potential shortfalls. Moreover, because the liquidity coverage ratio considers the provision of liquidity to facilitate settlement, including fails as delays in posting securities by members, the Commission believes that review of the ratio would improve LCH SA's ability to manage the liquidity needs arising from the settlement of transactions. The Commission therefore believes that the Framework would facilitate LCH SA's ability to measure, monitor, and manage the liquidity risk that arises in or is borne by LCH SA, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and

[30] 15 U.S.C. 78s(b)(2)(C).

[31] 15 U.S.C. 78q–1(b)(3)(F).

[32] 17 CFR 240.17Ad–22(e)(7)(i), (vi).

[33] 15 U.S.C. 78q–1(b)(3)(F).

[34] 15 U.S.C. 78q–1(b)(3)(F).

[35] 17 CFR 240.17Ad–22(e)(7)(i).

timely basis, and its use of intraday liquidity.

Moreover, by using the liquidity ratio to determine in advance the liquidity needs of LCH SA arising from the default of at least two clearing group members to which LCH SA has the largest exposures during the 5 days following default, the Commission believes the Framework would enhance LCH SA's ability to determine whether it has sufficient resources to meet its liquidity needs should such a default occur. The Commission believes that this would, in turn, enable LCH SA to avoid any potential disruptions to its operations caused by such liquidity needs arising from such a default. The Commission therefore believes that the Framework would enable LCH SA to maintain sufficient liquid resources to effect settlement of its payment obligations under a wide range of foreseeable stress scenarios, including the default of the participant family that would generate the largest aggregate payment obligation for LCH SA in extreme but plausible market conditions.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(e)(7)(i).[36]

C. Consistency With Rule 17Ad–22(e)(7)(vi) of the Act

Rule 17Ad–22(e)(7)(vi) requires that LCH SA establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by LCH SA, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by determining the amount and regularly testing the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement under Rule 17Ad–22(e)(7)(i)[37] by, among other things, conducting stress testing of its liquidity resources at least once each day using standard and predetermined parameters and assumptions.[38]

As discussed above, the Framework would describe the metrics LCH SA would use to quantify its liquidity needs, and the tests and reports LCH SA would use to confirm that its sources of liquidity can satisfy those liquidity needs. These metrics would include: (i) The liquidity coverage ratio; (ii) a monthly rolling average liquidity buffer; (iii) a daily minimum liquidity buffer; and (iv) required cash collateral. The Framework would describe how these metrics would be calculated for each day over a maximum of a 5 day liquidity period and how the liquidity coverage ratio, monthly rolling average liquidity buffer, and daily minimum liquidity buffer would be reported to LCH SA senior management daily.

The Commission believes that the metrics provided by the Framework would help LCH SA determine the amount and regularly test the sufficiency of LCH SA's liquid resources. The Commission believes that the liquidity coverage ratio, for example, would provide LCH SA senior management a view to LCH SA's liquidity needs in stressed conditions arising from a default of at least two clearing group members to which LCH SA has the largest exposures. As discussed above, the Framework would require the calculation and reporting of the liquidity coverage ratio daily. The Commission believes the other metrics described above would similarly test, and provide LCH SA senior management insight regarding, the sufficiency of LCH SA's liquid resources.

For the above reasons, the Commission therefore finds that the proposed rule change is consistent with Rule 17Ad–22(e)(7)(vi).[39]

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, Section 17A(b)(3)(F) of the Act[40] and Rules 17Ad–22(e)(7)(i) and (vi) thereunder.[41]

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–LCH SA–2018–003) be, and hereby is, approved.[42]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[43]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16168 Filed 7–27–18; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 240.17Ad–22(e)(7)(i).

[37] 17 CFR 240.17Ad–22(e)(7)(i).

[38] 17 CFR 240.17Ad–22(e)(7)(vi).

[39] 17 CFR 240.17Ad–22(e)(7)(vi).

[40] 15 U.S.C. 78q–1(b)(3)(F).

[41] 17 CFR 240.17Ad–22(e)(7)(i), (vi).

[42] In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83700; File No. SR–BX–2018–033]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Rule Concerning Handling of No Bid Options and To Clarify the Operation of Chapter V, Section 3, Entitled "Trading Halts"

July 24, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2018 Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter V, Section 3, entitled ''Trading Halts'' and Chapter VI, Section 6, entitled ''Acceptance of Quotes and Orders.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Chapter V, Section 3, entitled ''Trading Halts'' to add more specificity concerning auctions during a trading halt and remove unnecessary rule text. The Exchange proposes to adopt a zero bid options rule on BX within Chapter VI, Section 6, entitled ''Acceptance of Quotes and Orders.'' Each proposal is described in more detail below.

Chapter V, Section 3

The Exchange proposes to amend Chapter V, Section 3(a)(vi)(B) to add a sentence which provides, ''Auction orders and responses are rejected during a halt.'' The Exchange notes that today, during a trading halt, the Exchange does not commence an auction. This proposed rule text will make clear how auction orders and auction responses are handled during a trading halt.

The Exchange proposes to amend Chapter V, Section 3(b), which currently provides, ''In the event BX Regulation determines to halt trading, all trading in the effected class or classes of options shall be halted. BX Options shall disseminate through its trading facilities and over OPRA a symbol with respect to such class or classes of options indicating that trading has been halted, and a record of the time and duration of the halt shall be made available to vendors.'' The Exchange proposes to remove the words ''such class or'' in both places from this sentence because the Exchange only disseminates over OPRA a symbol with respect to classes of options to indicate a trading halt. Today, the Exchange halts symbol by symbol; all classes or every option would be halted. By amending this rule, the Exchange will add more transparency as to how it determines to halt trading and disseminates information regarding trading halts.

Chapter VI, Section 6

Today, the Exchange does not have a rule for the handling of options with no bid or zero bid options. The Exchange's handling of zero bid options on BX is identical to the manner in which zero bid is handled on Phlx.[3] The Exchange proposes to add this new rule to Chapter VI, Section 6(a)(3). The new rule would provide, ''In the case where the bid price for any options contract is $0.00, a market order accepted into the System to sell that series shall be considered a limit order to sell at a price equal to the minimum trading increment as defined in Chapter VI, Section 5. Orders will be placed on the limit order book in the order in which they were received by the System. With respect to market orders to sell which are submitted prior to the Opening and persist after the Opening, those orders are posted at a price equal to the minimum trading increment as defined in Chapter VI, Section 5.''

The Exchange intends to accept and convert market orders to sell allowing them an equal opportunity to trade if interest should arrive in the case of a no bid option. The Exchange notes that the orders would rest on the Order Book at the minimum price increment. The Exchange notes market orders ''accepted into the System'' would be converted to account for market orders that may not be accepted into the System due to Limit Up-Limit Down restrictions, which may prevent the market order from being accepted.[4] Only after acceptance into the System will market orders be treated as a sell limit order at a price equal to the minimum trading increment.

Further, the Exchange proposes to add rule text, which provides ''Orders will be placed on the limit order book in the order in which they were received by the System.''[5] The Exchange proposes to note that with respect to market orders to sell in zero bid options, which are submitted prior to the Opening Process[6] and persist after the Opening Process, those orders are posted at a price equal to the minimum trading increment as defined in Chapter VI, Section 5.[7] The Exchange's proposed rule will provide market participants with greater insight into the handling of orders where there is a zero bid. The Exchange believes that this proposed amendment will accurately describe the manner in which a zero-bid options series operates within the System both before and after the Opening Process.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Chapter V, Section 3

The Exchange is providing greater transparency as to the manner in which auctions are handled during a trading halt and the manner in which the Exchange determines to halt trading and disseminates information over OPRA during a trading halt. The Exchange believes that this rule text is consistent with the Act and the protection of investors and the public interest because it brings greater clarity to the manner in which trading halts function and what type of information is provided during a halt.

Chapter VI, Section 6

The Exchange's proposal to adopt a zero bid rule is consistent with the Act and designed to promote just and equitable principles of trade and to protect investors and the public interest by adopting text which describes the handling of zero-bid options. The Exchange is treating all market orders to sell in zero bid options in the same fashion by converting all those orders, provided that the Exchange's disseminated bid price in such option is zero for an option listed only on the Exchange or, for an option listed on multiple exchanges and the disseminated NBBO includes a bid price of zero in the series. Market orders to sell in zero bid options will be placed on the limit order book in the order in which they were received by the System. The Exchange desires to prevent members from submitting market orders to sell in no bid series, which would execute at a price of $0.00. The Exchange believes that the proposed rule will achieve this objective and continue to permit the Exchange to execute orders within its System at prices that reflect some value. Adding rule text regarding market orders to sell in zero bid options submitted prior to the Opening Process and persisting after the Opening Process is consistent with the Act because it provides more transparency as to the operation of this rule and as to how those market orders to sell in zero bid options will be handled by the System. Further, the Exchange believes that memorializing its current practice within the rule text will bring more clarity to the manner in which the zero bid rule operates to the benefits of all market participants.

[3] *See* Phlx Rule 1035.

[4] The Limit Up-Limit Down requirements must be met first before the proposed rule would apply.

[5] The time of receipt for an order is the time such message is processed by the System.

[6] The Exchange's Opening Process is described within Chapter VI, Section 8.

[7] Chapter VI, Section 5, entitled ''Minimum Increments'' provides for the minimum increments of trading.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Chapter V, Section 3

The Exchange's proposal to amend Chapter V, Section 3(a)(vi)(B) to make clear how auction orders and auction responses are handled during a trading halt and amend Chapter V, Section 3 to more specifically describe how the Exchange determines to halt trading as well as the information disseminated during a trading halt do not impose an undue burden on competition because the amendments add more transparency to the trading halt rule.

Chapter VI, Section 6

The Exchange's proposal to adopt a zero bid options rule does not impose an undue burden on competition because the proposed rule change will continue to apply uniformly for all market participants who enter market orders to sell into the System when there is a zero-bid options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal raises no novel issues. Specifically, as the Exchange noted in its proposal, the provisions on the handling of zero bid options are the same as Rule 1035 of Nasdaq PHLX LLC and the changes to the trading halt rules clarify that the Exchange rejects auction orders and responses during a trading halt, which is consistent with the fact that the Exchange does not commence auctions during trading halts. Further, the proposal conforms a minor reference in the trading halt rules to better reflect the fact that the Exchange halts trading on a symbol-by-symbol basis. For these reasons, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2018–033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2018–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2018–033, and should be submitted on or before August 20, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16165 Filed 7–27–18; 8:45 am]

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[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] *Id.*

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83694; File No. SR–NYSEArca–2018–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to the Continued Listing Criteria Applicable to the Indexes Underlying the iShares California AMT Free Muni Bond ETF and iShares New York AMT-Free Muni Bond ETF

July 24, 2018.

On May 21, 2018, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the index methodology applicable to the indexes underlying shares of the following series of Investment Company Units that are currently listed and traded on NYSE Arca under NYSE Arca Rule 5.2–E(j)(3): iShares California AMT-Free Muni Bond ETF and iShares New York AMT-Free Muni Bond ETF. The proposed rule change was published for comment in the **Federal Register** on June 11, 2018.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates September 9, 2018, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2018–38).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16163 Filed 7–27–18; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83381 (June 5, 2018), 83 FR 27042.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83695; File No. SR–NYSEArca–2018–50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Listing and Trading of Shares of the Columbia Multi-Sector Municipal Income ETF

July 24, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 10, 2018, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Columbia Multi-Sector Municipal Income ETF (the ''Fund'') pursuant to NYSE Arca Rule 5.2–E(j)(3), Commentary .02. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Fund under Commentary .02 to NYSE Arca Rule 5.2–E(j)(3), which governs the listing and trading of Investment Company Units (''Units'') [4] based on fixed income securities indexes.[5] As discussed below, the Exchange is submitting this proposed rule change because the ''Index'' (as defined below) does not meet all of the ''generic'' listing requirements of Commentary .02 to Rule 5.2–E(j)(3) applicable to the listing of Units based on fixed income securities indexes. The Index meets all such requirements except for those set forth in Commentary .02(a)(2).[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An open-end investment company that issues Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission previously has approved proposed rule changes relating to listing and trading of funds based on municipal bond indexes. *See* Securities Exchange Act Release Nos. 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR–NYSEArca–2012–92) (order approving proposed rule change to list and trade the iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under Rule 5.2(j)(3), Commentary .02); 72523 (July 2, 2014), 79 FR 39016 (July 9, 2014) (SRNYSEArca–2014–37) (order approving proposed rule change to list and trade iShares 2020 S&P AMT-Free Municipal Series under Rule 5.2(j)(3), Commentary .02); and 75468 (July 16, 2015), 80 FR 43500 (July 22, 2015) (SE–NYSEArca–2015–25) (order approving proposed rule change to list and trade the iShares iBonds Dec 2021 AMT-Free Muni Bond ETF and iShares iBonds Dec 2022 AMT-Free Muni Bond ETF under Rule 5.2(j)(3), Commentary .02). *See also* Securities Exchange Act Release Nos. 78329 (July 14, 2016), 81 FR 47217 (July 20, 2016) (SR–BatsBZX–2016–01) (order approving the listing and trading of the VanEck Vectors AMT-Free 6–8 Year Municipal Index ETF, VanEck Vectors AMT-Free 8–12 Year Municipal Index ETF, and VanEck Vectors AMT-Free 12–17 Year Municipal Index ETF).

[6] Commentary .02(a)(2) provides that Fixed Income Security components that in aggregate account for at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

Description of the Shares and the Fund

The Fund is a series of the Columbia ETF Trust I (the Trust).[7] Columbia Management Investment Advisers, LLC (the ''Adviser'') will be the investment advisor for the Fund. BNY Mellon Corporation will serve as the custodian, administrator, and transfer agent for the Fund. ALPS Distributors, Inc. will act as the distributor for the Fund's Shares.

Beta Advantage® Multi-Sector Municipal Bond Index

According to the Registration Statement, the investment objective of the Fund is to seek investment results that correspond (before fees and expenses) to the performance of the Beta Advantage® Multi-Sector Municipal Bond Index (the ''Index''), a multistate index of fixed income municipal bond securities.[8]

The Index reflects a rules-based, multi-sector strategic beta approach to measuring the performance of the U.S. tax-exempt bond market, including municipal bonds issued by or on behalf of state or local governmental units whose interest is exempt from regular federal income tax, through representation of the following five sectors of the municipal debt market in the Index (percentages noted below are sector weights within the Index):

- core revenue (45% of Index weight);[9]
- health care (20% of Index weight);[10]
- high quality revenue bonds (15% of Index weight);[11]
- general obligation (GO) bonds (10% of Index weight);[12] and
- high yield debt (10% of Index weight).[13]

Each of the sectors in [sic] other than the high yield debt sector is derived from a sub-set index or indices of the Bloomberg Barclays Municipal Bond Index (the ''Parent Index''), which serves as each sector's initial universe of eligible securities for inclusion in the Index. The Parent Index is a broad-based, market value-weighted index designed to measure the performance of the U.S. municipal bond market. The Index is designed to achieve higher yields and stronger risk-adjusted returns relative to that of the Parent Index. The Index's allocation to each of the five sectors is fixed and, as such, will not vary as a result of Index rebalancing or reconstitution. The five sectors will generate all of the component securities of the Index.

The Exchange represents, for informational purposes, that, as of May 18, 2018, the Index included 5,613 component fixed income municipal bond securities from issuers in 49 different states and the District of Columbia. The most heavily weighted security in the Index represented approximately 0.37% of the total weight of the Index and the aggregate weight of the top five most heavily weighted securities in the Index represented 1.41% of the total weight of the Index. Approximately 19.22% of the weight of the components in the Index had a minimum original principal outstanding of $100 million or more. In addition, the total dollar amount outstanding of issues in the Index was approximately $196,572,849,000 and the average dollar amount outstanding of issues in the Index was approximately $35,021,000.

The Fund will invest, under normal market conditions,[14] at least 80% of its assets in securities within the Index or in securities that the Adviser determines have economic characteristics that are substantially the same as the economic characteristics of the securities within the Index. The Fund will accordingly invest at least 80% of its net assets (plus borrowings for investment purposes) in bonds and other debt instruments issued by or on behalf of state or local governmental units whose interest is exempt from U.S. federal income tax.

Other Investments

While the Fund, under normal market conditions, will invest at least 80% of the Fund's assets in securities within the Index or in securities that the Adviser determines have economic characteristics that are substantially the same as the economic characteristics of the securities within the Index, the Fund may invest its remaining assets in cash and cash equivalents such as repurchase agreements and money market funds.

Requirements for Index Constituents

The Index will contain at least 500 component securities. In addition, at least 90% of the weight of the Index will be comprised of securities that have an outstanding par value of at least $10 million and were issued as part of a transaction of at least $100 million.

Discussion

Based on the characteristics of the Index and the representations made in the Requirements for Index Constituents section above, the Exchange believes it is appropriate to allow the listing and trading of the Shares. The Index and Fund satisfy all of the generic listing requirements for Units based on a fixed income index, except for the minimum principal amount outstanding

[7] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (''1940 Act''). On May 4, 2018, the Trust filed with the Commission its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–209996 and 811–22736) (''Registration Statement''). The Trust will file an amendment to the Registration Statement as necessary to conform to the representations in this filing. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 32134, (May 31, 2016) (File No. 812–14552).

[8] The Index is owned and calculated by Bloomberg Index Services Limited (''Index Provider''), which is not affiliated with the Fund or the Adviser.

[9] Core revenue includes certain bonds in the Bloomberg Barclays Municipal Bond: Electric Index, the Bloomberg Barclays Municipal Bond: Transportation Index, the Bloomberg Barclays Municipal Bond: Education Index, and the Bloomberg Barclays Municipal Bond: Leasing Index. The Exchange represents, for informational purposes, that, as of May 18, 2018, this sector included 1,476 bonds, and that such bonds had an outstanding par value of at least $15 million ($10 million for the Bloomberg Barclays Municipal Bond: Leasing Index), and were issued as part of a transaction of at least $100 million.

[10] Health care includes certain bonds in the Bloomberg Barclays Municipal Bond: Hospital Index. The Exchange represents, for informational purposes, that, as of May 18, 2018, this sector included 1,380 bonds, and that such bonds had an outstanding par value of at least $10 million and were issued as part of a transaction of at least $100 million.

[11] High quality revenue bonds include certain bonds in the Bloomberg Barclays Municipal Bond: Housing Index and the Bloomberg Barclays Municipal Bond: Water & Sewer Index. The Exchange represents, for informational purposes, that, as of May 18, 2018, this sector included 701 bonds, and that such bonds included in the Bloomberg Barclays Municipal Bond: Housing Index had an outstanding par value of at least $10 million and were issued as part of a transaction of at least $100 million; and that such bonds included in the Bloomberg Barclays Municipal Bond: Water & Sewer Index had an outstanding par value of at least $15 million and were issued as part of a transaction of at least $100 million.

[12] GO bonds include certain bonds in the Bloomberg Barclays Municipal Bond: GO Index. The Exchange represents, for informational purposes, that, as of May 18, 2018, this sector included 1,668 bonds, and that such bonds had an outstanding par value of at least $15 million and were issued as part of a transaction of at least $100 million.

[13] High yield debt includes certain bonds in the Bloomberg Barclays Municipal High Yield Bond Index. The Exchange represents, for informational purposes, that, as of May 18, 2018, this sector included 388 bonds, and that such bonds had an outstanding par value of at least $5 million and were issued as part of a transaction of at least $25 million.

[14] The term ''under normal market conditions'' as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues (such as systems failure) causing dissemination of inaccurate market information; or force majeure type events, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

requirement of Commentary .02(a)(2) to Rule 5.2–E(j)(3). A fundamental purpose behind the minimum principal amount outstanding requirement is to ensure that component securities of an index are sufficiently liquid such that the potential for index manipulation is reduced. The Exchange notes that the representations in the Requirements for Index Constituents for the Index are comparable to those made regarding the Bloomberg Barclays AMT-Free Intermediate Continuous Municipal Index, Bloomberg Barclays AMT-Free Long Continuous Municipal Index, Bloomberg Barclays AMT-Free Short Continuous Municipal Index, Bloomberg Barclays Municipal Pre-Refunded—Treasury-Escrowed Index, Bloomberg Barclays Managed Money Municipal Short Term Index, and Bloomberg Barclays Municipal Managed Money Index (the ''Comparable Indexes''), which underlie series of Units that were previously approved for listing and trading by the Commission.[15] In the Approval Order, the Commission highlighted the representations that the Comparable Indexes would, on a continuous basis, contain at least 500 component securities and that at least 90% of the weight of a Comparable Index would be comprised of securities that have a minimum par amount of $7 million and were a constituent of an offering where the original offering amount was at least $75 million. The Exchange believes that these representations regarding the Index's diversification and the lack of concentration among constituent securities provide a strong degree of protection against index manipulation consistent with other proposed rule changes relating to listing and trading of shares of funds based on municipal bond indexes.[16]

In addition, the Exchange represents that: (1) Except for Commentary .02(a)(2) to Rule 5.2–E(j)(3), the Index currently satisfies all of the generic listing standards under Commentary .02 to Rule 5.2–E(j)(3); (2) the continued listing standards under Commentary .02 to Rule 5.2–E(j)(3), as applicable to Units based on fixed income securities, will apply to the Shares of the Fund; and (3) the issuer of the Fund is required to comply with Rule 10A–3 [17] under the Act for the initial and continued listing of the Shares. In addition, the Exchange represents that the Fund will comply with all other requirements applicable to Units, including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index and the Intraday Indicative Value (''IIV''),[18] rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Bulletin, as set forth in the Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.

The current value of the Index will be widely disseminated by one or more major market data vendors at least once per day, as required by Commentary .02(b)(ii) to Rule 5.2–E(j)(3). The portfolio of securities held by the Fund will be disclosed daily on the Fund's website. Further, the Fund's website will contain the Fund's prospectus and additional data relating to net asset value (''NAV'') and other applicable quantitative information. The issuer has represented that the NAV will be calculated daily and will be made available to all market participants at the same time. The Index Provider is not a broker-dealer but is affiliated with a broker-dealer. The Index Provider will implement and will maintain a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the Index. In addition, any advisory committee, supervisory board or similar entity that advises the Index Provider or that makes decisions on the Index, methodology and related matters, will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the Index. The Adviser is not registered as a broker-dealer but is affiliated with one or more broker-dealers, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to relevant personnel and any broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange's existing rules require that the issuer of the Fund notify the Exchange of any material change to the methodology used to determine the composition of the Index and, therefore, if the methodology of the Index was changed in a manner that would materially alter its existing composition, the Exchange would have advance notice and would evaluate the modifications to determine whether the Index remained sufficiently broad-based and well diversified.

Availability of Information

On each business day, the Fund will disclose on its website (*www.columbiathreadneedleetf.com*) the portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.

On a daily basis, the Fund will disclose for each portfolio security or other financial instrument of the Fund the following information on the Funds' website: Ticker symbol (if applicable), name of security and financial instrument, a common identifier such as CUSIP or ISIN (if applicable), number of shares (if applicable), and dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The website information will be publicly available at no charge. The current value of the Index will be widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Rule 5.2–E(j)(3), Commentary .02 (b)(ii).

The IIV for Shares of the Fund will be disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session, as required by NYSE Arca Rule 5.2–E(j)(3), Commentary .02 (c). The current value of the Index would be widely disseminated by one or more major

[15] The Comparable Indexes underlie, respectively, the VanEck Vectors AMT-Free Intermediate Municipal Index ETF, VanEck Vectors AMT-Free Long Municipal Index ETF, VanEck Vectors AMT-Free Short Municipal Index ETF, VanEck Vectors Pre-Refunded Municipal Index ETF, SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF, and SPDR Nuveen Bloomberg Barclays Municipal Bond ETF. *See* Securities Exchange Act Release No. 82295 (December 12, 2017), 82 FR 60056 (December 18, 2017) (SR–NYSEArca–2017–56) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Shares of Twelve Series of Investment Company Units Pursuant to NYSE Arca Rule 5.2–E(j)(3)) (the ''Approval Order'').

[16] *See* note 5, *supra. See also,* the Approval Order.

[17] 17 CFR 240.10A–3.

[18] The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session (normally, 9:30 a.m. to 4:00 p.m., E.T. Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIV taken from CTA or other data feeds.

market data vendors at least once per day, as required by NYSE Arca Rule 5.–(j)(3), Commentary .02 (b)(ii). In addition, the portfolio of securities held by the Fund will be disclosed daily on the Fund's website.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares of the Fund will be available via the Consolidated Tape Association (''CTA'') high speed line. Quotation information for investment company securities may be obtained through nationally recognized pricing services through subscription agreements or from brokers and dealers who make markets in such securities. Price information regarding municipal bonds is available from third party pricing services and major market data vendors. Trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access (''EMMA'') system.

Surveillance

The Exchange represents that trading in the Shares of the Fund will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, or by regulatory staff of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares of the Fund in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[19]

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[20] in general and Section 6(b)(5) of the Act[21] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares of the Fund will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 5.2–E(j)(3), except for the requirement in Commentary .02(a)(2) that the component fixed income securities, in the aggregate, account for at least 75% of the weight of the index each shall have a minimum principal amount outstanding of $100 million or more. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.[22] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG. In addition, the Exchange will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares of the Fund.

As discussed above, the Exchange believes that the Index is sufficiently broad-based to deter potential manipulation. For informational purposes, as of May 18, 2018, the Index included 5,613 components, the total dollar amount outstanding of issues in the Index was approximately $196,572,849,000, and the average dollar amount outstanding of issues in the Index was approximately $35,021,000. Whereas the Exchange's generic listing rules require that an index contain securities from a minimum of 13 non-affiliated issuers,[23] the Index, as of May 18, 2018, included securities issued by municipal entities in 49 different states and the District of Columbia. Further, whereas the generic listing rules permit a single component security to represent up to 30% of the weight of an index and the top five component securities to, in aggregate, represent up to 65% of the weight of an index,[24] as of May 18, 2018,the most heavily weighted security in the Index represented approximately 0.37% of the total weight of the Index and the

[19] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(5).

[22] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[23] *See* Commentary .02(a)(5) to NYSE Arca Rule 5.2–E(j)(3).

[24] *See* Commentary .02(a)(4) to NYSE Arca Rule 5.2–E(j)(3).

aggregate weight of the top five most heavily weighted securities in the Index represented 1.41% of the total weight of the Index. The Exchange notes that the representations in ''Requirements for Index Constituents'' above for the Index are comparable to those made regarding the Comparable Indexes, which underlie series of Units that were previously approved for listing and trading by the Commission.[25] The Exchange believes that this significant diversification and the lack of concentration among constituent securities in the Index provides a strong degree of protection against index manipulation that is consistent with other proposed rule changes that have been approved for listing and trading by the Commission.[26]

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on the Fund's website daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. The current value of the Index will be disseminated by one or more major market data vendors at least once per day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The website for the Fund will include the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. If the IIV or the Index values are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or Index value occurs. If the interruption to the dissemination of the IIV or Index value persists past the trading day in which it occurred, the Exchange will halt trading. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Rule 7.34–E, which sets forth circumstances under which Shares of the Fund may be halted. In addition, investors will have ready access to information regarding the IIV, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded fund that holds municipal bonds and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, investors will have ready access to information regarding the IIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.[27]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of Units based on a municipal bond index that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and Rule 19b–4(f)(6) thereunder.[29]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the Exchange's proposal is similar to proposals the Commission has previously approved.[30] Accordingly, the Commission believes that the proposal raises no new or novel regulatory issues and waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission therefore waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.[31]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[25] *See* the Approval Order.

[26] *See* note 5, *supra. See also,* the Approval Order.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] *See, e.g.,* the Approval Order.

[31] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2018–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–50 and should be submitted on or before August 20, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16167 Filed 7–27–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33169; 812–14833]

Advisors Asset Management, Inc. and ETF Series Solutions; Notice of Application

July 24, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: ETF Series Solutions (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Advisors Asset Management, Inc. (the ''Initial Adviser''), a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on October 11, 2017 and amended on May 3, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the application 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 August 20, 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 Street NE, Washington, DC 20549–1090. Applicants: ETF Series Solutions, 615 E Michigan Street, Milwaukee, WI 53202; and Advisors Asset Management, Inc., 18925 Base Camp Road, Suite 203, Monument, CO 80132.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

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.

Summary of the Application

1. The Initial Adviser is the investment adviser to the AAM S&P 500 High Dividend Value ETF and AAM S&P Emerging Markets High Dividend Value ETF (together, the ''Initial Funds''), each a series of the Trust, pursuant to an investment management agreement with the Trust (''Investment Management Agreement'').[1] Under the terms of the Investment Management Agreement, the Adviser, subject to the

[32] 17 CFR 200.30–3(a)(12).

[1] Applicants request relief with respect to the Initial Funds, as well as to any future series of the Trust and any other existing or future registered open-end management investment company or series thereof that, in each case, is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with, the Initial Adviser or its successors (each, also an ''Adviser''), uses the multi-manager structure described in the application, and complies with the terms and conditions set forth in the application (each, a ''Subadvised Fund''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. Future Subadvised Funds may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain series of the Trust (each, a ''Feeder Fund'') may invest substantially all of their assets in a Subadvised Fund (a ''Master Fund'') pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund's sub-advisers.

supervision of the board of trustees of the Trust (''Board''), provides continuous investment management of the assets of each Subadvised Fund. Consistent with the terms of the Investment Management Agreement, the Adviser may, subject to the approval of the Board, delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to one or more Sub-Advisers.[2] The Adviser will continue to have overall responsibility for the management and investment of the assets of each Subadvised Fund. The Adviser will evaluate, select, and recommend Sub-Advisers to manage the assets of a Subadvised Fund and will oversee, monitor and review the Sub-Advisers and their performance and recommend the removal or replacement of Sub-Advisers.

2. Applicants request an order to permit the Adviser, subject to the approval of the Board, to enter into investment sub-advisory agreements with the Sub-Advisers (each, a ''Sub-Advisory Agreement'') and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f–2 under the Act.[3] Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Fund to disclose (as both a dollar amount and a percentage of the Subadvised Fund's net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, Aggregate Fee Disclosure'').[4]

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Funds' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Funds' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Funds. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16155 Filed 7–27–18; 8:45 am]

BILLING CODE 8011–01–P

[2] As used herein, a ''Sub-Adviser'' for a Subadvised Fund is (1) an indirect or direct ''wholly owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Subadvised Fund, or (2) a sister company of the Adviser for that Subadvised Fund that is an indirect or direct ''wholly-owned subsidiary'' of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (3) not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Subadvised Fund, any Feeder Fund invested in a Master Fund, the Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Subadvised Fund (''Non-Affiliated Sub-Advisers'').

[3] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Fund, of any Feeder Fund, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Funds (''Affiliated Sub-Adviser'').

[4] For any Subadvised Fund that is a Master Fund, the relief would also permit any Feeder Fund invested in that Master Fund to disclose Aggregate Fee Disclosure.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83699; File No. SR–FINRA–2018–026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Arbitrator Payment Rule To Pay Each Arbitrator a $200 Honorarium To Decide Without a Hearing Session a Contested Subpoena Request or a Contested Order for Production or Appearance

July 24, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 12214(c) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and FINRA Rule 13214(c) through (e) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'' and together, ''Codes''), to provide that FINRA will pay each arbitrator a $200 honorarium to decide without a hearing session a contested subpoena request or a contested order for production or appearance.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

The proposed rule change would amend FINRA Rules 12214 and 13214 that govern the payments (referred to as honorarium) arbitrators receive for deciding contested requests to issue subpoenas and orders for production and appearance. The proposed rule change would provide uniformity regarding when and how much arbitrators receive when deciding contested subpoenas and orders for production and appearance without a hearing session.

Background

In arbitration, the parties exchange documents and information to prepare for the arbitration through the discovery process. The Codes require parties to cooperate with each other and exchange documents or information to expedite the arbitration.[3] If an individual or entity objects to a discovery request, the party seeking the documents or information may request that the arbitrator issue a subpoena [4] or an order.[5]

Requests to Issue a Subpoena

Under the Codes, parties may request that the panel issue a subpoena to parties in an arbitration, non-parties, as well as entities and individuals who are not FINRA members.[6] If the subpoena will be served on a FINRA member, FINRA rules favor the use of orders rather than subpoenas, unless circumstances dictate otherwise.[7] A party's request (or motion) to issue a subpoena becomes a ''contested subpoena request'' if there is an objection raised to the scope or propriety of the subpoena.[8]

To decide a contested subpoena request, the arbitrator must review the motion requesting issuance of the subpoena, the draft subpoena, any written objections, and any other documents supporting a party's position.[9] When arbitrators decide these contested requests, they must review and consider all parties' objections and render their decision promptly on the issuance and scope of the subpoena.[10]

Currently, under FINRA Rule 12214(d),[11] each arbitrator who decides one or more contested subpoenas without a hearing session [12] receives a one-time honorarium of $250 during the life of the arbitration case.[13] The rule caps the total amount that the parties could pay the arbitrators to decide a contested subpoena request in any one case at $750.[14] This means that regardless of the number of contested subpoena requests that arbitrators decide without a hearing session in an arbitration case, an arbitrator will receive one honorarium payment of $250.[15] The panel allocates the cost of the honorarium to the parties in the award.[16]

If a party's request to issue a subpoena does not receive any objections, it remains unopposed, and arbitrators do not receive an honorarium for issuing an unopposed subpoena.

Request To Issue an Order for Production or Appearance

If a party is seeking documents or information, or the appearance of a witness from a FINRA member, the Codes direct the parties to request the issuance of an order for production or appearance,[17] rather than a subpoena.[18] A party's motion to issue an order becomes a ''contested order request'' if a party objects to the scope or propriety of the order.[19]

An arbitrator would decide a contested order request by reviewing the motion requesting issuance of the order,[20] the draft order,[21] and any written objections from the party receiving the motion.[22] Further, when arbitrators decide these contested order requests, they must review and consider all parties' objections and render their decision promptly on the issuance and scope of the order.[23] Thus, arbitrators review similar documents and follow the same process when deciding contested order requests as they do when deciding contested subpoena requests.

The Codes do not expressly provide an honorarium for arbitrators who decide requests for such orders without a hearing session. Thus, FINRA categorizes requests to issue orders for production as discovery-related motions [24] rather than requests to issue subpoenas and, thus, FINRA pays the $200 honorarium for each. FINRA pays the $200 honorarium for an order for production, whether contested or unopposed. FINRA does not pay the honorarium, however, for an order for appearance, regardless of whether it is contested or unopposed.

Concerns About Current Subpoena and Order Honorarium Structure

Parties label requests for subpoenas or orders interchangeably, which is understandable given the similarities of the requests and the work arbitrators do to decide them without a hearing session. However, the Codes treat the two discovery mechanisms differently. As noted, the Codes favor the use of orders over subpoenas when a party seeks documents or witnesses from a FINRA member.[25] If a request to issue a subpoena should have been a request to issue an order, a change in the labelling of the document can result in the arbitrators receiving a reduced honorarium (*i.e.,* $200 for an order versus $250 for a contested subpoena or no payment at all if the change is to an order of appearance).

The Codes also impose a per-case honorarium cap of $250 that each arbitrator who decides a contested subpoena request without a hearing session may receive.[26] Arbitrators do not receive an honorarium for deciding an unopposed subpoena request. There is no per-case cap on deciding requests

[3] *See* FINRA Rules 12505 and 13505.

[4] *See* FINRA Rules 12512 and 13512.

[5] *See* FINRA Rules 12513 and 13513.

[6] *See* FINRA Rules 12512(a)(1) and 13512(a)(1).

[7] *See* FINRA Rules 12512(a)(2) and 13512(a)(2).

[8] *See* FINRA Rules 12512(c) and 13512(c).

[9] *See* FINRA Rules 12214(d)(2) and 13214(d)(2).

[10] *See, e.g.,* FINRA Rules 12512(c) and 13512(c).

[11] *See also* FINRA Rule 13214(d).

[12] A hearing session is a meeting between the parties and arbitrators of four hours or less, including a hearing or prehearing conference. *See* FINRA Rules 12100(p) and 13100(p).

[13] *See* FINRA Rules 12214(d)(1) and 13214(d)(1).

[14] *Id.* The chairperson of a three-person panel will decide the contested subpoena request without a hearing session, for which the chairperson would be paid $250. The honorarium for contested subpoena requests could increase in $250 increments, if, for example, the chairperson recuses or withdraws from the panel and the replacement chairperson must decide another contested subpoena request without a hearing session. In this instance, the replacement chairperson would receive a $250 honorarium for this work. In no event would the parties be charged more than $750 per case.

[15] If a hearing session is required to decide the motion, each arbitrator who participates in the hearing session will receive a $300 honorarium instead. *See* FINRA Rules 12214(a) and 13214(a).

[16] *See* FINRA Rules 12214(d)(3) and 13214(d)(3).

[17] FINRA Rules 12513(a) and 13513(a) provide that upon a motion of a party, the panel may order the appearance of any employee or associated person of a FINRA member or the production of any documents in the possession or control of such persons or members, without the use of subpoenas.

[18] *See* FINRA Rules 12512(a)(2) and 13512(a)(2).

[19] *See* FINRA Rules 12513(c) and 13513(c).

[20] *See* FINRA Rules 12513(b) and 13513(b).

[21] *Id.*

[22] *See* FINRA Rules 12513(c) and 13513(c).

[23] *See, e.g.,* FINRA Rules 12513(c) and 13513(c).

[24] FINRA Rules 12214(c) and 13214(c) provide that FINRA will pay each arbitrator an honorarium of $200 to decide a discovery-related motion without a hearing session.

[25] *See* FINRA Rules 12512(a)(2) and 13512(a)(2).

[26] *See* FINRA Rules 12214(d)(1) and 13214(d)(1).

to issue orders of production however. Moreover, arbitrators receive an honorarium for deciding such requests, whether they are contested or unopposed.

Proposed Rule Change

FINRA believes that the subpoena or order label on a discovery-related motion should not dictate the amount of honorarium that arbitrators receive or the frequency with which they are paid. The honoraria that arbitrators receive should reflect the time and effort they spend in deciding requests without a hearing session and fairly compensate them for this work. Accordingly, FINRA is proposing to amend FINRA Rules 12214(c) and 13214(c) to provide that FINRA would pay each arbitrator an honorarium of $200 to decide, without a hearing session: (i) A discovery-related motion;[27] (ii) a motion that contains one or more contested subpoena requests[28] or contested orders for production or appearance; or (iii) a motion that contains one or more contested subpoena requests and contested orders for production or appearance. FINRA believes that unifying the honorarium structure for these discovery mechanisms would remove inconsistencies from FINRA's rules and make them more transparent as well as eliminate confusion for parties, arbitrators and staff that can occur when a discovery request is mislabeled.

Contested Subpoena Requests

The proposed rule change would reduce the honorarium that an arbitrator receives to decide a contested subpoena request from $250 to $200; however, it would also remove the per-case cap on these payments. Thus, under the proposed rule change, an arbitrator would receive a $200 honorarium for each contested subpoena request that he or she decides.[29]

FINRA recognizes that removing the per-case cap on contested subpoena requests could result in an increase in fees for the parties. In response to this concern, the proposed rule change would permit a party or parties to use one motion to request the issuance of one or more subpoenas.[30] FINRA is proposing to include this current practice in the rule, so that parties may mitigate their costs. Thus, under the proposed rule change, if parties request one or more subpoenas in one motion, for example, and one or all of the subpoena requests become contested, each arbitrator who decides the motion would receive one honorarium payment of $200. In addition to helping to minimize costs, requesting multiple subpoenas in one motion helps expedite the arbitration, which benefits parties and arbitrators.

FINRA believes that reducing the honorarium for contested subpoena requests and removing the per-case cap on these payments would provide consistency and fairness to the arbitrator payment rules by ensuring that the payment arbitrators receive for deciding these requests is commensurate with the time and effort spent on each motion.

Contested Orders for Production or Appearance

FINRA would amend Rule 12214(c) to provide a $200 honorarium for deciding a contested order for production or appearance without a hearing session. This means that arbitrators would receive an honorarium for deciding without a hearing session, a contested arbitrator order for appearance as well as for production. Under the proposed rule change, arbitrators would no longer receive an honorarium for unopposed requests to issue an order for production as these requests do not require the amount of time and effort needed to resolve contested requests.

The proposed rule change would describe what constitutes a contested order for production or appearance by modeling the description on that of a contested subpoena request. Thus, proposed FINRA Rule 12214(c)(2)(iii) would provide that a contested order for production or appearance shall include a motion requesting the issuance of an order for production or appearance, a written objection from the party opposing the issuance of the order, and any other documents supporting a party's position.

Moreover, like a contested subpoena request, a party would be permitted to request the issuance of one or more orders in one motion,[31] and if one or all of the arbitrator orders become contested, each arbitrator who decides the motion would receive one honorarium payment of $200. In addition to helping to minimize costs, requesting multiple orders in one motion helps expedite the arbitration, which benefits parties and arbitrators.

FINRA believes that adding contested orders for production or appearance to its honorarium rules would make the rules more transparent, so that parties and arbitrators understand how and when the honorarium and fees are assessed for contested orders. Moreover, FINRA believes that limiting honorarium to contested orders makes the honorarium rules more consistent and more equitable to the parties, as the fees FINRA would assess for arbitrators to decide contested orders for production or appearance would be proportionate with the time and effort that they spend deciding such orders.

Nonsubstantive Changes

In addition to the amendments discussed above to simplify the honorarium structure for contested subpoenas requests and contested orders for production and appearance, the proposed rule change would also amend Rules 12214(a) and 13214(a) to make a few nonsubstantive changes.

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[32] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(5) of the Act,[33] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

FINRA believes that the proposed rule change would simplify the structure of arbitrator honorarium for deciding

[27] Under the proposed rule change, FINRA would add a contested subpoena request and a contested order for production or appearance to the discovery-related motions rule; however, FINRA would not change the rule language explaining what constitutes a discovery-related motion.

[28] The proposal would retain what constitutes a contested subpoena by moving the description from FINRA Rule 12214(d)(2) to FINRA Rule 12214(c)(2)(ii).

[29] As is current practice, arbitrators would not receive an honorarium for an unopposed subpoena request.

[30] The proposed rule change would also permit parties to request the issuance of one or more orders in the same motion or a combination of subpoena and order requests.

[31] The proposed rule change would also permit parties to request the issuance of one or more subpoenas in the same motion or a combination of subpoena and order requests.

[32] 15 U.S.C. 78*o*–3(b)(6).

[33] 15 U.S.C. 78*o*–3(b)(5).

contested subpoena requests and contested orders for production or appearance without a hearing session by making the honorarium amount the same ($200) for each request. Further, the proposed rule change makes the honorarium structure more transparent by including expressly the current practice of paying arbitrators for deciding contested orders for production without a hearing session in the Codes' payment rules. For consistency and fairness, the proposed rule change would also extend the honorarium to include contested orders for appearance without a hearing session. These changes, FINRA believes, make the arbitrator honorarium structure easier to understand for parties and arbitrators and easier for FINRA to apply, and, therefore, will help parties, arbitrators and staff conserve resources that they might otherwise spend in trying to interpret the rules and understand the honorarium structure.

Further, FINRA believes structuring the arbitrator honorarium rules so that arbitrators receive an honorarium for each contested subpoena request or contested order for production or appearance they decide without a hearing session ensures that the honoraria arbitrators receive are proportionate with the time and effort they spend deciding such requests and the fees parties are assessed are equitable in relation to the services that they receive. Last, the proposed rule change allows parties to combine multiple requests for subpoenas or orders into one motion as a way to minimize costs and expedite the discovery process. For these reasons, FINRA believes that the proposed rule change is an equitable allocation of a reasonable fee to use the forum.

Moreover, FINRA believes that the proposed rule change would protect investors and the public interest by ensuring that arbitrators are compensated equitably for the services that they provide, which would enhance FINRA's ability to retain qualified arbitrators willing to devote the time and effort necessary to consider thoroughly the discovery issues presented. Retaining qualified arbitrators is an essential element, FINRA believes, in maintaining its ability to operate an effective arbitration forum for the purposes of investor protection and market integrity.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. A discussion of the economic impacts of the proposed amendments follows.

(a) Need for the Rule

The existing structure for payments to arbitrators for deciding requests to issue subpoenas or orders without a hearing session has been difficult for parties and arbitrators to understand due to the differences between when and under what circumstances arbitrators will receive payments.[34] Parties can incur different fees, and arbitrators can receive different honorarium, for contested and unopposed requests to issue subpoenas and orders. The existing structure can also make it confusing for FINRA to apply. Under the proposed amendments, the payments arbitrators receive would be more commensurate with their time and effort to consider the requests. The proposed amendments would also simplify the structure of the payments.

(b) Economic Baseline

The economic baseline for the proposal is the current rules under the Codes that address the payments to arbitrators for deciding discovery-related motions and requests to issue subpoenas or orders. The proposal is expected to affect the parties to an arbitration, their counsel, and FINRA arbitrators.

The existing fee structure for payments to arbitrators for deciding requests to issue subpoenas or orders without a hearing session has led to confusion and uncertainty with respect to the amount of fees that parties incur. As a result, parties and their counsel may incur time and other expenses to interpret the rules and understand the payment structure, as well as the possible time and expense to communicate and receive clarification from FINRA.

Arbitrators incur more costs to decide contested requests to issue subpoenas or orders without a hearing session than unopposed requests. The costs to arbitrators for deciding contested requests include the time to review the materials and the effort to make a decision. Alternatively, arbitrators spend less time and effort to review unopposed requests.[35]

The honorarium that arbitrators receive, and the fees parties incur, may not be commensurate with the effort expended by arbitrators to decide the requests. The existing fee structure can result in instances where arbitrators do not receive an honorarium for their time and effort to consider a contested request (*i.e.,* contested orders of appearance decided without a hearing session). Arbitrators also do not receive additional honorarium to decide multiple contested requests for subpoenas. In general, the absence of an honorarium when arbitrators decide certain contested requests may serve as a disincentive for arbitrators to give their best efforts or the time necessary to make a decision. The existing fee structure can also result in instances where arbitrators receive an honorarium even though they incur little time or effort to decide a request (*e.g.,* unopposed orders of production).

There were 7,370 arbitration cases closed in 2016 and 2017. Among the 7,370 cases, there were 497 cases (6.7 percent) with contested requests for subpoenas, 1,210 cases (16.4 percent) with unopposed requests for subpoenas, and 1,334 cases (18.1 percent) with requests for orders. The information available does not distinguish between contested and unopposed requests for orders of production and appearance. We are therefore not able to estimate the potential change to the fees parties would incur and the honorarium that arbitrators would receive as a result of the proposed amendments.

Although the majority of the cases with contested subpoenas (454 or 91.3 percent) have three arbitrators, in the experience of FINRA staff, typically only one arbitrator decides contested subpoenas without a hearing session. Thus, although parties could currently incur fees of $750 for contested subpoenas if three arbitrators decide the requests without a hearing session, the typical fee parties currently incur is $250.

(c) Economic Impact

The proposed amendments would simplify and make uniform the structure for payments to arbitrators for deciding requests to issue subpoenas or orders without a hearing session. The benefits of the proposed amendments include a decrease in the time and expense parties would incur to understand the payment structure, an increase in the incentives of arbitrators to decide contested subpoenas and orders, and an increase in the efficiency of the forum. Depending on the composition and timing of the requests, however, the fees parties incur could either increase or decrease. The honorarium payments arbitrators receive could also increase or decrease. The benefits and costs of the

[34] For example, arbitrators raised issues with FINRA concerning the inconsistencies in the existing honorarium structure for requests to issue subpoenas or orders without a hearing session.

[35] For most unopposed requests, arbitrators can resolve them by signing the subpoena or order that accompanies the request.

proposed amendments, including the changes to the fees parties incur and the honorarium arbitrators receive, are discussed in further detail below.

A benefit of the proposed amendments is the reduction in the complexity of the fee schedule. Parties and their counsel would be more certain with respect to the assessment of fees, and would therefore incur less time and expense to interpret the fee schedule. Parties and their counsel would also be less likely to incur the time and expense from requesting clarification from FINRA.

Another benefit of the proposed amendments is that the honorarium arbitrators receive would be more commensurate with their time and effort to decide requests to issue subpoenas or orders. Arbitrators would receive an honorarium to decide all contested requests to issue subpoenas or orders without a hearing session. Arbitrators would therefore have more incentive to devote the time and effort necessary to decide these requests. Arbitrators would also receive no honorarium to decide unopposed requests to issue subpoenas or orders, which reflects the minimal time and effort needed to review such requests.

The changes to the fee schedule would also increase the efficiency of the arbitration process. Parties and their counsel could minimize the amount of fees assessed by filing a request to issue multiple subpoenas or orders in one motion instead of several separate motions. This could also increase the arbitrators' efficiency by having them decide at the same time requests to issue multiple subpoenas or orders that are based largely on the same facts or arguments. The filing of one motion that requests the issuance of multiple subpoenas or orders could also expedite the discovery process, and decrease the amount of time to an arbitration decision.

The proposed amendments would also benefit the parties that incur fewer fees and the arbitrators who receive additional honorarium, but would impose costs on the parties that incur additional fees and the arbitrators who receive less honorarium. A decrease in the fees that parties incur would correspond to a decrease in the honorarium that arbitrators receive, and an increase in the fees that parties incur would correspond to an increase in the honorarium that arbitrators receive.

The total fees parties incur, and the total honorarium that arbitrators receive, could either increase or decrease depending on the composition and timing of the requests. For example, parties would be subject to fees for contested requests to issue orders of appearance without a hearing session, but would not be subject to fees for unopposed requests to issue orders of production. In addition, the fees for submitting contested requests to issue subpoenas without a hearing session would decrease from $250 to $200 per arbitrator. The per-case cap on these payments, however, would be removed. Therefore, parties would be assessed additional fees if they submit multiple contested requests for subpoenas.

Among the 497 cases with contested subpoenas, 399 cases (or 80.3 percent) had only one contested request for subpoenas, whereas 98 cases (or 19.7 percent) had more than one contested request for subpoenas. For the cases with two or more contested requests for subpoenas, the median number of days between requests is less than two months. This suggests that contested requests for subpoenas are often submitted within short periods of time, and that counsel could reasonably anticipate these requests and submit the requests at one time. The potential additional fees to parties from submitting multiple contested requests for subpoenas from the removal of the per-case cap, therefore, is likely to be minimal.

If parties file a contested request to issue one or more subpoenas or orders at one time and these are not based on the same facts or arguments (*i.e.,* unrelated), then arbitrators may not receive honorarium payments commensurate with their time and effort to decide the request. This could serve as a disincentive for arbitrators to give their best efforts or the time necessary to make decisions on these requests. The Director, however, could separate the motions and pay the arbitrators accordingly, thereby mitigating these potential effects.

(d) Alternatives Considered

Arbitrators raised issues with FINRA concerning the inconsistencies in the existing honorarium structure for requests to issue subpoenas or orders without a hearing session. Along with the proposed amendments, FINRA considered other changes to the existing honorarium structure. Other changes would have included an increase in the honorarium that arbitrators receive to decide discovery-related motions, contested subpoena requests, and requests for contested orders for production or appearance. The honorarium payments would have been similar to the honorarium that arbitrators receive for currently deciding contested subpoenas ($250) or for deciding motions in discovery prehearings ($300).

FINRA believes that the fee structure under the proposed amendments would provide arbitrators with honoraria that are commensurate with their efforts to decide these requests. FINRA also believes that the proposed amendments provide incentives for parties to combine their requests for submission simultaneously to minimize their costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2018–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2018–026. 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 FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2018–026 and should be submitted on or before August 20, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16166 Filed 7–27–18; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33168; 812–14853]

OFI Carlyle Private Credit Fund and OC Private Capital, LLC; Notice of Application

July 24, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c), and 18(i) of the Act, pursuant to sections 6(c) and 23(c) of the Act, granting an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares of beneficial interest (''Shares'') and to impose asset-based service and/or distribution fees and early withdrawal charges.

APPLICANTS: OFI Carlyle Private Credit Fund (the ''Initial Fund'') and OC Private Capital, LLC (the ''Adviser'').

FILING DATES: The application was filed on December 15, 2017, and amended on March 26, 2018, June 6, 2018, and July 3, 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 August 17, 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 Street NE, Washington, DC 20549–1090; Applicants, 6803 South Tucson Way, Centennial, Colorado 80112.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, at (202) 551–6773 or Nadya B. Roytblat, Assistant Director, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

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 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 Initial Fund is a Delaware statutory trust that is registered under the Act as a non-diversified, closed-end management investment company. The Initial Fund's investment objective is to produce current income by opportunistically allocating its assets across a wide range of credit strategies.

2. The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Initial Fund.

3. The applicants seek an order to permit the Initial Fund to issue multiple classes of Shares, each having its own fee and expense structure, and to impose asset-based service and/or distribution fees and early withdrawal charges.

4. Applicants request that the order also apply to any other registered closed-end management investment company that conducts a continuous offering of its shares, existing now or in the future, for which the Adviser, its successors,[1] or any entity controlling, controlled by, or under common control with the Adviser, or its successors, acts as investment adviser, and which provides periodic liquidity with respect to its Shares through tender offers conducted in compliance with either rule 23c–3 under the Act or rule 13e–4 under the Securities Exchange Act of 1934 (the ''1934 Act'') (each such closed-end investment company, a ''Future Fund'' and, together with the Initial Fund, each, a ''Fund'' and collectively, the ''Funds'').[2]

5. The Initial Fund currently issues a single class of Shares (the ''Initial Class Shares''). The Shares are currently being offered on a continuous basis pursuant to a registration statement under the Securities Act of 1933 at their net asset value per share plus the applicable sales load. The Initial Fund, as a closed-end investment company, does not continuously redeem Shares as does an open-end management investment company. Shares of the Initial Fund are not listed on any securities exchange and do not trade on an over-the-counter system such as NASDAQ. Applicants do not expect that any secondary market will ever develop for the Shares.

6. If the requested relief is granted, the Initial Fund intends to offer multiple classes of Shares, such as the Initial Class Shares and a new Share class (the ''New Class Shares''), or any other classes. Because of the different distribution fees, shareholder services fees, and any other class expenses that may be attributable to the different classes, the net income attributable to, and any dividends payable on, each class of Shares may differ from each other from time to time.

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The Initial Fund and any Future Fund relying on the requested relief will do so in a manner consistent with the terms and conditions of the application. Applicants represent that any person presently intending to rely on the requested relief is listed as an applicant.

7. Applicants state that, from time to time, the Board of a Fund may create additional classes of Shares, or may vary the characteristics described of the Initial Class and New Class Shares, including without limitation, in the following respects: (1) The amount of fees permitted by different distribution plans or different service fee arrangements; (2) voting rights with respect to a distribution plan of a class; (3) different class designations; (4) the impact of any class expenses directly attributable to a particular class of Shares allocated on a class basis as described in the application; (5) differences in any dividends and net asset values per Share resulting from differences in fees under a distribution plan or in class expenses; (6) any early withdrawal charge or other sales load structure; and (7) any exchange or conversion features, as permitted under the Act.

8. Applicants state that, in order to provide some liquidity to shareholders, the Initial Fund is structured as an ''interval fund'' and makes quarterly offers to repurchase between 5% and 25% of its outstanding Shares at net asset value, pursuant to rule 23c–3 under the Act, unless such offer is suspended or postponed in accordance with regulatory requirements. Any other investment company that intends to rely on the requested relief will provide periodic liquidity to shareholders in accordance with either rule 23c–3 under the Act or rule 13e–4 under the 1934 Act.

9. Applicants represent that any asset-based service and/or distribution fees of a Fund will comply with the provisions of Rule 2341 of the Rules of the Financial Industry Regulatory Authority (''FINRA Rule 2341'') as if that rule applied to the Fund.[3] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of Shares offered for sale by the prospectus, as is required for open-end, multiple class funds under Form N–1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in, or elimination of, sales loads in its prospectus.[4] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[5]

10. Each Fund and its distributor (the ''Distributor'') will also comply with any requirements that may be adopted by the Commission or FINRA regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund and the Distributor. Each Fund or the Distributor will contractually require that any other distributor of the Fund's Shares comply with such requirements in connection with the distribution of Shares of the Fund.

11. Each Fund will allocate all expenses incurred by it among its various classes of Shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of the Fund's Shares will be borne on a pro rata basis by each outstanding Share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

12. Applicants state that the Initial Fund does not intend to offer any exchange privilege or conversion feature, but any such privilege or feature introduced in the future by a Fund will comply with rule 11a–1, rule 11a–3, and rule 18f–3 as if the Fund were an open-end investment company.

13. Applicants state that the Initial Fund does not currently intend to impose an early withdrawal charge. However, in the future a Fund may impose an early withdrawal charge on shares submitted for repurchase that have been held less than a specified period. The Fund may waive the early withdrawal charge for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the early withdrawal charge (and any waivers or scheduled variations of the early withdrawal charge) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Fund was an open-end investment company.

14. The Initial Fund, operating as an interval fund pursuant to rule 23c–3 under the Act, does not intend to, but a Fund may, offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their Shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, the ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3 under the Act, each Fund will treat an early withdrawal charge as if it were a contingent deferred sales load.

15. Applicants state that the Initial Fund does not currently intend to impose a repurchase fee, but may do so in the future.[6] If a Fund charges a repurchase fee, Shares of the Fund will be subject to a repurchase fee at a rate of no greater than 2% of the shareholder's repurchase proceeds if the interval between the date of purchase of the Shares and the valuation date with respect to the repurchase of those Shares is less than one year. Repurchase fees, if charged, will equally apply to all classes of Shares of the Fund, consistent with section 18 of the Act and rule 18f–3 thereunder. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate a repurchase fee, it will do so consistently with the requirements of rule 22d–1 under the Act as if the repurchase fee were a contingent deferred sales load and as if the Fund were a registered open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of, the repurchase fee will

[3] Any references to FINRA Rule 2341include any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority (''FINRA'').

[4] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[5] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also rules 12d1–1, *et seq.* of the Act.

[6] Unlike a distribution-related charge, the repurchase fee is payable to the Fund to compensate long-term shareholders for the expenses related to shorter-term investors, in light of the Fund's generally longer-term investment horizons and investment operations.

apply uniformly to all shareholders of the Fund regardless of class.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2)(A) and (B) makes it unlawful for a registered closed-end investment company to issue a senior security that is a stock unless (a) immediately after such issuance it will have an asset coverage of at least 200% and (b) provision is made to prohibit the declaration of any distribution, upon its common stock, or the purchase of any such common stock, unless in every such case such senior security has at the time of the declaration of any such distribution, or at the time of any such purchase, an asset coverage of at least 200% after deducting the amount of such distribution or purchase price, as the case may be. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a registered closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of Shares of a Fund may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple classes of Shares of a Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of Shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit each Fund to facilitate the distribution of its Shares and provide investors with a broader choice of shareholder options. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for each Fund to impose early withdrawal charges on shares of the Fund submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the early withdrawal charges they intend to impose are functionally similar to contingent deferred sales loads imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose contingent deferred sales loads, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of contingent deferred sales loads where there are adequate safeguards for the investor and state that the same policy considerations support imposition of early withdrawal charges in the interval fund context. In addition, applicants state that early withdrawal charges may be necessary for the Fund's Distributor to recover distribution costs. Applicants represent that any early withdrawal charge imposed by a Fund will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. Each Fund will disclose early withdrawal charges in accordance with the requirements of Form N–1A concerning contingent deferred sales loads.

Asset-Based Service and/or Distribution Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the Fund to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b–1 and

17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based service and/or distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based service and/or distribution fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the requested order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1 and, where applicable, 11a–3 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with FINRA Rule 2341, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16154 Filed 7–27–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83690; File No. SR–ICC–2018–004]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating To Formalization of the ICC Model Validation Framework

July 24, 2018.

I. Introduction

On May 23, 2018, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to formalize the ICC Model Validation Framework. The proposed rule change was published in the **Federal Register** on June 12, 2018.[3] The Commission has not received any comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The proposed rule change would formalize the ICC Model Validation Framework (''Framework''), which sets forth ICC's model validation procedures.[4] Through the use of these model validation procedures, ICC determines the effectiveness of the risk models underpinning ICC's risk management system, considers new components and enhancements to existing components of the risk models, and monitors and validates on an ongoing basis the risk models. The Framework also describes the personnel responsible for, and the governance process associated with, the successful operation and maintenance of the model validation procedures. Specifically, the Framework designates ICC's Risk Oversight Officer (''ROO'') as the Framework owner and makes the ROO responsible to the ICC President for the successful operation and maintenance of the Framework.[5]

ICC has a proprietary risk management system that uses models to assess the risk of the credit default swap-based portfolios that ICC clears. ICC uses its risk management system to determine the appropriate Initial Margin and Guaranty Fund requirements that offset the risks of the credit default swap-based portfolios ICC clears. The risk management system is composed of risk model components (''Model Components''), which employ a combination of statistical analysis of credit spread time series and stress test simulation scenarios to address different sources of risk. These sources of risk addressed by the Model Components constitute the foundation of total Initial Margin and Guaranty Fund requirements for the credit default swap-based portfolios that ICC clears.[6]

The Framework considers both new Model Components and enhancements to existing Model Components (collectively, ''Model Change''). New Model Components consider sources of risk that are not currently included in the risk management system.[7] Enhancements to existing Model Components improve upon the methodologies already used by the risk management system to consider a given source or sources of risk.[8] The Framework classifies Model Changes as either Materiality A or Materiality B, depending on how substantially the Model Change affects the risk management system's assessment of risk for the related source or sources of risk.[9] Materiality A Model Changes substantially affect the risk management system's assessment of risk for the related source or sources of risk. Materiality B Model Changes do not substantially affect the risk management system's assessment of risk for the related source or sources of risk. The Framework requires that the ICC Chief Risk Officer (''CRO'') and the ROO review and determine which enhancements to the risk management system qualify as Model Changes and classify Model Changes as Materiality A or B.[10] The Framework requires that the ICC Risk Committee review the materiality classifications and provide feedback as necessary.[11] The Framework also describes the Model Inventory which is maintained by the ICC Risk Department and which contains key information about all Model Components and Model Changes.[12] The Framework requires that the ICC ROO review the model

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–83386 (June 6, 2018), 83 FR 27360 (June 12, 2018) (SR–ICC–2018–004) (''Notice'').

[4] Notice, 83 FR at 27361. Capitalized terms used herein but not otherwise defined have the meaning set forth in the Framework and ICE Clear Europe rulebook, which is available at *https://www.theice.com/clear-europe/regulation#rulebook.*

[5] Notice, 83 FR at 27361.

[6] *Id.*

[7] *Id.*

[8] Notice, 83 FR at 27361.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

inventory at least quarterly to ensure that it contains accurate and up to date information relating to Model Components and Model Changes.[13]

To assure the effectiveness of ICC's risk management system, the Framework employs four controls: Initial validation; ongoing monitoring and validation; investigation; and independent periodic review.[14] Before going live with any Model Change, the Framework requires an initial validation of the conceptual soundness of the methodology and the proposed ongoing monitoring and validation approach.[15] In addition, the Framework subjects Materiality A Model Changes to an additional independent initial validation.[16]

Ongoing monitoring and validation provides assurances that ICC has appropriately configured and calibrated the risk management system, including any recent Model Change, and that the risk management system is achieving the desired level of performance.[17] Ongoing monitoring and validation consists of three areas: Parameter setting, execution monitoring, and outcome analysis.[18] Through execution monitoring ICC reviews on a daily basis the changes generated by its risk management system and explains them in relation to known changes in cleared portfolios, prices, and market conditions.

If ongoing monitoring and validation identifies features of the risk management system that might indicate weakness in a Model Component, the Framework requires ICC to investigate and identify the root cause.[19] If weakness in a Model Component is discovered during investigation, the Framework requires the ICC CRO to inform the ICC Risk Committee of the results of the investigation.[20] ICC must then remediate the identified weakness through an appropriate Model Change, which passes through the required steps of the Framework starting with an Initial validation.[21]

The Framework sets forth the process for selecting independent validators and describes the independent validator criteria, including technical expertise and independence requirements. The Framework requires that the ICC CRO provide support and information to allow the independent validators to perform periodic reviews of all Model Components and related practices at least once in every calendar year.[22] At ICC's choosing, the scope of an independent periodic review may cover all Model Components used by the risk management system, or a subset of Model Components, as long as all Model Components are included in one or more independent periodic reviews each year.[23] The independent periodic review must demonstrate that the Model Components remain fit for purpose; that the assumptions associated with the Model Components are still valid; that ICC has adequately addressed any open items of medium priority[24] from Model Change initial validations and any other implementation conditions; and that ICC has been complying with its ongoing monitoring and validation requirements and the Model Components are performing without any significant weakness.[25] The ICC CRO must present the periodic review to the ICC Risk Committee and describe ICC's plans in relation to any open high or medium priority items in the report.[26]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[27] For the reasons given below, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act[28] and Rules 17Ad–22(b)(2), 17Ad–22(b)(3), 17Ad–22(b)(4), and 17Ad–22(d)(8) thereunder.[29]

A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and, in general, to protect investors and the public interest.[30]

As described above, the Framework would provide a process for reviewing and enhancing ICC's risk management system. The Framework would also designate the personnel responsible for, and the governance process associated with, the successful operation and maintenance of the model validation procedures and would set forth the process and criteria for selecting independent validators.

Taken together, the Commission believes these aspects of the Framework would help ensure that ICC's risk management system appropriately and effectively addresses the risks associated with clearing security based swap-related portfolios by providing ICC a means for reviewing and enhancing the risk management system as needed. In providing for independent validators, the Commission believes the Framework would help ensure that ICC receives unbiased and objective views regarding its risk management system, which would improve such review and enhancement. The Commission believes that both of these aspects of the Framework would improve the effectiveness of ICC's risk management system, thereby improving ICC's ability to manage the risks associated with clearing security based swap-related portfolios. Given that mismanagement of the risks associated with clearing security based swap-related portfolios could cause ICC to realize losses on such portfolios and disrupt ICC's ability to promptly and accurately clear security based swap transactions, the Commission believes that the Framework would promote the prompt and accurate clearance and settlement of securities transactions. Similarly, given that mismanagement of the risks associated with clearing security based swap-related portfolios could cause ICC to realize losses on such portfolios and threaten ICC's ability to operate, thereby threatening access to securities and funds in ICC's control, the Commission believes that the Framework would help assure the safeguarding of securities and funds which are in the custody or control of the ICC or for which it is responsible. Finally, for both of these reasons, the Commission believes the Framework would, in general, protect investors and the public interest.

Therefore, the Commission finds that the proposed rule change would promote the prompt and accurate

[13] *Id.*

[14] Notice, 83 FR at 27361.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] Notice, 83 FR at 27361.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] The Framework defines as medium priority those items that reflect deficiencies in the Model Components, assumptions, usage, or compliance with stated procedures that create risks that ICC can mitigate with viable workarounds until it remediates them fully, within a reasonable timeframe agreed with the Risk Committee.

[25] Notice, 83 FR at 27361.

[26] *Id.*

[27] 15 U.S.C. 78s(b)(2)(C).

[28] 15 U.S.C. 78q–1(b)(3)(F).

[29] 17 CFR 240.17Ad–22(b)(2)–(4), (d)(8).

[30] 15 U.S.C. 78q–1(b)(3)(F).

clearance and settlement of securities transactions, assure the safeguarding of securities and funds in ICC's custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.[31]

B. Consistency With Rule 17Ad–22(b)(2)

Rule 17Ad–22(b)(2) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements and review such margin requirements and the related risk-based models and parameters at least monthly.[32]

As described above, the Framework would describe how ICC would review and enhance its risk management system, including the selection and use of independent validators. In doing so, the Commission believes that the Framework would help ensure that ICC's risk management system is appropriate and effective for dealing with the risks associated with clearing security based swap-related portfolios. The Commission believes that the Framework would also enable ICC to improve its margin requirements by allowing ICC to review and improve the models that generate such margin requirements. The Commission believes that these aspects of the Framework would improve ICC's use of margin requirements to limit its credit exposures to participants under normal market conditions and ICC's use of risk-based models and parameters to set margin requirements.

In addition, the Framework would describe ICC's process for execution monitoring, whereby ICC would review on a daily basis the changes generated by its risk management system and would explain those changes in relation to known changes in cleared portfolios, prices, and market conditions. The Framework would require ICC to then investigate any anomalies identified. In reviewing such changes and anomalies, the Commission believes ICC would review its margin requirements and the models that generate such requirements. Thus, the Commission believes the Framework would enable ICC to review its margin requirements and the models that generate such requirements on a daily basis.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(b)(2).[33]

C. Consistency With Rule 17Ad–22(b)(3)

Rule 17Ad–22(b)(3) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a central counterparty for security-based swaps.[34]

As described above, the Framework would provide a process for reviewing and enhancing ICC's risk management system and would set forth the process and criteria for selecting independent validators. In doing so, the Commission believes that the Framework would help ensure that ICC's risk management system appropriately and effectively deals with the risks associated with clearing security based swap-related portfolios, including the risk associated with the default by the two participant families to which ICC has the largest exposures in extreme but plausible market conditions. The Commission believes that the Framework would also help ICC improve its guaranty fund requirements by allowing ICC to review and improve the models that generate such requirements. The Commission believes that these aspects of the Framework would help ensure that ICC effectively establishes and maintains financial resources sufficient to withstand, at a minimum, a default by the two participant families to which ICC has the largest exposures in extreme but plausible market conditions.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(b)(3).[35]

D. Consistency With Rule 17Ad–22(b)(4)

Rule 17Ad–22(b)(4) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of its margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated.[36]

As discussed above, the Framework would require the ICC CRO to provide support and information to allow independent validators to perform periodic reviews of all Model Components and related practices at least once in every calendar year. The Framework would further provide that the scope of an independent periodic review may cover all Model Components used by the risk management system, or a subset of Model Components, as long as all Model Components are included in one or more independent periodic reviews each year. The Framework would also provide the process and criteria (including independence) for selecting independent validators. Finally, the Framework would describe the required components of an independent review and the documentation required to be produced by the independent validators.

The Commission believes these aspects of the Framework would enable ICC to validate the models underpinning its risk management system on an annual basis including the related parameters and assumptions associated with such models. The Commission also believes that by setting out the process and criteria (including independence) for selecting independent validators, the Framework would help ensure that such validations are performed by qualified persons free from influence from the persons responsible for the development or operation of the models being validated.

Therefore, for the reasons described above the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(b)(4).[37]

E. Consistency With Rule 17Ad–22(d)(8)

Rule 17Ad–22(d)(8) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Act[38] applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.[39]

As discussed above, the Framework would describe the personnel responsible for, and the governance process associated with, the successful operation and maintenance of the model validation procedures. Specifically, the Framework would designate ICC's ROO

[31] 15 U.S.C. 78q–1(b)(3)(F).

[32] 17 CFR 240.17Ad–22(b)(2).

[33] 17 CFR 240.17Ad–22(b)(2).

[34] 17 CFR 240.17Ad–22(b)(3).

[35] 17 CFR 240.17Ad–22(b)(3).

[36] 17 CFR 240.17Ad–22(b)(4).

[37] 17 CFR 240.17Ad–22(b)(4).

[38] 15 U.S.C. 78q–1.

[39] 17 CFR 240.17Ad–22(d)(8).

as the Framework owner and would make the ROO responsible to the ICC President for the successful operation and maintenance of the Framework. The Framework would also designate certain responsibilities to ICC's CRO and the Risk Committee. The Commission believes that in doing so the Framework would allow ICC to establish clear and transparent arrangements for governing the Framework and its model validation procedures. The Commission further believes that these same arrangements would contribute to ICC's fulfilling the public interest requirements in Section 17A of the Act [40] applicable to clearing agencies, and the objectives of owners and participants. Finally, the Commission believes that these procedures and arrangements would promote the effectiveness of ICC's risk management procedures by clarifying the process for, and responsibilities associated with, using the Framework to improve ICC's risk management system.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad–22(d)(8).[41]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, and in particular, with the requirements of Section 17A(b)(3)(F) of the Act [42] and Rules 17Ad–22(b)(2), 17Ad–22(b)(3), 17Ad–22(b)(4), and 17Ad–22(d)(8) thereunder.[43]

It is therefore ordered pursuant to Section 19(b)(2) of the Act [44] that the proposed rule change (SR–ICC–2018–004) be, and hereby is, approved.[45]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16164 Filed 7–27–18; 8:45 am]

BILLING CODE 8011–01–P

[40] 15 U.S.C. 78q–1.

[41] 17 CFR 240.17Ad–22(d)(8).

[42] 15 U.S.C. 78q–1(b)(3)(F).

[43] 17 CFR 240.17Ad–22(b)(2)–(4), (d)(8).

[44] 15 U.S.C. 78s(b)(2).

[45] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[46] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0249]

Argosy Investment Partners IV, L.P.; Notice Seeking Exemption Under the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Argosy Investment Partners IV, L.P., 950 West Valley Road, Suite 2900, Wayne, PA 19087, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Argosy Investment Partners IV, L.P. is seeking post-financing approval from SBA for loan and equity financings it made to POSC Holdings LLC, formerly known as Panhandle Oilfield Service Companies, Inc., 14000 Quail Springs Parkway, Suite 300, Oklahoma City, OK 73134.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Argosy Investment Partners V, L.P., an Associate of Argosy Investment Partners IV, L.P., owns more than ten percent of POSC Holdings LLC, and therefore this transaction is considered *Financing an Associate* requiring prior SBA approval. Argosy Investment Partners IV, L.P. has already made its investments in POSC Holdings LLC and is seeking post-financing SBA approval.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

A. Joseph Shepard,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2018–16206 Filed 7–27–18; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Docket No.: SBA–2018–0007]

Surety Bond Guarantee Program Fees

AGENCY: U.S. Small Business Administration.

ACTION: Notification of temporary initiative to test lower fees; request for public comments.

SUMMARY: This document announces a temporary decrease in the guarantee fees that the U.S. Small Business Administration (SBA) charges all Surety companies and Principals on each guaranteed bond (other than a bid bond) issued in SBA's Surety Bond Guarantee (SBG) Program.

DATES:

Applicability Date: The fee decreases described in this document will apply to all SBA surety bond guarantees approved during the one year period beginning October 1, 2018 and ending September 30, 2019.

Comment Date: SBA must receive comments on or before August 29, 2018.

ADDRESSES: You may submit comments, identified by Docket No. SBA–2018–0007, by any of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov,* following the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: Jermanne Perry, Surety Bond Specialist, U.S. Small Business Administration, Office of Surety Guarantees, 409 Third Street SW, Suite 8600, Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to U.S. Small Business Administration, Jermanne Perry, Office of Surety Guarantees, 409 Third Street SW, Washington, DC 20416 or send an email to *jermanne.perry@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Jermanne Perry, Surety Bond Specialist, Office of Surety Guarantees, (202) 401–8275; *jermanne.perry@sba.gov.*

SUPPLEMENTARY INFORMATION: Under its SBG Program, the SBA guarantees bid, payment and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee gives Sureties an incentive to provide bonding for small businesses and, thereby, assists small businesses in obtaining greater access to contracting opportunities. SBA's guarantee is an agreement between a Surety and SBA that SBA will assume a certain percentage of the Surety's loss should a contractor default on the underlying contract. Pursuant to its statutory authority ''to establish such fee or fees for small business concerns and

premium or premiums for sureties as it deems reasonable and necessary,'' and to administer the SBG Program ''on a prudent and economically justifiable basis,'' 15 U.S.C. 694b(h), SBA assesses a guarantee fee against both the small business concern (the Principal) and the Surety and deposits these fees into a revolving fund to cover the program's liabilities and certain program expenses.

SBA last changed the fees over 12 years ago when the fee charged to the Sureties was increased from 20% to 26% of the bond premium and the fee charged to Principals increased from $6.00 per thousand dollars of the contract amount to $7.29 per thousand dollars of the contract amount. Those fees have been in effect since April 3, 2006. At that time, SBA determined that the program's revolving fund was insufficient to cover projected, unfunded liabilities. *See* 71 FR 9632 (February 24, 2006). SBA increased the guarantee fees to address the projected deficiency. Over the past 12 years, with the increased fee amounts, the revolving fund has accumulated sufficient funds to support the program.

SBA's rules provide that the amount of the fees to be paid by the Surety and the Principal ''will be determined by SBA and published in Notices in the **Federal Register** from time to time.'' *See* 13 CFR 115.32(b) and (c) and 115.66. The purpose of this document is to announce that, for the one year period beginning October 1, 2018, the Surety fee will decrease from 26% of the bond premium to 20% of the bond premium and the Principal fee will decrease from $7.29 per thousand dollars of the contract amount to $6 per thousand dollars of the contract amount.

As indicated above, the decreases in the fees are temporary and will be in effect for guaranteed bonds approved during the one year period beginning October 1, 2018, and ending September 30, 2019. During the year, SBA will evaluate whether the lower fees will result in an increase in the bond activity level of the SBG Program and, if so, whether any such increased level of activity will generate sufficient revenues to offset the reduced fee amounts. After carefully reviewing program performance during the year, SBA will determine whether the guarantee fees should remain at these new amounts or if they should revert to the higher amounts or otherwise be changed.

SBA invites public comments on the above stated fee decreases. Please clearly identify paper and electronic comments as ''Public Comments on Fee Decreases under the SBG Program Docket No. SBA–2018–0007'' and submit them by one of the methods identified in the **ADDRESSES** section of this document. SBA will consider the comments and determine whether any revisions are necessary.

Authority: 13 CFR 115.32(b) and (c) and 115.66.

Dated: July 23, 2018.

William Manger,

Associate Administrator, Office of Capital Access.

[FR Doc. 2018–16202 Filed 7–27–18; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0263]

Argosy Investment Partners V, L.P.; Notice Seeking Exemption Under the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Argosy Investment Partners V, L.P., 950 West Valley Road, Suite 2900, Wayne, PA 19087, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Argosy Investment Partners V, L.P. is seeking post-financing approval from SBA for loan and equity financings it made to POSC Holdings LLC, formerly known as Panhandle Oilfield Service Companies, Inc., 14000 Quail Springs Parkway, Suite 300, Oklahoma City, OK 73134.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Argosy Investment Partners IV, L.P., an Associate of Argosy Investment Partners V, L.P., owns more than ten percent of POSC Holdings LLC, and therefore this transaction is considered *Financing an Associate* requiring prior SBA approval. Argosy Investment Partners V, L.P. has already made its investments in POSC Holdings LLC and is seeking post-financing SBA approval.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

A. Joseph Shepard,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2018–16205 Filed 7–27–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 10479]

Notice of Availability of the Draft Environmental Assessment for the Proposed Keystone XL Pipeline Mainline Alternative Route in Nebraska

ACTION: Notice of availability; solicitation of comments.

SUMMARY: The U.S. Department of State (Department) announces the availability of the *Draft Environmental Assessment* (Draft EA) *for the Proposed Keystone XL Pipeline Mainline Alternative Route in Nebraska* for public review and comment. The Draft EA evaluates the potential environmental impacts of the proposed Keystone XL Mainline Alternative Route —consistent with the National Environmental Policy Act of 1969— in support of the Bureau of Land Management's (BLM) review of TransCanada Keystone Pipeline, L.P.'s (TransCanada) application for a right-of-way.

DATES: The public comment period ends on August 29, 2018.

ADDRESSES: Comments may be submitted at *https://www.regulations.gov* by entering the title of this Notice or Docket Number: DOS–2018–0031 into the search field, and then following the prompts.

FOR FURTHER INFORMATION CONTACT: The Draft EA, along with detailed records on the proposed project and general information about the Presidential permit process, are available at: *https://keystonepipeline-xl.state.gov.*

Marko Velikonja, Office of Environmental Quality and Transboundary Issues, (202) 647–4828, *VelikonjaMG@state.gov.*

SUPPLEMENTARY INFORMATION: On January 26, 2017, TransCanada resubmitted its Presidential permit application for the proposed Keystone XL pipeline. On March 23, 2017, the Under Secretary of State for Political Affairs determined that issuance of a Presidential permit to TransCanada to construct, connect, operate, and maintain at the border of the United States pipeline facilities to transport crude oil from Canada to the United States would serve the national interest.

Accordingly, the Under Secretary issued a Presidential permit to TransCanada for the Keystone XL pipeline. Later, on November 20, 2017, the Nebraska Public Service Commission approved the Mainline Alternative Route for that pipeline in the State of Nebraska. TransCanada's application to BLM for a right-of-way remains pending with that agency.

The Department invites members of the public, government agencies, tribal governments, and all other interested parties to comment on the Draft EA for the proposed Keystone XL Mainline Alternative Route during the 30-day public comment period. Comments provided by agencies and organizations should list a designated contact person. All comments received during the public comment period may be publicized. Comments will be neither private nor edited to remove either identifying or contact information. Commenters should omit information that they do not want disclosed. Any party who will either solicit or aggregate other people's comments should convey this cautionary message.

Robert D. Wing,

Acting Director, Office of Environmental Quality and Transboundary Issues.

[FR Doc. 2018–16241 Filed 7–27–18; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–27]

Petition for Exemption; Summary of Petition Received; Yamaha Motor Corporation, USA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 20, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0182 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0182.

Petitioner: Yamaha Motor Corporation, USA.

Section(s) of 14 CFR Affected: §§ 61.23(a) & (c); 61.101(e)(4) & (5); 61.113(a) & (b); 91.105; 91.107; 91.121; 91.151; 137.19(b), (c) & (e)(2)(ii), (iii), & (iv); 137.31(b); 137.41(c); and 137.42.

Description of Relief Sought: The petitioner is requesting relief to operate their FAZER R unmanned aircraft system, in concert with type certification, in order to provide commercial agricultural-related services in the United States. The FAZER R is a rotorcraft, spanning 9 feet, 1 inch long, and 3 feet, 6 inches tall, with an empty weight of 138.5 pounds and a maximum payload capacity of 105.5 pounds. A trained pilot in command and visual observer, maintaining visual line-of-sight, would conduct the proposed operation.

[FR Doc. 2018–16258 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–23]

Petition for Exemption; Summary of Petition Received; Eagle Mountain City

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before August 20, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0173 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records

notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0173.

Petitioner: Eagle Mountain City

Section(s) of 14 CFR Affected: § 107.12(a)(2).

Description of Relief Sought: The petitioner is requesting relief to use their training program to allow for other operators to operate their Autel Robotics X-Star Premium small unmanned aircraft system in areas they are more familiar with, and not require the remote pilot-in-command to be present at all operations. The proposed operation includes: observational video capture over development areas; inspection of city infrastructure or property including water tanks and pumps; inspecting of city property for improper dumping; and video productions for economic development and tourism purposes.

[FR Doc. 2018–16260 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Juneau Access Improvements Project in Alaska

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces final actions taken by the FHWA. The actions relate to the proposed Juneau Access Improvements (JAI) Project in the City and Borough of Juneau, Haines Borough, and Municipality of Skagway Borough in the State of Alaska. Those actions grant approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of FHWA actions on the JAI Project will be barred unless the claim is filed on or before December 27, 2018. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Tim Haugh, Environmental Program Manager, FHWA, Alaska Division, 709 West 9th Street, Room 851, Juneau, AK 99802, telephone (907) 586–7418; email: *Tim.Haugh@dot.gov.* The FHWA Alaska Division Office's normal business hours are 8:00 a.m. to 5:00 p.m. (Alaska Time), Monday through Friday, except Federal holidays. You may also contact Greg Lockwood, Preliminary Design and Environmental Group Chief, Alaska Department of Transportation and Public Facilities, Southcoast Region, P.O. Box 112506, Juneau, AK 99811–2506, telephone (907) 465–1828; email: *greg.lockwood@alaska.gov.* The DOT&PF Southcoast Region's normal business hours are 8:00 a.m. to 4:30 p.m. (Alaska Time), Monday through Friday, except State and Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency action subject to 23 U.S.C. 139(*l*)(1) by issuing approvals for the JAI Project (Project Number STP–000S (131)/71100) in the State of Alaska. The purpose of the JAI Project is to improve public access to and from Juneau in Lynn Canal. Seven build alternatives were evaluated, along with a No Action Alternative. Alternatives include a combination of highway and ferry routes and improved ferry service in Lynn Canal in Southeast Alaska. The routes pass through City and Borough of Juneau, Haines Borough, and/or Municipality of Skagway Borough. The selected alternative was the No Action Alternative.

The actions by the FHWA, and the laws under which such actions were taken, are described in the JAI Project Final Supplemental Environmental Impact Statement (Final SEIS) and Record of Decision (ROD), issued on June 18, 2018. The Final SEIS and ROD are available on the project website at *www.juneauaccess.alaska.gov,* or obtained from the contacts provided above.

This notice applies to all FHWA decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; Alaska National Interest Lands Conservation Act of 1980 (ANILCA) [16 U.S.C. 3164].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671q].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966, as amended [49 U.S.C. 303]; ANILCA Title XI (Conservation System Units) [16 U.S.C. Ch. 58, Subchapter IV, Section 3161 *et seq*].

4. *Fish and Wildlife:* Section 7 of the Endangered Species Act (ESA) of 1973 [16 U.S.C. 1531–1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361–1423h]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Bald and Golden Eagle Protection Act [16 U.S.C. 668–668d]; Magnuson-Steven Fishery Conservation and Management Act/Sustainable Fisheries Act [16 U.S.C. 1801 *et seq*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 306108]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(mm)]; Archaeological and Historic Preservation Act [54 U.S.C. 312501–312508]; Native American Graves Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; ANILCA Title VIII, Section 810 (Subsistence) [16 U.S.C. 3120]; Uniform Relocation and Real Property Acquisition Act [42 U.S.C 4601 *et seq*].

7. *Wetlands and Water Resources:* Clean Water Act (Sections 319 and 401) [33 U.S.C. 1251–1387]; Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26)]; Rivers and Harbors Act of 1899 Section 10 [33 U.S.C. 1344]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 119(g) and 133(b)(14)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11988, Floodplain Management; E.O. 11990, Protection of Wetlands; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13112, Invasive

Species; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency; E.O. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139 *(l)*(1).

Issued on: July 23, 2018.

Sandra A. Garcia-Aline,

Federal Highway Administration, Alaska Division Administrator, Juneau.

[FR Doc. 2018–16263 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0223]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Groendyke Transport, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from Groendyke Transport, Inc. (Groendyke) to allow the use of a pulsating brake lamp in addition to the steady burning brake lamps required by the Federal Motor Carrier Safety Regulations (FMCSR) in its fleet operations. The FMCSRs require all exterior lamps (both required lamps and any additional lamps) to be steady-burning, with the exception of turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and commercial motor vehicles (CMV) transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities. Groendyke believes that operating a pulsating brake lamp on the rear of its trailers on a fleet-wide basis would allow the company to operate its equipment more effectively, efficiently, and safely, and would maintain a level of safety that is equivalent to, or greater than, the level that it would achieve without the requested exemption.

DATES: Comments must be received on or before August 29, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2018–0223 using any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday-Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: 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.*

Public participation: The *http://www.regulations.gov* website is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* website as well as the DOT's *http://docketsinfo.dot.gov* website. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–0676, *Luke.Loy@dot.gov,* Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant exemptions from the FMCSRs. Pursuant to the implementing regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

Groendyke's Application for Exemption

Groendyke applied for an exemption from the requirements of 49 CFR 393.25(e) which requires all exterior lamps (both required lamps and any additional lamps) to be steady-burning, with the exception of turn signal lamps, hazard warning signal lamps, school bus warning lamps, amber warning lamps or flashing warning lamps on tow trucks and CMVs transporting oversized loads, and warning lamps on emergency and service vehicles authorized by State or local authorities. Specifically, Groendyke is requesting the exemption to allow it to install pulsating brake lamps in addition to the steady-burning brake lamps required by the FMCSRs. A

copy of the application is included in the docket referenced at the beginning of this notice.

Groendyke is a carrier of flammable fuel and liquid hazardous materials. Groendyke has a fleet of approximately 900 trucks and 1,440 trailers, and employs over 1,200 individuals, including approximately 900 drivers. In its application, Groendyke states ''Groendyke assessed what it could do to prevent other drivers from rear ending Groendyke trailers, and determined that increasing visibility of Groendyke trailers would be an efficient means to prevent rear ending accidents. To do this, Groendyke searched for ways to cause its braking system to capture the attention of other drivers faster and more completely.''

In its application, Groendyke seeks an exemption to include an amber brake-activated pulsating lamp to the rear of its trailers. The pulsating brake lamp would be positioned in the upper center portion of the trailer. In support of its application, Groendyke contends that the addition of the pulsating brake lamp will improve safety, and states that (1) research shows that pulsating brake lamps in addition to steady burning red brake lamps improves visibility and prevents accidents, (2) its own experience has demonstrated that pulsating brake lamps in addition to steady burning red brake lamps has decreased the frequency of rear-end accidents involving its fleet, and (3) similar exemptions exist for other classes of vehicles.

Research. Groendyke cites several studies conducted by the National Highway Traffic Safety Administration, another agency in the U.S. Department of Transportation, on the issues of rear-end crashes, distracted driving, and braking signals. Groendyke states:

> Research indicates that there are ways to improve the attention-getting qualities of braking systems. Including a pulsating brake lamp on a lead vehicle has quantifiable effect on the drivers of following vehicles and measurably reduces rear-end collisions. Drivers are redirected and altered faster and more efficiently when a pulsating brake lamp draws their attention to the lead vehicle. As a result, rear-end collisions, can be prevented or at least reduced.

Groendyke Experience. Beginning in the second quarter of 2015, Groendyke began installing pulsating brake lamps on some of its fleet without authorization from FMCSA to compare the frequency of rear-end collisions between (1) trailers equipped with pulsating brake lamps and the required steady-burning lamps and (2) trailers equipped with only the steady-burning lamps required by the FMCSRs. As of July 31, 2017, Groendyke had outfitted 632 of its 1,440 trailers with pulsating brake lamps.

Data gathered by Groendyke between January 2015 and July 2017 show that the pulsating brake lamps decreased the frequency of rear-end collisions by 33.7 percent. Groendyke also analyzed its data to determine whether the pulsating brake lamps improved outcomes when drivers were slowing or stopping at railroad crossings.[1] Groendyke found that trailers equipped with the pulsating brake lamps were not involved in a rear-end crash at a railroad crossing during the same time period. Groendyke states:

> The results of the Groendyke Brake Warning Device Campaign are clear: The frequency of rear-end collisions is markedly lower when trailers are outfitted with pulsating brake lamps in addition to the steady-burning lamps required by the FMCSRs. The pulsating brake lamps draw other drivers' attention to what is happening with the vehicle in front more effectively and more quickly than steady burning lamps. In the interest of safety and productivity, Groendyke desires to implement the Groendyke Brake Warning Device Campaign on the rest of its fleet without risking violation of the FMCSRs.

Exemptions for Other Classes of Vehicles. In its application, Groendyke notes that the current requirements of 49 CFR 393.25(e) specifically exclude tow trucks and CMVs from the requirements that all exterior lamps be steady-burning. Groendyke contends that ''Allowing an exemption for drivers of hazardous loads would be consistent with the intent of the regulation.''

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on Groendyke's application for an exemption from the requirements of 49 CFR 393.25(e). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: July 17, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–16223 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–EX–P

[1] As cargo tank operators hauling hazardous materials, Groendyke drivers are required to stop or slow significantly at railroad crossings (49 CFR 392.10–392.12). Groendyke notes that railroad crossings are a significant source of rear-end collisions at Groendyke and elsewhere because non-commercial drivers may not anticipate stops at railroad crossings.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0119]

Agency Information Collection Activities; Request for Comments; Revision and Renewal of an Approved Information Collection: Medical Qualification Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The FMCSA requests to revise and renew an ICR titled, ''*Medical Qualification Requirements,*'' due to updated information for several of the Information Collections (ICs) discussed. This ICR is needed to ensure that drivers, motor carriers and the States are complying with the physical qualification requirements of commercial motor vehicle (CMV) drivers. The information collected is used to determine and certify driver medical fitness and must be collected in order for our highways to be safe. On April 27, 2018, FMCSA published a 60-day notice (83 FR 18640) requesting comment on the renewal of this ICR. In response to this notice, eight comments were received. However, none of the comments were related to information collection activities or the renewal of this ICR.

DATES: Please send your comments by August 29, 2018. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2018–0119. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and

Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, New Jersey Avenue SE, Washington, DC 20590–0001. Telephone: (202) 366–4001, Email Address: *fmcsamedical@dot.gov.* Office hours are 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Medical Qualification Requirements.

OMB Control Number: 2126–0006.

Type of Request: Revision and renewal of a current approved information collection.

Respondents: Commercial motor vehicle drivers, motor carriers, medical examiners, testing centers.

Estimated Number of Respondents: 65,503,280.

Expiration Date: August 31, 2018.

Estimated Total Annual Burden: 2,395,315 hours.

This information collection is comprised of the following five information collection activities.

Physical Qualification Standards
1,892,700 annual burden hours
4,813,510 annual respondents

Resolution of Medical Conflict
11 annual burden hours
3 annual respondents

Medical Exemptions
4,430 annual burden hours
7,332 annual respondents

SPE Certificate Program
2,714 annual burden hours
2,426 annual respondents

National Registry of Certified Medical Examiners
495,460 annual burden hours
680,009 annual respondents

Background: CMVs (trucks and buses) are longer, heavier, and more difficult to maneuver than automobiles, making them a threat to highway safety if not operated properly by qualified individuals. The public interest in, and right to have, safe highways requires the assurance that drivers of CMVs can safely perform the increased physical and mental demands of their duties. FMCSA's medical standards provide this assurance by requiring drivers to be examined and medically certified as physically and mentally qualified to drive. Therefore, information used to determine and certify driver medical fitness must be collected. FMCSA is the Federal government agency authorized to require the collection of this information. FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce for non-excepted industries [49 U.S.C. 31136(a)(3) and 31502(b)]. The regulations discussing this collection are outlined in the Federal Motor Carrier Safety Regulations (FMCSRs) at 49 CFR 390–399.

Below is a brief description of the included IC activities and how the information is used.

Physical Qualification Standards

FMCSRs at 49 CFR 391.41 set forth the physical qualification standards that interstate CMV drivers who are subject to part 391 must meet, with the exception of commercial driver's license/commercial learner's permit (CDL/CLP) drivers transporting migrant workers (who must meet the physical qualification standards set forth in 49 CFR 398.3). The FMCSRs covering driver physical qualification records are found at 49 CFR 391.43, which specify that a medical examination be performed on CMV drivers subject to part 391 who operate in interstate commerce. The results of the examination shall be recorded in accordance with the requirements set forth in that section. The current provisions of 49 CFR 391.51 and 398.3 require that a motor carrier retain the Medical Examiner's Certificate (MEC), Form MCSA–5876, in the driver's qualification (DQ) file for 3 years. The certificate affirms that the driver is physically qualified to drive a CMV in interstate commerce.

Due to potential onset of new conditions or changes in existing conditions that may adversely affect a driver's ability to drive safely and/or cause incapacitation that could be a risk to public safety, periodic re-evaluation and recertification is required to assess driver physical qualification. MECs may be issued for up to 2 years after the date of examination. However, drivers with certain medical conditions must be certified more frequently than every 2 years. Medical Examiners (MEs) have discretion to certify for shorter time periods on a case-by-case basis for medical conditions that require closer monitoring or that are more likely to change over time. In addition, the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users requires MEs to transmit to FMCSA's Chief Medical Officer, electronically and on a monthly basis, driver information and results of any CMV driver medical examinations conducted during the previous month. MEs are required to maintain records of the CMV driver medical examinations they conduct. FMCSA does not require MEs to maintain these records electronically. However, there is nothing to preclude a ME from maintaining electronic records of the medical examinations he/she conducts. FMCSA is continuously evaluating new information technology in an attempt to decrease the burden on motor carriers and MEs. Less frequent collection of driver data, Medical Examination Report Forms, MCSA–5875, and MECs would compromise FMCSA's ability to determine ME compliance with FMCSA's physical qualification standards and guidelines in performing CMV driver medical examinations, which could result in MEs listed on the National Registry of Certified Medical Examiners who should be removed and possibly drivers that don't meet the physical qualification standards possessing an MEC. Less frequent data collection would also result in decreased validity of the data (*i.e.,* less frequent data submission may increase the error rate due to unintentional omission of examination information). Therefore, less frequent collection of driver examination results is not an option.

Resolution of Medical Conflict

The medical conflict provision provides a mechanism for drivers and motor carriers to request that FMCSA make a final decision to resolve conflicting medical evaluations when either party does not accept the decision of a medical specialist. If two MEs disagree about the medical certification of a driver, the requirements set forth in 49 CFR 391.47 mandate that the applicant (driver or motor carrier) submit a copy of a report including results of all medical testing and the opinion of an impartial medical specialist in the field in which the medical conflict arose. The applicant may, if they choose to do so, submit the information above using fax and/or email. FMCSA uses the information collected from the applicant, including medical information, to determine if the driver should or should not be qualified. Without this provision and its incumbent driver medical information collection requirements, an unqualified person may be permitted to drive and

qualified persons may be prevented from driving.

Medical Exemptions and Skill Performance Evaluation (SPE) Certificates

FMCSA may, on a case by case basis, grant a medical exemption from a physical qualification standard set forth in 49 CFR 391.41, if the Agency determines the exemption is in the interest of the public and would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation. Individuals with limb impairments are permitted to operate a CMV, but only when they are otherwise qualified and are granted a Skill Performance Evaluation (SPE) certificate by FMCSA. Title 49 CFR 381.310 establishes the procedures that persons must follow to request exemptions from FMCSA safety regulations. Without an exemption, individuals who do not meet the requirements in 49 CFR 391.41 would not be qualified to operate a CMV in interstate commerce. The application process for all exemptions currently provides for electronic collection of the application information by FMCSA for those applicants that choose to do so. They are able to fax or scan and email documents to FMCSA. In addition, the Diabetes and Vision Exemption Programs and the SPE Certificate Program maintain a database of application information. The Medical Programs Division maintains a database of application information for hearing and seizure exemptions. FMCSA must collect medical information about the driver's medical condition in order to determine eligibility to receive an exemption or an SPE certificate. The Agency requires all exemptions be renewed every 2 years to ensure that the granting of the exemption does not diminish safety under 49 CFR 381.310. Exemption holders are required to submit annual medical information for review to ensure the driver continues to meet the physical qualification requirements. In the interest of highway safety, the medical examination, exemption, and SPE renewal should not be performed less frequently.

The National Registry of Certified Medical Examiners (National Registry)

The National Registry requires MEs that conduct physical qualification examinations for interstate CMV drivers to complete training concerning FMCSA physical qualification standards, pass a certification test, and maintain competence through periodic training and testing, all of which require information collection. ME candidates submit demographic and eligibility data in order to register on the National Registry website to begin the certification process. This data is used to provide the public with contact information for those medical professionals who are certified by FMCSA to conduct interstate CMV driver medical examinations. Less frequent collection of ME candidate test results and identity and eligibility information means that there are less healthcare professionals attempting to become certified which would result in fewer certified MEs being available to the CMV driver and motor carrier population. This could place a huge burden on drivers and motor carriers to find certified MEs to perform their medical examinations. Therefore, less frequent collection of ME candidate test results and identity and eligibility information is not an option. MEs must provide specific driver medical examination information for every driver they examine on medical forms required by FMCSA and into the National Registry. Drivers must provide identification and health history information on medical forms required by FMCSA. The purpose for providing this information is to enable the ME to determine if the driver is medically qualified under 49 CFR 391.41 and to ensure that there are no disqualifying medical conditions that could adversely affect their safe driving ability or cause incapacitation constituting a risk to the public. If this information was not required, the threat to public safety would be immense and unacceptable.

The National Registry also requires motor carriers to verify the national registry number of the MEs who certify their drivers and place a note in the DQ file. Less frequent verification of the national registry numbers by motor carriers would mean drivers may not have been examined by a certified ME listed on the National Registry and they may no longer meet the physical qualifications standards of the FMCSRs even though they were previously certified as physically qualified.

As a follow-on rule to the National Registry, the *Medical Examiner's Certification Integration* final rule, (80 FR 22790), modified several of the requirements adopted in the National Registry final rule, some of which have a scheduled compliance date of June 22, 2018. Specifically, it requires (1) FMCSA to electronically transmit from the National Registry to the State Driver's Licensing Agencies (SDLAs) the driver identification information, examination results, and restriction information from examinations performed for holders of CLPs/CDLs (interstate and intrastate); (2) FMCSA to transmit electronically to the SDLAs the medical variance information for all CMV drivers; and (3) SDLAs to post the driver identification, examination results, and restriction information received electronically from FMCSA.

However, as the *Medical Examiner's Certification Integration* final rule compliance date of June 22, 2018, approached, FMCSA reluctantly concluded that it would not be able to electronically transmit MEC information from the National Registry to the SDLAs nor would the SDLAs be able to electronically receive the MEC information from the National Registry for posting to the CDLIS driver record as intended by the *Medical Examiner's Certification Integration* final rule. Due to a number of delays including an incident that occurred in early December 2017 causing the Agency to take the National Registry offline leading to interruptions in the development of the process for the electronic transmission of MEC information and medical variances, the final specifications for the electronic transmission of MEC information have not been completed. Under these circumstances, neither the Agency nor the stakeholders would be able to rely on the CDLIS driver record as official proof of medical certification unless MEs continue to issue the original paper MEC to qualified drivers and drivers continue to provide the MEC to the SDLAs, as is being done presently. All of the functions regarding electronic transmission of data that were to be implemented on June 22, 2018, are dependent upon the implementation of information technology infrastructure that was not available on June 22, 2018. For this reason, on June 21, 2018, FMCSA published a notice (83 FR 28774) extending the compliance date for several of the provisions in the *Medical Examiner's Certification Integration* final rule (80 FR 22790) to June 22, 2021, to ensure that the SDLAs have sufficient time once the final specifications are released to make the necessary information technology programming changes. However, beginning on June 22, 2018, certified MEs are still required to report results of all completed CMV drivers' medical examinations (including the results of examinations where the driver was found not to be qualified) to FMCSA by midnight (local time) of the next calendar day following the examination but must continue issuing the original paper MEC to qualified drivers. All CMV drivers should continue to provide

the SDLA with their MEC as proof of medical certification. As a result of this extension, there are no additional annual burden hours or costs to respondents imposed by the *Medical Examiner's Certification Integration* final rule during the first 6 years of implementation of the final rule. Therefore, all the IC activities imposed on the MEs, drivers, and motor carriers over the first 6 years of implementing the *Medical Examiner's Certification Integration* final rule will remain unchanged.

On April 27, 2018, FMCSA published a 60-day notice (83 FR 18640) requesting comment on the renewal of this ICR. In response to the notice, eight comments were received. However, none of the comments were related to information collection activities or the renewal of this ICR.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: July 20, 2018.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2018–16224 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0147]

Qualification of Drivers; Skill Performance Evaluation; Virginia Department of Motor Vehicles Application for Renewal Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew a Virginia Department of Motor Vehicles (DMV) exemption on behalf of truck and bus drivers who are licensed in the Commonwealth of Virginia and need a Skill Performance Evaluation (SPE) Certificate from FMCSA to operate commercial motor vehicles (CMV) in interstate commerce. The exemption enables interstate CMV drivers who are licensed in Virginia and are subject to the Federal SPE requirements under 49 CFR 391.49 to continue to fulfill the Federal requirements with a State-issued SPE and to operate CMVs in interstate commerce anywhere in the United States.

DATES: This decision is effective July 8, 2018, and will expire July 8, 2023, and may be renewed. Comments must be received on or before August 29, 2018.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0147 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Nolan, Office of Carrier, Driver and Vehicle Safety, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs) for no longer than 5 years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute allows the Agency to renew exemptions at the end of the 5-year period.

On July 8, 2014, FMCSA granted Virginia a 2-year exemption that enables interstate CMV drivers licensed in Virginia who are subject to the Federal SPE requirements under 49 CFR 391.49 to fulfill the Federal requirements with a State-issued SPE (79 FR 38659). Subsequently, a request for exemption renewal was received, and granted for a 2-year period, beginning July 8, 2016 and ending on July 8, 2018 (81 FR 44674).

At the time the first exemption was granted, the term of temporary exemptions was limited by statute to a maximum of 2 years. However, on December 4, 2015, Congress enacted the Fixing America's Surface Transportation (FAST) Act, which now allows an exemption to be granted for a period of 5 years (49 U.S.C. 31315(b)(2)) if FMCSA finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Virginia has consistently maintained the statutory requirements associated with 49 U.S.C. 31136(e) and 31315 for their SPE program. Therefore, the Agency believes that extending the exemption period to a 5-year period will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

The requirements of the exemption were outlined in the prior notices and

will therefore not be repeated. Virginia has established its own SPE program that is essentially identical to the current FMCSA SPE program to include an application process modeled on the FMCSA process. In addition, State personnel who have completed SPE training identical to that of FMCSA personnel currently administer the SPE program and conduct the skill evaluation according to the same procedures and testing criteria used by FMCSA. If the driver passes the skill evaluation, the State issues the SPE Certificate. Virginia maintains records of applications, testing, and certificates issued, which are available, as required, for periodic review by FMCSA. On behalf of CMV drivers licensed in the Commonwealth of Virginia, the State requested renewal of the exemption from 49 CFR 391.49 concerning FMCSA's SPE Certificate process for drivers who have experienced an impairment or loss of a limb.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that granting this exemption is not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the Virginia DMV exemption.

III. Basis for Renewing Exemption

The Agency's decision regarding this exemption is based on the fact that Virginia's SPE program is essentially identical to the current FMCSA program. Virginia continues to adhere to the application process modeled on the FMCSA process. State personnel who conduct the skill evaluation complete the same training as FMCSA personnel conducting the test and follow the same procedures and testing criteria used by FMCSA. FMCSA has conducted ongoing monitoring and SPE program reviews and Virginia continues to maintain records of applications, testing, and certificates issued for periodic review by FMCSA. At the time, Virginia DMV submitted its request for exemption renewal to the Agency, it had issued 29 new and 48 renewal SPE Certificates. Based upon FMCSA's analyses of the applications and the program as a whole, FMCSA has determined that no safety vulnerabilities are associated with Virginia's renewal request. The renewal of the exemption for a 5-year period is granted.

Consequently, FMCSA has concluded that renewing the exemption allows the Virginia SPE program to achieve the level of safety required by 49 U.S.C. 31315.

If a Virginia-licensed driver would prefer not to opt for the streamlined SPE process, the driver may still apply for an FMCSA-issued SPE. However, FMCSA may still exercise its discretion and call upon Virginia DMV to provide assistance in conducting the road evaluation needed to complete an SPE application, depending on the volume of applications.

IV. Conditions and Requirements:

The FMCSA grants the renewal of the exemption to allow the Virginia DMV to conduct SPE's on drivers who have experienced an impairment or loss of a limb and are licensed in the Commonwealth of Virginia. The following terms and conditions apply to the State and any drivers who receive a State-issued SPE certificate:

- Virginia must establish and maintain its own SPE program that is essentially identical to the current FMCSA program.
- The State must maintain an application process modeled on the FMCSA process and submit information concerning the application process to FMCSA's Medical Programs Division for review, as required.
- State personnel who conduct the skill test must complete SPE training identical to that of FMCSA personnel currently administering the Federal SPE program.
- The skill evaluation and scoring for the SPE must be done using the same procedures and testing criteria used by FMCSA.
- Virginia must maintain records of applications, testing, and certificates issued for periodic review by FMCSA.
- Virginia must submit a monthly report to FMCSA listing the names and license number of each driver tested by the State and the result of the test (pass or fail).
- Each driver who receives a State-issued SPE must carry a copy of the certificate when driving for presentation to authorized Federal, State, or local law enforcement officials.

V. Preemption

During the period the exemption is in effect; no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption. An exemption granted under the authority of 49 U.S.C. 31315(b) preempts State laws and regulations that conflict with or are inconsistent with the exemption. The decision to grant Virginia's request amounts to automatic Federal ratification of the State issued SPE Certificate and therefore prohibits other jurisdictions from requiring a separate FMCSA-issued SPE. The State-issued certificate must be treated as if it had been issued by FMCSA. Virginia-licensed drivers who receive the State-issued SPE are allowed to operate CMVs in interstate commerce anywhere in the United States.

VI. Conclusion

Virginia has consistently maintained the statutory exemption requirements associated with the Skill Performance Evaluation Certificate program. Therefore, in accordance with 49 U.S.C. 31136(e) and 31315, this exemption will be valid for five years unless revoked earlier by FMCSA.

The Agency does not intend its decision to pressure other States to take action to implement State-run SPE programs. Virginia is the first State to submit an application on behalf of its drivers to provide an alternative to the Federal SPE process. Other States are welcome to make similar applications if they believe it is appropriate to do so and they have the resources to meet terms and conditions comparable to those provided in this exemption.

Issued on: July 24, 2018.

Raymond P. Martinez,

Administrator.

[FR Doc. 2018–16225 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0052]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this provides the public notice that by letter dated June 4, 2018, Norfolk Southern Railway (NS) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236. FRA assigned the petition Docket Number FRA–2018–0052.

NS seeks a waiver of compliance from cab signal system requirements found in 49 CFR 236.566, *Locomotive of each train operating in train stop, train control, or cab signal territory; equipped.* Specifically, NS seeks relief to operate non-equipped locomotives in

the following locations: Operations on the Conemaugh Line, Pittsburg Division, from control point (CP) Kiski at milepost (MP)–LC 47.8 near Freeport, PA to CP Pennnear near Pittsburgh, PA at MP–LC 77.9, with an absolute block to be established in advance of each non-equipped movement and covering the following operations:

(a) Work Trains, Wreck Trains and Ballast cleaners to and from work.

(b) Engines and rail diesel cars moving to and from shops.

(c) Engines used in switching and transfer service, with or without cars, operating at Restricted Speed not exceeding 15 miles per hour.

NS provides the following justification for relief. First, NS states that ''relief is in the public interest,'' and is ''important to maintaining efficient rail operations in the region.'' Second, NS explains exemptions have been granted for the ''operation of non-equipped locomotives in cab signal system territory at nearby locations on the NS and the relief requested'' is a ''consistent extension of those currently granted exceptions.'' Moreover, NS states this waiver would update relief previously granted regarding Ex Parte No. 171 by the Interstate Commerce Commission at 286 I. C. C. 709. Finally, NS contends ''the requested relief will not have a negative material impact on safety.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 13, 2018 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dotransportation.gov/privacy.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov.*

Robert C. Lauby,

Associate Administrator for Safety, Chief Safety Officer.

[FR Doc. 2018–16212 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0040; Notice 2]

Continental Tire the Americas, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Continental Tire the Americas, LLC (CTA), has determined that certain Continental brand tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* CTA filed a noncompliance report dated March 31, 2017, and later revised it on February 23, 2018. CTA also petitioned NHTSA on April 27, 2017, and amended it on June 28, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Abraham Diaz, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5310, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

1. Overview: CTA has determined that certain Continental brand tires do not fully comply with paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139). CTA filed a noncompliance report dated March 31, 2017, and later revised it on February 23, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* CTA also petitioned NHTSA on April 27, 2017, and amended it on June 28, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on September 29, 2017, in the **Federal Register** (82 FR 45661). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2017–0040.''

II. Tires Involved: Approximately 111,500 of the following Continental brand tires, manufactured between December 2, 2012, and March 25, 2017, are potentially involved:

- XL Continental CrossContact UHP size 255/55R18 109Y
- Barum Brillantis 2 size 175/70R13 82T
- Continental ContiTrac size P225/70R15 100S
- XL General Grabber UHP size 275/55R20 117V
- Continental ExtremeContact DWS size 285/30ZR20 99W XL
- Continental CrossContact LX20 size 245/55R19 103S
- XL Continental CrossContact LX20 size 285/45R 114H
- General Altimax RT43 size 215/45R17 87V

III. Noncompliance: CTA states that the noncompliance is due to mold errors, and that as a result, the number of tread plies indicated on the sidewall of the subject tires do not match the actual number of plies in the tire construction and in one tire model the

ply material was incorrect, as required by paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139. Specifically, below is a list of the subject tires with the labeling as marked (Marked) and how the sidewall should have been marked (Actual):

- XL Continental Cross Contact UHP size 255/55R18 109Y
—Marked: ''PLIES: TREAD: 2 RAYON + 2 STEEL + 2 POLYAMIDE''
—Actual: ''PLIES: TREAD: 2 RAYON + 2 STEEL + 1 POLYAMIDE''
- Barum Brillantis 2 size 175/70R13 82T
—Marked: ''TREAD 4 PLIES: 1 POLYESTER + 2 STEEL + 1 POLYAMIDE''
—Actual: ''TREAD 5 PLIES: 1 POLYESTER + 2 STEEL + 2 POLYAMIDE''
- Continental ContiTrac size P225/70R15 100S
—Marked: ''TREAD 4 PLIES: 2 POLYESTER + 2 STEEL''
—Actual: ''TREAD 5 PLIES: 2 POLYESTER + 2 STEEL + 1 POLYAMIDE''
- XL General Grabber UHP size 275/55R20 117V
—Marked: ''PLIES: TREAD: 2 POLYESTER + 2 STEEL + 2 POLYAMIDE SIDEWALL: 2 POLYESTER''
—Actual: ''PLIES: TREAD: 2 RAYON + 2 STEEL + 2 POLYAMIDE SIDEWALL: 2 RAYON''
- Continental ExtremeContact DWS size 285/30ZR20 99W
—Marked: ''PLIES: TREAD: 1 RAYON + 2 STEEL + 2 POLYAMIDE''
—Actual: ''PLIES: TREAD: 2 RAYON + 2 STEEL + 1 POLYAMIDE''
- Continental CrossContact LX20 size 245/55R19 103S
—Marked: ''PLIES: TREAD: 1 POLYESTER + 2 STEEL + 2 POLYAMIDE''
—Actual: ''PLIES: TREAD: 1 POLYESTER + 2 STEEL + 1 POLYAMIDE''
- XL Continental CrossContact LX20 size 285/45R22 114H
—Marked: ''PLIES: TREAD: 2 POLYESTER + 2 STEEL + 2 POLYAMIDE''
—Actual: ''PLIES: TREAD: 1 POLYESTER + 2 STEEL + 2 POLYAMIDE''
- General Altimax RT43 size 215/45R17 87V
—Marked: ''PLIES: TREAD: 2 POLYESTER + 2 STEEL + 1 POLYAMIDE''
—Actual: ''PLIES: TREAD: 2 POLYESTER + 2 STEEL + 2 POLYAMIDE''

IV. Rule Text: Paragraphs S5.5(e) and S5.5(f) of FMVSS No. 139 include the requirements relevant to this petition:

- Each tire must be marked on each sidewall with the information specified in paragraphs S5.5(a) through (d) and on one sidewall with the information specified in paragraphs S5.5(e) through (i) according to the phase-in schedule specified in paragraph S7.
- Must include the generic name of each cord material used in the plies (both sidewall and tread area) of the tire. S5.5(e)
- Must state the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different. S5.5(f)

V. Summary of CTA's Petition: CTA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, CTA submitted the following reasoning:

(a) The tires covered by this petition are labeled with incorrect information regarding the number of tread plies and in two cases, the incorrect and/or missing ply material. However, this mislabeling has no impact on the operational performance of these tires or on the safety of vehicles on which these tires are mounted. The subject tires meet or exceed all of the performance requirements specified by FMVSS No. 139.

(b) NHTSA has concluded in response to numerous other petitions that this type of noncompliance is inconsequential to safety.

(c) CTA cited three petitions[1] that NHTSA has previously granted and noted that on several occasions NHTSA has stated:

> In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.

(d) All tires covered by this petition meet or exceed the performance requirements of FMVSS No. 139, as well as the other labeling requirements of the standard.

(e) CTA is not aware of any crashes, injuries, customer complaints, or field reports associated with the mislabeling.

(f) CTA has quarantined all existing inventory of these tires that contain the noncompliant tire sidewall labeling.

(g) CTA has corrected the molds at the manufacturing plant, so no additional tires will be manufactured with the noncompliance.

CTA concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

CTA's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and following the online search instructions to locate the docket number listed in the title of this notice.

NHTSA's Analysis

The agency agrees with CTA that the noncompliance is inconsequential to motor vehicle safety. NHTSA believes that one measure of inconsequentiality to motor vehicle safety, in this case, is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair and recycling industries must also be considered and is a measure of inconsequentiality.

Although tire construction affects the strength and durability of tires, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgement, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the number of plies in a tire.

The agency also believes the noncompliance will have no measureable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tire sidewalls are marked correctly for the number of steel plies, this potential safety concern does not exist.

NHTSA's Decision

In consideration of the foregoing, NHTSA finds that CTA has met its

[1] Cooper Tire & Rubber Company, 82 FR 17075 (April 7, 2017); Nitto Tire USA, Inc., 81FR 17764 (April 30, 2016); Hankook Tire America Corp., 79 FR 30688 (May 28, 2014); Bridgestone 78 FR 47049 (August 2, 2013).

burden of persuasion that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, CTA's petition is hereby granted and CTA is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject tires that CTA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after CTA notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Michael A. Cole,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2018–16153 Filed 7–27–18; 8:45 am]

BILLING CODE 4910–59–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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning election involving the repeal of the bonding requirement.

DATES: Written comments should be received on or before September 28, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election Involving the Repeal of the Bonding Requirement under § 42(j)(6).

OMB Number: 1545–2120.

Revenue Procedure Number: 2008–60.

Abstract: This revenue procedure affects taxpayers who are maintaining a surety bond or a Treasury Direct Account (TDA) to satisfy the low-income housing tax credit recapture exception in § 42(j)(6) of the Internal Revenue Code (the Code), as in effect on or before July 30, 2008. This revenue procedure provides the procedures for taxpayers to follow when making the election under section 3004(i)(2)(B)(ii) of the Housing Assistance Tax Act of 2008 (Pub. L. 110–289) (the Act) to no longer maintain a surety bond or a TDA to avoid recapture.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 7,810.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 7,810.

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: July 23, 2018.

Tuawana Pinkston,

Supervisory, Tax Analyst.

[FR Doc. 2018–16201 Filed 7–27–18; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 154, 260, and 284

Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate; American Forest & Paper Association; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 260, and 284

[Docket Nos. RM18–11–000, RP18–415–000; Order No. 849]

Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate; American Forest & Paper Association

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Commission is adopting procedures for determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of the income tax reductions provided by the Tax Cuts and Jobs Act and the Commission's revised policy and precedent concerning tax allowances to address the double recovery issue identified by *United Airlines, Inc.* v. *FERC.* These procedures also allow interstate natural gas pipelines to voluntarily reduce their rates.

DATES: This rule is effective September 13, 2018.

FOR FURTHER INFORMATION CONTACT:

Adam Eldean (Legal Information), Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–8047, *Adam.Eldean@ferc.gov*

Seong-Kook Berry (Technical Information), Office of Energy Market Regulation, 888 First Street NE, Washington, DC 20426, (202) 502–6544, *Seong-Kook.Berry@ferc.gov*

SUPPLEMENTARY INFORMATION:

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

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I. Introduction

1. In this Final Rule, the Commission adopts procedures for determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of (1) the income tax reductions provided by the Tax Cuts and Jobs Act [1] and (2) the Commission's Revised Policy Statement [2] and Opinion No. 511–C [3] concerning income tax allowances following the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United Airlines.*[4] These procedures also allow interstate natural gas pipelines to voluntarily reduce their rates to reflect the income tax reductions and *United Airlines* Issuances.

2. The procedures adopted in this Final Rule are generally the same as the Commission proposed in its March 15, 2018 Notice of Proposed Rulemaking (NOPR or proposed rule) in this proceeding.[5] The Commission is thus adopting, with clarifications, the proposed FERC Form No. 501–G informational filing for evaluating the impact of the Tax Cuts and Jobs Act and *United Airlines* Issuances on interstate natural gas pipelines' revenue requirements. The Commission is also providing four options each interstate natural gas pipeline may choose from to address the changes to the pipeline's revenue requirement as a result of the income tax reductions: (1) A limited Natural Gas Act (NGA) section 4 [6] rate reduction filing, (2) a commitment to file a general section 4 rate case in the near future, (3) an explanation why no rate change is needed, and (4) no action (other than filing a report).

3. However, as discussed further below, the Final Rule modifies the NOPR's proposed treatment of master limited partnership (MLP) pipelines [7] and other pass-through entities in several respects. First, the Commission has modified the FERC Form No. 501–G so that, if a pipeline states that it is not a tax paying entity, the form will not only automatically enter a federal and state income tax of zero, but also eliminate Accumulated Deferred Income Taxes (ADIT) from the pipeline's cost of service. Second, if an MLP pipeline chooses Option 1 (limited section 4 rate filing), this Final Rule permits the pipeline to reflect only the tax reductions in the Tax Cuts and Jobs Act. Although the Commission determined in the Revised Policy Statement that permitting MLP pipelines to include a tax allowance in their cost of service results in a double recovery of the MLP pipeline's tax costs, this Final Rule does not require MLP pipelines to eliminate their tax allowances at this time in compliance with this rulemaking. Third, the Final Rule clarifies that a natural gas company organized as a pass-through entity all of whose income or losses are consolidated on the federal income tax return of its corporate parent is considered to be subject to the federal corporate income tax, and is thus eligible for a tax allowance.

4. The Final Rule also makes certain changes to the proposed FERC Form No.

[1] An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Public Law 115–97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

[2] *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs,* Revised Policy Statement, 83 FR 12,362 (Mar. 21, 2018), FERC Stats & Regs. ¶ 35,060 (2018), *order on reh'g,* 164 FERC ¶ 61,030 (2018).

[3] *SFPP, L.P.,* Opinion No. 511–C, 162 FERC ¶ 61,228, at P 9 (2018).

[4] *United Airlines, Inc.* v. *FERC,* 827 F.3d 122 (D.C. Cir. 2016). For purposes of this order, the Revised Policy Statement, *United Airlines,* and Opinion No. 511–C will collectively be referred to as ''*United Airlines* Issuances.''

[5] *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate,* 83 FR 12,888 (Mar. 26, 2018), FERC Stats. & Regs. ¶ 32,725 (2018) (NOPR).

[6] 15 U.S.C. 717c (2012).

[7] Throughout this order, as in prior Commission orders, we use the phrase ''MLP pipeline.'' For the purposes of this proceeding, MLP pipeline includes a pipeline, such as SFPP, L.P., that does not pay taxes itself and is a wholly-owned subsidiary of an MLP. *See* Opinion No. 511–C, 162 FERC ¶ 61,228 at P 9.

501–G, including modifying the hypothetical capital structure to be used by pipelines who cannot use their own or their parent's capital structure. In addition, the Final Rule provides a guarantee that the Commission will not initiate a NGA section 5 rate investigation for a three-year moratorium period of an interstate pipeline that makes a limited NGA section 4 rate reduction filing that reduces its ROE to 12 percent or less.

II. Background

A. Tax Cuts and Jobs Act

5. On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act. The Tax Cuts and Jobs Act, among other things, reduces the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. This means that, beginning January 1, 2018, companies subject to the Commission's jurisdiction will compute income taxes owed to the Internal Revenue Service (IRS) based on a 21 percent tax rate. The tax rate reduction will result in less corporate income tax expense going forward.[8] Further, with respect to income derived from pass-through entities, the Tax Cuts and Jobs Act generally reduced the income tax liability for individuals, and permitted up to a 20 percent deduction of pass-through income.[9] The combination of these two changes for individuals holding units of pass-through entities means that the effective tax level applicable to individuals with pass-through derived income may be slightly less than the corporate income tax.

B. United Airlines Issuances

6. In *United Airlines,* the D.C. Circuit held that the Commission failed to demonstrate that allowing SFPP, L.P. (SFPP), an MLP pipeline, to recover both an income tax allowance and the discounted cash flow (DCF) methodology rate of return does not result in a double recovery of investors' tax costs. Accordingly, the D.C. Circuit remanded the underlying rate proceeding to the Commission for further consideration. Although the D.C. Circuit's decision directly addressed the rate case filed by SFPP, the *United Airlines* double-recovery analysis referred to partnerships generally. Recognizing the potentially industry-wide ramifications, the Commission issued a Notice of Inquiry in Docket No. PL17–1–000, soliciting comments on how to resolve any double recovery resulting from the rate of return policies and the policy permitting an income tax allowance for partnership entities.[10]

7. Concurrently with the issuance of the NOPR in this proceeding, the Commission issued an Order on Remand in Opinion No. 511–C[11] in response to *United Airlines.* Consistent with the *United Airlines* remand, Opinion No. 511–C concluded that granting SFPP an income tax allowance in addition to its return on equity (ROE) determined by the DCF methodology resulted in a double-recovery. The Commission explained:

> [MLP pipelines (such as SFPP)] and similar pass-through entities do not incur income taxes at the entity level. Instead, the partners are individually responsible for paying taxes on their allocated share of the partnership's taxable income.
>
> The DCF methodology estimates the returns a regulated entity must provide to investors in order to attract capital.
>
> To attract capital, entities in the market must provide investors a pre-tax return, *i.e.,* a return that covers investor-level taxes and leaves sufficient remaining income to earn investors' required after-tax return. In other words, because investors must pay taxes from any earnings received from the partnership, the DCF return must be sufficient both to cover the investor's tax costs and to provide the investor a sufficient after-tax ROE.[12]

8. Accordingly, the Commission ordered removal of the additional income tax allowance from SFPP's cost of service. The Commission explained that such action (a) remedies the double recovery identified by the court in its *United Airlines* remand, (b) restores parity between SFPP (an MLP pipeline) and corporate investment forms, (c) is consistent with Congressional intent, and (d) provides SFPP with a sufficient return via the DCF ROE.[13]

9. Simultaneously, the Commission also issued the Revised Policy Statement[14] that superseded the Commission's prior guidance in the 2005 Income Tax Policy Statement[15] and established new guidance following *United Airlines.* Like Opinion No. 511–C, the Revised Policy Statement explained that a double recovery results from granting an MLP pipeline an income tax allowance and a DCF ROE, and accordingly provided guidance that the Commission will no longer permit MLP pipelines to recover an income tax allowance in their cost of service. The Revised Policy Statement also explained that although all partnerships seeking to recover an income tax allowance in a cost-of-service rate case will need to address the *United Airlines* double-recovery concern, the Commission will address the application of *United Airlines* to these non-MLP partnership forms as those issues arise in subsequent proceedings.[16] The Commission received requests for rehearing of Opinion No. 511–C and the Revised Policy Statement.

C. Overview of Natural Gas Rates

1. The Natural Gas Act

10. As required by § 284.10 of the Commission's regulations,[17] interstate natural gas pipelines generally have stated rates for their services, which are approved in a rate proceeding under NGA sections 4 or 5 and remain in effect until changed in a subsequent NGA section 4 or 5 proceeding. The stated rates are designed to provide the pipeline the opportunity to recover all components of the pipeline's cost of service, including the pipeline's federal income taxes.[18] When pipelines file under NGA section 4 to change their rates, the Commission requires the pipeline to provide detailed support for all the components of its cost of service, including federal income taxes.[19]

11. The Commission generally does not permit pipelines to change any single component of their cost of service outside of a general NGA section 4 rate case.[20] A primary reason for this policy is that, while one component of the cost of service may have increased, others may have declined. In a general NGA section 4 rate case, all components of the cost of service may be considered and any decreases in an individual component can be offset against increases in other cost components.[21] For the same reasons, the Commission reviews all of a pipeline's costs and revenues when it investigates whether a pipeline's existing rates are unjust and unreasonable under NGA section 5.[22]

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[8] *See* Tax Cuts and Jobs Act 13001, 131 Stat. at 2096.

[9] *See id.* 11011, 131 Stat. at 2063.

[10] *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs,* Notice of Inquiry, FERC Stats & Regs. ¶ 35,581 (2016).

[11] Opinion No. 511–C, 162 FERC ¶ 61,228.

[12] *Id.* P 22.

[13] *Id.* P 21.

[14] Revised Policy Statement, FERC Stats. & Regs. ¶ 35,060.

[15] *Policy Statement on Income Tax Allowances,* 111 FERC ¶ 61,139 (2005).

[16] Revised Policy Statement, FERC Stats. ¶ Regs. 35,060 at P 3.

[17] 18 CFR 284.10 (2017).

[18] Most pipeline tariffs include tracking mechanisms for the recovery of fuel and lost and unaccounted for gas, but generally pipelines do not separately track any other cost.

[19] 18 CFR 154.312 and 154.313. The pipeline must show the computation of its allowance for federal income taxes in Statement H–3.

[20] *See, e.g., Trunkline Gas Co.,* 142 FERC ¶ 61,133, at P 24 n.28 (2013).

[21] *ANR Pipeline Co.,* 110 FERC ¶ 61,069, at P 18 (2005).

[22] *Midwestern Gas Transmission Co.,* 162 FERC ¶ 61,219 (2018); *Dominion Energy Overthrust Pipeline, LLC,* 162 FERC ¶ 61,218 (2018); *Natural*

12. NGA sections 4 and 5 proceedings are routinely resolved through settlement agreements between the pipeline and its customers. Most of the agreements are ''black box'' settlements that do not provide detailed cost-of-service information. In addition, in lieu of submitting a general NGA section 4 rate case, a pipeline may submit a pre-packaged settlement to the Commission. When pipelines file pre-packaged settlements, they generally do not include detailed cost and revenue information in the filing. The Commission will approve an uncontested settlement offer upon finding that ''the settlement appears to be fair and reasonable and in the public interest.'' [23] Many rate case settlement agreements include moratorium provisions that limit the ability of the pipeline to file to revise its rates, or for the shippers to file an NGA section 5 complaint, for a particular time period. In addition, many settlement agreements include ''come-back provisions,'' which require a pipeline to file an NGA section 4 filing no later than a particular date.

13. The Commission has granted most interstate natural gas pipelines authority to negotiate rates with individual customers.[24] Such rates are not bound by the maximum and minimum recourse rates in the pipeline's tariff.[25] In order to be granted negotiated rate authority, a pipeline must have a cost-based recourse rate on file with the Commission, so a customer always has the option of entering into a contract at the cost-based recourse rate rather than a negotiated rate if it chooses. The pipeline must file each negotiated rate agreement with the Commission. In addition, pipelines are also permitted to selectively discount their rates. Although negotiated rates may be above the maximum recourse rate, discounted rates must remain below the maximum rate. The maximum recourse rate is the ceiling rate for all long-term capacity releases, including capacity releases to replacement shippers by firm customers with negotiated rates.

14. Changes to a pipeline's recourse rates occurring under NGA sections 4 and 5 do not affect a customer's negotiated rate, because that rate is negotiated as an alternative to the customer taking service under the recourse rate. However, a shipper receiving a discounted rate may experience a reduction as a result of the outcome of a rate proceeding if the recourse rate is reduced below the discounted rate. The prevalence of negotiated and discounted rates varies among pipelines, depending upon the competitive situation.

15. The Commission also grants interstate natural gas pipelines market-based rate authority when the pipeline can show it lacks market power for the specific services or when the applicant or the Commission can mitigate the market power with specific conditions.[26] A pipeline that has been granted market-based rate authority will have an approved tariff on file with the Commission but will not have a Commission approved rate. Rather, all rates for services are negotiated by the pipeline and its customers. Currently, 29 interstate natural gas pipelines have market-based rate authority for storage and interruptible hub services (such as wheeling and park and loan services), and one pipeline (Rendezvous Pipeline Company, LLC) has market-based rate authority for transportation services.

2. The Natural Gas Policy Act of 1978

16. Section 311 of the Natural Gas Policy Act of 1978 (NGPA) authorizes the Commission to allow intrastate pipelines to transport natural gas ''on behalf of'' interstate pipelines or local distribution companies served by interstate pipelines.[27] NGPA section 311(a)(2)(B) provides that the rates for interstate transportation provided by intrastate pipelines shall be ''fair and equitable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.'' [28] In addition, NGPA section 311(c) provides that any authorization by the Commission for an intrastate pipeline to provide interstate service ''shall be under such terms and conditions as the Commission may prescribe.'' [29] Section 284.224 of the Commission's regulations provides for the issuance of blanket certificates under section 7 of the NGA to Hinshaw pipelines [30] to provide open access transportation service ''to the same extent that and in the same manner'' as intrastate pipelines are authorized to perform such service.[31] The Commission regulates the rates for interstate service provided by Hinshaw pipelines under NGA sections 4 and 5.

17. Section 284.123 of the Commission's regulations provides procedures for NGPA section 311 and Hinshaw pipelines to establish fair and equitable rates for their interstate services.[32] Section 284.123(b) allows intrastate pipelines an election of two different methodologies upon which to base their rates for interstate services.[33] First, § 284.123(b)(1) permits an intrastate pipeline to elect to base its rates on the methodology or rate(s) approved by a state regulatory agency included in an effective firm rate for city-gate service. Second, § 284.123(b)(2) provides that the pipeline may petition for approval of rates and charges using its own data to show its proposed rates are fair and equitable. The Commission has established a policy of reviewing the rates of NGPA section 311 and Hinshaw pipelines every five years.[34] Section 311 pipelines not using state-approved rates must file a new rate case every five years, and Hinshaw pipelines must at a minimum file a cost and revenue study every five years. Intrastate pipelines

Gas Pipeline Co. of America LLC, 158 FERC ¶ 61,044 (2017); *Wyoming Interstate Co., L.L.C.,* 158 FERC ¶ 61,040 (2017); *Tuscarora Gas Transmission Co.,* 154 FERC ¶ 61,030 (2016); *Iroquois Gas Transmission System, L.P.,* 154 FERC ¶ 61,028 (2016); *Empire Pipeline, Inc.,* 154 FERC ¶ 61,029 (2016); *Columbia Gulf Transmission, LLC,* 154 FERC ¶ 61,027 (2016); *Wyoming Interstate Co., L.L.C.,* 141 FERC ¶ 61,117 (2012); *Viking Gas Transmission Co.,* 141 FERC ¶ 61,118 (2012); *Bear Creek Storage Co., L.L.C.,* 137 FERC ¶ 61,134 (2011); *MIGC LLC,* 137 FERC ¶ 61,135 (2011); *ANR Storage Co.,* 137 FERC ¶ 61,136 (2011); *Ozark Gas Transmission, L.L.C.,* 133 FERC ¶ 61,158 (2010); *Kinder Morgan Interstate Gas Transmission LLC,* 133 FERC ¶ 61,157 (2010); *Northern Natural Gas Co.,* 129 FERC ¶ 61,159 (2009); *Great Lakes Gas Transmission Ltd. P'ship,* 129 FERC ¶ 61,160 (2009); *Natural Gas Pipeline Co. of America LLC,* 129 FERC ¶ 61,158 (2009).

[23] 18 CFR 385.602(g)(3).

[24] *See Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy,* 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification,* 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification,* 114 FERC ¶ 61,304 (2006) (*Negotiated Rate Policy Statement*).

[25] *Northern Natural Gas Co.,* 105 FERC ¶ 61,299, at PP 15–16 (2003).

[26] *Alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines,* 74 FERC ¶ 61,076 (1996) (Negotiated Rate Policy Statement); *see also Rate Regulation of Certain Natural Gas Storage Facilities,* Order No. 678, FERC Stats. & Regs. ¶ 31,220 (2006) (cross-referenced at 115 FERC ¶ 61,343), *reh'g denied,* Order No. 678–A, 117 FERC ¶ 61,190 (2006).

[27] 15 U.S.C. 3371.

[28] 15 U.S.C. 3371(a)(2)(B).

[29] 15 U.S.C. 3371(c).

[30] Section 1(c) of the NGA, 15 U.S.C. 717(c), exempts from the Commission's NGA jurisdiction those pipelines which transport gas in interstate commerce if (1) they receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state, and (3) the pipeline is regulated by a state Commission. This is known as the Hinshaw exemption.

[31] *See* 18 CFR 284.224.

[32] 18 CFR 284.123.

[33] 18 CFR 284.123(b).

[34] *Contract Reporting Requirements of Intrastate Natural Gas Companies,* Order No. 735, FERC Stats. & Regs. ¶ 31,310, at P 92, *order on reh'g,* Order No. 735–A, FERC Stats. & Regs. ¶ 31,318 (2010); *see also Hattiesburg Industrial Gas Sales, L.L.C.,* 134 FERC ¶ 61,236 (2011) (imposing a five-year rate review requirement on Hattiesburg Industrial Gas Sales, L.L.C.).

using state-approved rates that have not changed since the previous five-year filing are only required to make a filing certifying that those rates continue to meet the requirements of § 284.123(b)(1) on the same basis on which they were approved. Conversely, if the state-approved rate used for the election is changed at any time, the NGPA section 311 or Hinshaw pipeline must file a new rate election pursuant to § 284.123(b) for its interstate rates no later than 30 days after the changed rate becomes effective.

18. An intrastate pipeline may file to request authorization to charge market-based rates under subpart M of Part 284 of the Commission's regulations. The same requirements for showing a lack of market power apply to intrastate pipelines as for interstate pipelines. The Commission has granted market-based rate authority for storage and hub services to 19 of the 112 intrastate pipelines with subpart C of Part 284 tariffs.

D. Request for Commission Action

19. On January 31, 2018, in Docket No. RP18–415–000, several trade associations and companies representing a coalition of the natural gas industry that are dependent upon services provided by interstate natural gas pipeline and storage companies (Petitioners) [35] filed a petition requesting that the Commission take immediate action under sections 5(a), 10(a), and 14(a) and (c) of the NGA to initiate show cause proceedings against all interstate natural gas pipeline companies (with certain exceptions) and require each pipeline to submit a cost and revenue study to demonstrate that its existing jurisdictional rates continue to be just and reasonable following the passage of the Tax Cuts and Jobs Act.

20. Petitioners requested that the Commission require an immediate rate reduction, if a filed cost and revenue study demonstrates that the interstate natural gas pipeline is over-recovering its costs following the adjustments to account for changes to the tax laws implemented under the Tax Cuts and Jobs Act. Petitioners contended that, if a pipeline believed that a Commission-approved settlement exempted it from such a rate analysis, the Commission should require such company to provide evidence to that effect.

E. Notice of Proposed Rulemaking

21. In response to the Tax Cuts and Jobs Act and *United Airlines* Issuances, on March 15, 2018, the Commission issued a NOPR proposing to require interstate natural gas pipelines to file an informational filing with the Commission pursuant to sections 10(a) and 14(a) of the NGA [36] (One-time Report on Rate Effect of the Tax Cuts and Jobs Act, FERC Form No. 501–G).[37] The One-time Report was designed to collect financial information to evaluate the impact of the Tax Cuts and Jobs Act and *United Airlines* Issuances on interstate natural gas pipelines' revenue requirements. In addition to the One-time Report, the Commission proposed to provide four options for each interstate natural gas pipeline to choose from, including to voluntarily make a filing to address the changes to the pipeline's recovery of tax costs, or explain why no action is needed. The four options are: (1) File a limited NGA section 4 filing to reduce the pipeline's rates to reflect the decrease in the federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act and the elimination of the income tax allowance for MLP pipelines consistent with the Revised Policy Statement, (2) make a commitment to file a general NGA section 4 rate case in the near future, (3) file a statement explaining why an adjustment to its rates is not needed, or (4) take no action other than filing the One-time Report. If an interstate natural gas pipeline does not choose either of the first two options, the Commission would consider, based on the information in the One-time Report and comments by interested parties, whether to issue an order to show cause under NGA section 5 requiring the pipeline either to reduce its rates to reflect the income tax reduction or explain why it should not be required to do so.[38]

22. The Commission proposed to establish a staggered schedule for interstate natural gas pipelines to file the One-time Report and choose one of the four options described above. The Commission stated in the NOPR that interstate natural gas pipelines that file general NGA section 4 rate cases or pre-packaged uncontested rate settlements before the deadline for their One-time Report will be exempted from making the One-time Report. In addition, the Commission stated that interstate natural gas pipelines whose rates are being investigated under NGA section 5 need not file the One-time Report.[39]

F. Comments on Notice of Proposed Rulemaking

23. The Commission received 33 comments and ten answers and reply comments in response to its NOPR.[40] In general, commenters support the Commission taking action in regard to the recent tax changes although commenters disagree about various aspects of the Commission's proposed procedures. These comments have informed our determinations in this Final Rule.

24. Several commenters take issue with the NOPR's implementation of the Revised Policy Statement and the proposal that, if an MLP pipeline chooses the option of making a limited NGA section 4 filing, that filing must reduce its maximum rates to reflect the elimination of any tax allowance included in its current rates consistent with the Revised Policy Statement.

25. In regard to the proposed FERC Form No. 501–G, among other things, commenters challenge the Commission's authority to require such a filing, seek clarification regarding inputs to the form including the use of an indicative ROE of 10.55 percent, and suggest changes to the form.

26. Commenters also seek clarification and suggest changes to the four options for an interstate natural gas pipeline to make a filing to address the changes to the pipeline's recovery of tax costs or explain why no action is needed. Commenters suggest alternative timelines or request additional time to make such filings. Commenters also seek clarification regarding the deadline to make such filings. Some commenters suggest that the Commission eliminate or alter some of the proposed filing options.

27. The Commission also received several comments regarding negotiated rate agreements and whether those agreements can or should be altered by the Final Rule.

28. Commenters generally support the Commission's proposed procedures for NGPA section 311 and Hinshaw pipelines with some suggested modifications.

[35] Petitioners include the following trade associations: American Forest and Paper Association, American Public Gas Association, Independent Petroleum Association of America, Natural Gas Supply Association, and Process Gas Consumers Group. Petitioners also include the following companies: Aera Energy LLC, Anadarko Energy Services Company, Chevron U.S.A. Inc., ConocoPhillips Company, Hess Corporation, Petrohawk Energy Corporation, WPX Energy Marketing, LLC, and XTO Energy Inc.

[36] 15 U.S.C. 717i(a), 717m(a).

[37] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 32. The One-time Report on Rate Effect of the Tax Cuts and Jobs Act is referred to interchangeably as ''One-time Report'' or ''FERC Form No. 501–G'' in this Final Rule.

[38] NOPR, FERC Stats. & Regs. ¶ 32,725 at PP 41–51.

[39] *Id.* PP 4, 40 & n.8.

[40] The list of commenters and the abbreviation used for each in this order are shown on Appendix A.

III. Overview of Final Rule

29. In this Final Rule, the Commission adopts procedures for determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of (1) the income tax reductions provided by the Tax Cuts and Jobs Act and (2) the *United Airlines* Issuances. These procedures also allow interstate natural gas pipelines to voluntarily reduce their rates to reflect the income tax reductions and change in tax allowance resulting from the *United Airlines* Issuances.

30. The Commission adopts, with modifications, the procedures proposed in the NOPR. The Final Rule establishes a requirement, pursuant to sections 10 and 14(a) of the NGA, that all interstate natural gas companies, with cost-based stated rates, that filed a 2017 FERC Form No. 2 or 2–A must file the FERC Form No. 501–G informational filing for the purpose of evaluating the impact of the Tax Cuts and Jobs Act and the *United Airlines* Issuances on interstate natural gas pipelines' revenue requirements. The Final Rule makes certain adjustments to the FERC Form No. 501–G. For example, if a pipeline states that it is not a tax paying entity, the revised form will not only automatically enter a federal and state income tax of zero, but also eliminate ADIT from the pipeline's cost of service. This change is consistent with the policy announced in our contemporaneous order on rehearing of the Revised Policy Statement,[41] that when a pass-through entity's tax allowance is eliminated, it is appropriate to also eliminate ADIT. The Final Rule also modifies the FERC Form No. 501–G's treatment of capital structure, so that, among other things, if a pipeline must report a hypothetical capital structure, that capital structure will be 57 percent equity, instead of 50 percent equity.

31. In addition to the FERC Form No. 501–G filing requirement, the Commission provides four options for each interstate natural gas pipeline to make a filing to address the changes to the pipeline's recovery of tax costs or explain why no action is needed: (1) A limited NGA section 4 rate reduction filing (Option 1), (2) a commitment to file a general section 4 rate case in the near future (Option 2), (3) an explanation why no rate change is needed (Option 3), and (4) no action (Option 4). These procedures are intended to encourage natural gas pipelines to voluntarily reduce their rates to the extent the tax changes result in their over-recovering their cost of service, while also providing the Commission and stakeholders information necessary to take targeted actions under NGA section 5 where necessary to achieve just and reasonable rates.

32. We modify the NOPR proposal so as to permit MLP pipelines to, under Option 1, propose in their limited section 4 filings to either (1) eliminate their tax allowance, along with their ADIT, or (2) reflect only the tax reductions in the Tax Cuts and Jobs Act. Although the Commission determined in the Revised Policy Statement that permitting MLP pipelines to include a tax allowance in their cost of service results in a double recovery of the MLP pipeline's tax costs, the Commission will not require MLP pipelines to eliminate their tax allowances in this rulemaking proceeding. The Final Rule also clarifies that a natural gas company organized as a pass-through entity is considered subject to the federal corporate income tax, if all of its income or losses are consolidated on the federal income tax return of its corporate parent. Thus, such a pass-through entity is eligible for a tax allowance.

33. The Commission reiterates the voluntary nature of the three filing options and the option to take no action available to pipelines once the pipeline files the required FERC Form No. 501–G. While the Commission is permitting interstate natural gas pipelines to voluntarily file a limited NGA section 4 filing or commit to make a general NGA section 4 rate case filing to modify their rates to reflect the impact of the Tax Cuts and Jobs Act and *United Airlines* Issuances, the Commission is not ordering interstate natural gas pipelines to make such filings. The limited NGA section 4 filing option (Option 1) is beneficial to both pipelines and their customers because it allows interstate pipelines to voluntarily reduce their rates to reflect a reduction in a single cost component—their federal income tax costs—so as to flow through that benefit to consumers as soon as possible. In order to provide an additional incentive for pipelines to make a limited NGA section 4 rate reduction filing, the Final Rule includes a guarantee that the Commission will not, for a three-year moratorium period, initiate a NGA section 5 rate investigation of a pipeline that makes such a filing, if that filing reduces the pipeline's ROE to 12 percent or less.

34. The commitment to file a general NGA section 4 rate case in the near future option (Option 2) provides an opportunity for pipelines to reflect the impact of the Tax Cuts and Jobs Act and *United Airlines* Issuances if the limited NGA section 4 filing option would not be appropriate. Although the Commission prefers for pipelines to reflect the impact of the Tax Cuts and Jobs Act and *United Airlines* Issuances on their own accord, the Commission will consider whether to initiate an investigation to determine if the pipeline's rates may be unjust and unreasonable under NGA section 5 if a pipeline that chooses Option 3 (provide an explanation why no rate change is needed) fails to convince the Commission, or the pipeline chooses Option 4 (take no action).

35. The Commission also modifies the implementation schedule proposed in the NOPR by combining the third and fourth groups of pipelines into a single group. The deadline for the first group of pipelines to file their FERC Form No. 501–Gs will be 28 days after the effective date of the Final Rule and the deadlines for the second and third groups will each be 28 days after the previous group's deadline. Combining the third and fourth groups into a single group will allow the filing of the FERC Form No. 501–Gs to be completed by early December of this year.

36. Additionally, the Commission adopts, with clarifying modifications, the procedures proposed in the NOPR for NGPA section 311 and Hinshaw pipelines to reflect in their jurisdictional rates any rate reductions from the Tax Cuts and Jobs Act and the *United Airlines* Issuances directed by a state agency. Pursuant to this Final Rule, NGPA section 311 and Hinshaw pipelines are not required to file the FERC Form No. 501–G or make any other immediate filing. Instead, the Commission will rely on its five-year rate review process as the primary mechanism to consider changes to reflect the Tax Cuts and Jobs Act, and the Commission adopts the NOPR's proposed § 284.123(i) in this Final Rule. Under pre-existing policy, any pipeline that elected to use state-derived rates pursuant to § 284.123(b)(1) is already required to file with the Commission a new rate election 30 days after a state regulatory agency adjusts its intrastate rates, and new § 284.123(i) expands that requirement to include intrastate pipelines that use Commission-established cost-based rates pursuant to § 284.123(b)(2), as well as pipelines that use state derived rates pursuant to § 284.123(b)(1).

[41] *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs,* Order on Rehearing, 164 FERC ¶ 61,030 (2018).

IV. Discussion

A. Treatment of Pass-Through Entities

1. NOPR

37. The NOPR addressed the treatment of pass-through entities in two ways. First, the proposed One-time Report, FERC Form No. 501–G, assumed a federal and state income tax allowance of zero for all pass-through entities in order to address the double-recovery issues discussed in the *United Airlines* Issuances.

38. Second, the implementation of Option 1, described above, provided different treatment for MLP pipelines as compared to other entities, as set forth in proposed § 154.404 of the regulations.[42] Specifically, proposed § 154.404 distinguishes between the types of rate reductions pipelines could include in these limited NGA section 4 filings, depending upon whether the pipeline should be treated as a corporation, an MLP pipeline, or a non-MLP partnership. Thus, proposed § 154.404(a)(1) permits a pipeline subject to the federal corporate income tax to make a limited NGA section 4 filing reducing its maximum rates to reflect the decrease in the federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act. However, proposed § 154.404(a)(2) only permits an MLP pipeline to file a limited NGA section 4 filing reducing its maximum rates to reflect the elimination of any tax allowance included in its current rates consistent with the *United Airlines* Issuances. In contrast, proposed § 154.404(a)(3) provides that if a partnership not organized as an MLP pipeline believes that a federal or state income tax allowance is permissible notwithstanding *United Airlines,* it may justify why its pipeline should continue to receive an income tax allowance and reduce its maximum rates to reflect the decrease in the federal income tax rates applicable to partners pursuant to the Tax Cuts and Jobs Act.[43]

2. Comments

39. Some commenters support the implementation of the Revised Policy Statement in the proposed rule, including NGSA,[44] APGA,[45] CAPP,[46] and Direct Energy.[47] CAPP supports the proposal that pass-through entities report a federal and state income tax expense of zero on the proposed FERC Form No. 501–G, unless a non-MLP partnership can justify why it should continue to receive an income tax allowance while reducing its maximum rates to reflect the decrease in the federal income tax rates resulting from the Tax Cuts and Jobs Act. CAPP asserts that such information will enable shippers and the Commission to properly evaluate submissions by pipelines as to whether adjustments to rates are appropriate in light of the tax changes and, in the absence of any pipeline commitments to changing rates, whether an NGA section 5 review of rates is warranted.[48] APGA asserts that the proposed rule is an appropriate response to pipelines that seek clarification of the Revised Policy Statement because pipelines can demonstrate the applicability of the Commission's revised policy to their own situations.

40. Several commenters representing pipeline interests oppose the implementation of the Revised Policy Statement in the proposed rule, including INGAA, Enable Interstate Pipelines, Boardwalk, Spectra, Kinder Morgan, Williams, Millennium, and Dominion Energy. These commenters request that the Commission remove the requirements that MLP pipelines and other pass-through pipelines (1) report an income tax expense of zero in the FERC Form No. 501–G and (2) eliminate a tax allowance in making a limited section 4 rate reduction filing.[49] These commenters also request that the Commission clarify that pass-through pipelines, including MLP pipelines, will be allowed to propose and present evidence supporting an income tax allowance in future rate proceedings.[50] To support these positions, the pipelines (a) raise various challenges to the Commission's response to *United Airlines* and (b) identify various concerns with the implementation of those policies in the NOPR. These arguments, and various requests for clarification, are discussed below.

a. Challenges to the Commission's Response to United Airlines

41. Pipeline commenters argue that the Revised Policy Statement is not a binding rule with the force of law.[51] They assert that under the Administrative Procedure Act, the Commission must support the policy with substantial evidence as if it had never been issued in order to apply the policy as a substantive rule in this proceeding and the Commission has not done so.[52]

42. In addition, several pipeline commenters challenge the Commission's Revised Policy Statement and Opinion No. 511–C, including INGAA, Enable Interstate Pipelines, Boardwalk, Spectra, Kinder Morgan, Williams, Tallgrass Pipelines, EQT Midstream, and Dominion Energy.[53] These commenters assert that the Revised Policy Statement was not the product of reasoned decision-making.[54] Other commenters request that the Commission resolve similar issues raised in requests for rehearing of the Revised Policy Statement before natural gas pipelines are required to file any information regarding the effects upon the pipeline's cost of service.[55]

43. Pipeline commenters argue that implementing the Revised Policy Statement in this rulemaking proceeding will introduce uncertainty that will delay resolution of the action to address the rate impact from the Tax Cuts and Jobs Act. They state that removing the MLP pipeline and pass-through income tax allowance issues from the proposed rule will reduce the uncertainty associated with the proposed rule and allow pipelines and their customers to focus on the potential rate reductions resulting from the Tax Cuts and Jobs Act.[56]

b. Arguments Regarding the Implementation

44. Commenters also raise concerns and request clarification regarding the NOPR's proposed implementation of the Revised Policy Statement.

45. First, pipeline commenters argue that the proposed rule improperly places the burden under NGA section 5

[42] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 42.

[43] *Id.* P 36.

[44] NGSA Comments at 3, 5.

[45] APGA Comments at 5–7.

[46] CAPP Comments at 3–4, 7.

[47] Direct Energy Comments at 7.

[48] CAPP Comments at 7.

[49] INGAA Comments at 3, 11, 15, 17–18; Boardwalk Comments at 2; Spectra Comments at 16–17, 28; Kinder Morgan Comments at 21–23; Williams Comments at 4, 14; Millennium Comments at 1–2; Dominion Energy Comments at 2, 9; Enable Interstate Pipelines Comments at 28–31.

[50] INGAA Comments at 3, 11, 18–19; Boardwalk Comments at 2, 5; Spectra Comments at 4–5; Williams Comments at 14; Millennium Comments at 1–2.

[51] INGAA Comments at 2–3; Boardwalk Comments at 2; Williams Comments at 4, 12; Millennium Comments at 1; Tallgrass Pipelines Comments at 10; Dominion Energy Comments at 5–7.

[52] INGAA Comments at 16–18; Williams Comments at 4, 14–15; Millennium Comments at 1.

[53] INGAA, Enable, Spectra, Kinder Morgan, Tallgrass Pipelines, EQT Midstream, and Dominion Energy filed requests for rehearing of the Revised Policy Statement in Docket No. PL17–1.

[54] Dominion Energy Comments at 3; INGAA Comments at 2.

[55] Tallgrass Pipelines Comments at 4–9; EQT Midstream Comments at 2, 6–8.

[56] INGAA Comments at 3; Boardwalk Comments at 2; Tallgrass Pipelines Comments at 4–9; EQT Midstream Comments at 2, 6–8.

onto pass-through entities to justify a tax allowance.[57]

46. Second, while generally supporting the proposal, APGA also claims that proposed § 154.404(a)(3) should be amended to replace ''partnership'' with ''partnership or other pass-through entity.'' APGA argues that the proposed NOPR recognizes that partnerships or other pass-through entities such as limited liability corporations must address the double-recovery concern raised by *United Airlines.*[58] APGA also proposes that the Commission clarify that if a pass-through entity files a written justification to preserve its tax allowance under the limited section 4 option (Option 1), staff and intervenors may comment or seek a hearing on that issue. APGA proposes to add a new subpart (iv) to § 154.404(e) that states ''Whether any justification submitted pursuant to paragraph (a)(3)(ii) of this section is consistent with Commission policy and the public interest.'' [59]

47. Finally, several pipeline commenters challenge the FERC Form No. 501–G's assumption that a non-MLP pass-through pipeline's federal and state tax allowance is zero.[60] They request that the Commission clarify that non-MLP pass-through entities, in particular those that are owned, in whole or in part, by tax-paying corporate partners, may continue to recover an income tax allowance.[61] These commenters argue that the assumed tax allowance of zero for pass-through entities is unwarranted given that the Revised Policy Statement and § 154.404(a)(3) of the proposed rule explicitly permit a non-MLP pass-through entity to justify why it should continue to receive an income tax allowance.[62] They further claim that assuming a tax allowance of zero for all pass-through pipelines will result in inaccuracies and distortions of such pipeline's reported cost of service on the FERC Form No. 501–G. They allege that such distortions could discourage pipelines from making the limited section 4 filings,[63] lead customers to mistakenly conclude that these pipelines are over-earning,[64] and hinder settlement negotiations between pipelines and shippers.[65]

48. Regarding non-MLP pass-through entities, commenters support these concerns with specific arguments and requests for clarification. For instance, arguing that there is no double-recovery when a pass-through entity is owned by a corporation, Millennium requests that a partnership be permitted to include an income tax allowance on the FERC Form No. 501–G and in the limited section 4 filings if such entity is owned by corporations that incur an income tax liability before issuing dividends to their shareholders.[66] AGA requests that the Commission clarify the proper reporting on FERC Form No. 501–G for a non-MLP pass-through pipeline that is partly owned by at least one MLP and partly owned by one or more corporations.[67] Similarly, Spectra requests that the Commission revise the FERC Form No. 501–G to allow joint venture pipelines to include an income tax allowance or to reflect such pipeline's ownership in the cost-of-service components.[68]

3. Discussion

49. As discussed below, the Commission is revising proposed § 154.404 so that MLP pipelines, like other pass-through entities,[69] that choose Option 1 (limited section 4 rate filing) may reduce their rates solely to reflect the Tax Cuts and Jobs Act without further reducing rates for the elimination of the income tax allowance. The Commission also provides clarification regarding the completion of FERC Form No. 501–G and the permissible adjustments.

50. Given these modifications, the Commission is not, in this rulemaking proceeding, addressing the merits of either (1) the Commission's holding in Opinion No. 511–C that an impermissible double recovery results from granting an MLP pipeline both an income tax allowance and a DCF ROE or (2) the similar policy the Commission announced in the Revised Policy Statement. However, the binding precedent of *United Airlines* and Opinion No. 511–C may be considered by the Commission or any shipper when initiating any subsequent section 5 action, and we encourage pipelines to consider the guidance provided by the Revised Policy Statement.

a. Limited Section 4 Filings

51. In the Final Rule, the Commission modifies the proposed § 154.404(a) permitting limited section 4 rate filings as follows [deletions in italics, additions in underline]:

[57] INGAA Comments at 19–22; Enable Interstate Pipelines Comments at 25–26; Kinder Morgan Comments at 19; Williams Comments at 11; Millennium Comments at 7–8; TransCanada Comments at 9.

[58] APGA Comments at 6.

[59] *Id.*

[60] INGAA Comments at 21; Enable Interstate Pipelines Comments at 25–26; Spectra Comments at 5, 12, 18–20; Kinder Morgan Comments at 14–23; Williams Comments at 4, 11; Millennium Comments at 7–9; TransCanada Comments at 8–10; Tallgrass Pipelines Comments at 10–11; EQT Midstream Comments at 6–7; Dominion Energy Comments at 5–6.

[61] INGAA Comments at 19–21; Enable Interstate Pipelines Comments at 33; Kinder Morgan Comments at 17–18, 21–23; Millennium Comments at 5–6.

[62] INGAA Comments at 19–21; Enable Interstate Pipelines Comments at 25–26, 33; Spectra Comments at 12; Kinder Morgan Comments at 2, 17–23; Williams Comments at 11; Millennium Comments at 5–7, 9; TransCanada Comments at 3, 8–9; Tallgrass Pipelines Comments at 10–11; EQT Midstream Comments at 6–7.

[63] INGAA Comments at 21; Millennium Comments at 6–7.

[64] INGAA Comments at 21; Spectra Comments at 18–19; Millennium Comments at 9; Tallgrass Pipelines Comments at 10–11; Kinder Morgan Comments at 15.

[65] Kinder Morgan Comments at 15.

[66] Millennium Comments at 5–6.

[67] AGA Comments at 5–6.

[68] Spectra Comments at 28–29.

[69] A pass-through entity or pipeline refers to an entity that does not pay taxes itself. As discussed below, in the Final Rule we are revising § 154.404 to provide that a natural gas company organized as a pass-through entity whose income or losses are included in the consolidated federal income tax return of its corporate parent is considered to be subject to the federal corporate income tax.

The limited rate filing permitted by this section is intended to permit

(1) a natural gas company subject to the federal corporate income tax to reduce its maximum rates to reflect the decrease in the federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act of 2017,

(2) a natural gas company organized as a master limited partnership to reduce its maximum rates to reflect the elimination of any tax allowance included in its current rates, and

(*2*3) a natural gas company organized as a pass-through entity *partnership (but not a master limited partnership)* either (i) to eliminate any income tax allowance and accumulated deferred income taxes reflected *included* in its current rates or (ii) *to justify why it should continue to receive an income tax allowance and* to reduce its maximum rates to reflect the decrease in the federal income tax rates applicable to partners pursuant to the Tax Cuts and Jobs Act of 2017.

52. Pursuant to these revisions to § 154.404(a), MLP pipelines will have the same options as other pass-through entities in a limited section 4 rate filing: Either to reduce their rates to reflect complete elimination of the tax allowance or to reduce their rates only for the Tax Cuts and Jobs Act without further reducing rates for the elimination of their income tax allowance. Likewise, consistent with the discussion in section IV.B.7, the Commission is also modifying the proposed § 154.404 so that a pipeline's limited NGA section 4 filing can reflect the elimination of ADIT as a result of the elimination of an income tax allowance.

53. The Commission expects that modifying proposed § 154.404(a) in this manner will help achieve Commission objectives. The Commission seeks to encourage MLP pipelines (like all other pipeline entities) to quickly reduce rates and to pass on the benefits of reduced tax costs to customers without the need for a full examination of costs and revenues. Allowing MLP pipelines the option to make a rate reduction reflecting reduced tax rates under the Tax Cuts and Jobs Act while still asserting eligibility for a tax allowance will incentivize more pipelines to file the limited section 4 rate cases. Additionally, MLP pipelines and other pass-through entities making the limited section 4 filing would be eligible for the moratoria on NGA section 5 rate investigations discussed below. Although in a subsequent proceeding the Commission (subject to the moratoria) or any shipper may take action under NGA section 5 to further reduce an MLP pipeline's rates, we believe providing pipelines flexibility in the limited NGA section 4 filing option will increase the probability that customers benefit from an immediate rate reduction.[70]

54. Furthermore, we seek to avoid complicating the optional, limited NGA section 4 proceedings. We recognize that the Revised Policy Statement itself is guidance, not binding precedent. Although *United Airlines* and Opinion No. 511–C are binding precedent,[71] SFPP has sought rehearing of that order, and other pipelines have raised issues involving the Commission's income tax policies for pass-through entities in comments in response to the NOPR. We decline to address such matters in this rulemaking proceeding, particularly when the Commission will be able to address these *United Airlines* issues, as appropriate, when we address the pending request for rehearing of Opinion No. 511–C and in any ensuing NGA section 5 investigation after pipelines file their FERC Form No. 501–Gs as discussed below.

55. Consistent with the modifications discussed above, we clarify that an MLP pipeline or other pass-through entity's decision to submit an optional limited NGA section 4 rate filing to reduce rates for the Tax Cuts and Jobs Act, as opposed to eliminating its income tax allowance, is not an issue that is within the scope of the limited NGA section 4 proceeding. Permitting parties to challenge a pass-through entity's choice to not eliminate its income tax allowance through its limited NGA section 4 rate filing would undermine the Commission's objectives in affording pass-through entities both options in the first place, namely to encourage more entities to file limited NGA section 4 rate cases and expedite rate reductions. If an MLP pipeline or other pass-through entity chooses to make the more limited rate reduction reflecting reduced tax rates under the Tax Cuts and Jobs Act, the issue of whether a further rate reduction is just and reasonable because the entity should not recover any income tax allowance may arise in a subsequent NGA section 5 proceeding, subject to the moratoria provisions regarding Commission-initiated section

[70] As discussed below, the Commission acknowledges that the Revised Policy Statement's elimination of an income tax allowance for MLP pipelines is not a binding rule, but an expression of policy intent following the *United Airlines* decision. *Pacific Gas & Electric Co.* v. *FPC,* 506 F.2d 33, 38 (D.C. Cir. 1974).

[71] In *Pacific Gas & Electric Co.,* 506 F.2d at 33, 38, the D.C. Circuit stated that the Commission may ''establish binding policy . . . through adjudications which constitute binding precedent.'' *See Algonquin Gas Transmission, LLC,* 153 FERC ¶ 61,038, at PP 29–37 (2015), and cases cited. Although Opinion No. 511–C is pending rehearing, it remains binding precedent.

5 proceedings discussed below. Nonetheless, the Commission encourages MLP pipelines to consider the guidance provided in the Revised Policy Statement as well as the precedents of *United Airlines* and Opinion No. 511–C in evaluating the options available in § 154.404.

56. In response to the comments, the Commission also provides other clarifications regarding the limited NGA section 4 filings. In response to comments from APGA, we clarify that § 154.404 applies to all pass-through entities (such as limited liability corporations), not merely partnerships, and we have modified § 154.404 to replace the reference to ''partnership'' with ''pass-through entity.'' We also add language in § 154.404(b) to clarify that, for purposes of making a limited NGA section 4 filing under § 154.404(a), a natural gas company organized as a pass-through entity all of whose income or losses are consolidated on the federal income tax return of its corporate parent is considered to be subject to the federal corporate income tax.[72] Thus, such a natural gas company may make its limited NGA section 4 filing pursuant to § 154.404(a)(1), which is applicable to natural gas companies subject to the federal corporate income tax, rather than under § 154.404(a)(2), which is applicable to pass-through entities.[73]

57. In addition, the Commission eliminates any requirement as a part of the limited NGA section 4 filing for a pass-through entity to satisfy a burden of showing that it is entitled to receive any income tax allowance. The Commission recognizes that it will have the burden, in any proceeding it initiates under NGA section 5 to support complete elimination of the existing tax allowance. Moreover, as discussed below, any pass-through entity reporting an income tax allowance in an optional Addendum to FERC Form No. 501–G may provide such explanation.

b. FERC Form No. 501–G and Addendum

58. Although the Commission will permit all pass-through entities to make limited NGA section 4 filings which only reduce their rates to reflect the reduced income tax rates in the Tax Cuts and Jobs Act, the Commission is continuing to design the FERC Form No. 501–G so that it will automatically enter a federal and state income tax of zero for all respondents that state they are not tax paying entities.[74] However, we clarify that a pass-through entity claiming a tax allowance may submit an Addendum to the FERC Form No. 501–G that includes an income tax allowance. Moreover, consistent with the discussion above, to the extent a pipeline elects to make the optional limited NGA section 4 filing, the pipeline may use either (a) the FERC Form No. 501–G if it proposes to eliminate its tax allowance or (b) the Addendum to the FERC Form No. 501–G if it claims a tax allowance.[75]

59. The FERC Form No. 501–G will continue to require pass-through entities to report an income tax allowance of zero, because this informational filing is intended to aid the Commission's further evaluation of a pipeline's cost of service given the double-recovery concerns raised by *United Airlines*[76] and Opinion No. 511–C.[77] This precedent provides that an MLP cannot claim an income tax allowance if a double-recovery results from the inclusion of both (a) a DCF ROE and (b) an income tax allowance. Although the Commission is not adopting the NOPR proposal to require MLP pipelines to eliminate their tax allowances in any limited NGA section 4 filing, Opinion No. 511–C remains binding Commission precedent. Accordingly, if a pass-through entity files a limited NGA section 4 filing reducing its rates to reflect the Tax Cuts and Jobs Act without proposing to eliminate its tax allowance, the Commission will consider whether to initiate an NGA section 5 investigation to further reduce the pipeline's rates by eliminating its tax allowance consistent with Opinion No. 511–C and *United Airlines,* subject to the moratoria provisions regarding Commission-initiated section 5 proceedings discussed below. In addition, shippers have the option of bringing a complaint under NGA section 5 and raising arguments based upon the *United Airlines* Issuances. The elimination of the income tax allowance in the FERC Form No. 501–G will help the Commission and pipeline customers assess the potential effects of the removal of any income tax allowance as a consequence of *United Airlines'* double-recovery concerns.

60. However, in an Addendum to FERC Form No. 501–G that pipelines may choose to file along with their FERC Form No. 501–G, the Commission will permit pass-through entities to report an income tax allowance alongside the other adjustments to FERC Form No. 501–G. Any income tax allowance reported in the Addendum should reflect the relevant tax reductions resulting from the Tax Cuts and Jobs Act.[78] We encourage any pass-through entity reporting an income tax allowance in an Addendum to FERC Form No. 501–G to support its calculation of that income tax allowance, including showing where and how the income tax liability is incurred.[79] Some commenters argue that pass-through entities have complex ownership forms which may be relevant to assessing whether there is a double recovery of tax costs when affording any such entity an income tax allowance in addition to a DCF ROE.[80] Although not required, in preparing any Addendum to FERC Form No. 501–G, we encourage pass-through entities to provide any information regarding their particular circumstances or ownership structures that they consider relevant in assessing any potential *United Airlines* double-recovery issue.

61. We emphasize that this one-time filing of FERC Form No. 501–G and the Addendum are for informational purposes pursuant to NGA sections 10 and 14. As discussed below, we also emphasize that in any subsequent NGA section 5 proceeding initiated by the Commission (regardless of the contents

[72] *BP West Coast Products, LLC* v. *FERC,* 374 F.3d 1263, at 1289 (D.C. Cir. 2004) (explaining that an income tax allowance is appropriate in the cost of service of a pass-through subsidiary of a corporation ''when such a subsidiary does not itself incur a tax liability but generates one that might appear on a consolidated return of the corporate group.'').

[73] Similarly, when filling out the FERC Form No. 501–G, such a natural gas company may state that it is a tax paying entity, and thus, as discussed below, the form will not automatically enter a federal and state income tax of zero.

[74] However, as discussed below, consistent with the language the Commission is adding to 154.404(b)(1), a natural gas company organized as a pass-through entity all of whose income or losses are consolidated on the federal income tax return of its corporate parent is considered to be subject to the federal corporate income tax for purposes of the FERC Form No. 501–G, and therefore the form will not automatically enter a federal and state income tax of zero for such a natural gas company. *BP West Coast Products, LLC* v. *FERC,* 374 F.3d 1263, at 1289 (D.C. Cir. 2004).

[75] As explained below, whether or not the pipeline uses FERC Form No. 501–G or the optional Addendum, the limited NGA section 4 rate filing should only reflect the percent change to the pipeline's cost of service resulting from the reduction in the pipeline's income tax allowance and any corresponding adjustment to ADIT. In the limited NGA section 4 filing, the pipeline cannot treat other cost changes as offsetting the reduction to the income tax allowance.

[76] *United Airlines,* 827 F.3d 122 at 134, 136.

[77] Opinion No. 511–C, 162 FERC ¶ 61,228.

[78] The income tax allowance attributable to individual unit holders should reflect the reduction in the tax rate applicable to the taxpayer(s) and include any adjustment for the deduction for section 199A ''qualified business income of pass-thru entities'' pursuant to the Tax Cuts and Jobs Act. *See* Tax Cuts and Jobs Act 11011, 131 Stat. at 2063.

[79] *See, e.g.,* IRS Form 851: Affiliations Schedule; IRS Form 1122: Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return.

[80] *See, e.g.,* Millennium Comments at 5–6; AGA Comments at 5–6.

of the FERC Form No. 501–G or the optional Addendum), the Commission will have the burden under NGA section 5 to justify any changes to the pipeline's rates.[81]

c. Other Issues

62. In response to the comments, we decline to clarify further our income tax allowance policies for MLP pipelines or other pass-through entities. As modified above, the rule does not require pass-through entities to eliminate the income tax allowance in limited section 4 filings pursuant to § 154.404 or in any subsequent rate proceeding. As for the commenters' request to clarify whether pass-through entities will be granted an income tax allowance in future rate proceedings, the Commission will not speculate now on future potential actions. We recognize that the Revised Policy Statement itself is guidance, not binding precedent, but any participant in a subsequent rate proceeding must be prepared to address the Opinion No. 511–C and *United Airlines* precedent. Moreover, this binding precedent, as well as the Commission's Revised Policy Statement, will be considered in any subsequent section 5 action, whether initiated by the Commission or by any shipper.

B. One-time Report

63. In the NOPR, the Commission proposed to exercise its authority under NGA sections 10(a) and 14(a)[82] to require all interstate natural gas pipelines that file a 2017 FERC Form No. 2 or 2–A to submit an abbreviated cost and revenue study in a format similar to the cost and revenue studies the Commission has attached to its orders initiating NGA section 5 rate investigations in recent years.[83] Using the data in the pipelines' 2017 FERC Form Nos. 2 and 2–A, these studies would estimate (1) the percentage reduction in the pipeline's cost of service resulting from the Tax Cuts and Jobs Act and the Revised Policy Statement, and (2) the pipeline's current ROEs before and after the reduction in corporate income taxes and the elimination of income tax allowances for MLP pipelines. The proposed One-time Report is an Excel spreadsheet with formulas.

64. The Commission stated that the Commission and interested parties could use this information in the One-time Report in considering whether to initiate NGA section 5 rate investigations of pipelines which do not opt to file a limited NGA section 4 to reduce their rates or commit to make a general NGA section 4 filing by December 31, 2018, and the order in which to initiate any such investigations so as to make the most efficient use of the Commission's and interested parties' resources to provide consumer benefits.

65. The cost and revenue study required by the One-time Report incorporates all the major cost components of a jurisdictional cost of service, including: Administrative and General, Operation and Maintenance, other taxes, depreciation and amortization expense, and the return related components of ROE, interest expenses and income taxes. Most of the required data is to be taken directly from the respondent's 2017 FERC Form No. 2 or 2–A[84] without modification. However, the NOPR stated that, if a pipeline believes that this data does not reflect its current situation, the pipeline may make adjustments to individual line items in additional work sheets, referred to below as an Addendum to the FERC Form No. 501–G. The NOPR stated that all adjustments should be shown in a manner similar to that required for adjustments to base period numbers provided in statements and schedules required by sections 154.312 and 154.313 of the Commission's regulations.

66. The NOPR also proposed an *Implementation Guide for One-time Report on Rate Effect of the Tax Cuts and Jobs Act* (*Implementation Guide*), providing additional guidance to parties as to the expected data entries, including the proposed staggered compliance dates and the list of companies for each of the four compliance periods.

1. Legal Authority

a. Comments

67. Southern Star, TransCanada, and Enable Interstate Pipelines question the Commission's legal authority to require the One-time Report.[85] They each raise the same argument: compelling a pipeline to file the One-time Report is equivalent to compelling the pipeline to initiate an NGA section 4 rate proceeding, which the *Consumers* court case prohibits.[86] Enable Interstate Pipelines note that the ''pipeline filing the form is not making a proposal to change rates under NGA Section 4, justify its rates, or take any position regarding its current or future rates.''[87] Enable Interstate Pipelines argue that because the Commission has ''stated that it will 'consider whether to initiate an investigation under NGA Section 5 based upon the 'statement filed with the form,'''' and because intervenors can ''make any further comments that intervenors want,'' the effect is to ''require[] pipelines to justify their current rates through statements.''[88]

68. Southern Star contends that, by permitting pipelines to make adjustments to individual line items in the FERC Form No. 501–G on additional worksheets and support those adjustments in a separate document, the Commission is requiring pipelines to justify their existing rates under the guise of an informational filing. Southern Star states that making any such adjustments based on more recent data would require the pipeline to make judgement calls with respect to data sources and reliability of the type it makes in an NGA section 4 rate filing.[89]

b. Discussion

69. These comments misapprehend both the nature of the One-time Report and the holding in *Consumers.* The primary purpose of the One-time Report, together with any comments and protests to it, is to provide information relevant to determining whether the Commission should exercise its discretion to initiate an investigation under NGA section 5 as to whether the subject interstate natural gas pipeline may be collecting unjust and unreasonable rates in light of the recent reduction in the corporate income tax rate and change in the Commission's income tax allowance policies.[90]

[81] *Interstate Natural Gas Ass'n of America* v. *FERC,* 285 F.3d 18, 38 (2002) (*INGAA*) (observed that the Commission would ''shoulder the burden under [section] 5 of the NGA'' with respect to any rate change and found ''no violation of the NGA'' with respect to ''the Commission's determination to extract information from pipelines relevant to the practical issues'').

[82] *See Tuscarora Gas Transmission Co.,* 154 FERC ¶ 61,273, at PP 4–14 (2016) (requiring a pipeline to submit a more detailed cost and revenue study than that which the Commission is proposing here).

[83] The Commission proposed to exempt from this requirement (1) interstate natural gas pipelines whose rates are being examined in a general NGA section 4 rate case or an NGA section 5 investigation and (2) pipelines that file a pre-packaged uncontested rate settlement before the deadline for their One-time Report.

[84] FERC Form Nos. 2s (*Annual report for Major natural gas companies*) and 2–As (*Annual report for Nonmajor natural gas companies*) for calendar year 2017 were due April 18, 2018. 18 CFR 260.1(b)(2) & 260.2(b)(2).

[85] Enable Interstate Pipelines Comments at 13–17; Southern Star Comments at 3–5; TransCanada Comments at 4–7.

[86] *Consumers Energy Co.* v. *FERC,* 226 F.3d 777 (6th Cir. 2000) (*Consumers*).

[87] Enable Interstate Pipelines Comments at 14.

[88] Enable Interstate Pipelines Comments at 15.

[89] Southern Star Comments at 3–4.

[90] *General Motors Corp* v. *FERC,* 613 F.2d 939, 944 (D.C. Cir. 1979); *Southern Union Gas Co.,* 840 F.2d 964, 968 (D.C. Cir. 1988); *see also Iroquois Gas Transmission System, L.P.,* 69 FERC ¶ 61,165, at 61,631 (1994); *JMC Power Projects* v. *Tennessee Gas Pipeline, Co.,* 69 FERC ¶ 61,162 (1994), *reh'g*

70. The Commission routinely initiates NGA section 5 investigations ''based upon our review of publicly available information on file with the Commission.'' [91] The court in *Consumers* did not prohibit such information collection; to the contrary, it condoned information collection.[92] The limitation that *Consumers* placed is that the Commission must act ''with clarity and precision'' so as to ensure that any directive for the pipeline to make ''informational filings'' is just that, and not an NGA section 4 filing to ''justify its current rate.'' [93]

71. Indeed, this Final Rule is patterned on the Commission's successful method of collecting information from the Hinshaw pipelines that were specifically at issue in *Consumers.* For the past decade, instead of requiring Hinshaw pipelines to periodically file to justify their current rates, the Commission now requires Hinshaw pipelines to periodically ''file with the Commission an informational filing with cost, throughput, revenue and other data, in the form specified in § 154.313 of the Commission's regulations.'' [94] These five-year review filings are docketed and noticed, and parties may intervene, comment, and protest.[95] The Commission expressly warns Hinshaw pipelines that the Commission will use that informational filing ''to determine whether any change in [the pipeline's] interstate transportation or storage rates should be ordered pursuant to section 5 of the Natural Gas Act.'' [96] This two-step process allows the Commission to collect cost-of-service data consistent with NGA section 10(a), which the Commission may rely upon in deciding whether to exercise its discretion to initiate an investigation of the Hinshaw pipeline's rates pursuant to NGA section 5. The Hinshaw pipeline is free, if it so chooses, to propose to modify its rates under NGA section 4, based on the cost and revenue information in the study submitted to the Commission. Absent such a voluntary section 4 filing, no change in the Hinshaw pipeline's rates will occur, without the Commission satisfying its burden of persuasion under NGA section 5.

72. The One-time Report, adopted in this Final Rule, will operate in a similar fashion. The Final Rule permits an interstate natural gas pipeline, if it so chooses, to submit a limited NGA section 4 filing reducing its rates to reflect the income tax reductions in the Tax Cuts and Jobs Act or following the *United Airlines* Issuances, using the information in the One-time Report.[97] However, the Final Rule contains no requirement that an interstate pipeline make any form of rate filing. Indeed, as discussed further below, the Final Rule expressly permits interstate pipelines to take no action other than submitting the required One-time Report in order to avoid any implication that the Commission is requiring interstate pipelines to make an NGA section 4 rate change filing, contrary to the decision of the United States Court of Appeals for the D.C. Circuit in *Public Service Commission of New York* v. *FERC* [98] that the Commission may not require pipelines to file rate cases under NGA section 4.

73. The Commission rejects Southern Star's contention that the Commission is requiring pipelines to justify their existing rates under the guise of an informational filing by permitting pipelines to make adjustments to individual line items in the FERC Form No. 501–G on additional worksheets. The FERC Form No. 501–G requires interstate natural gas pipelines to develop a cost and revenue study in which most of the data is taken directly from the pipeline's FERC Form No. 2 or 2–A without modification. Using formulas that are incorporated into the form that may not be changed by the pipeline, the FERC Form No. 501–G produces a cost and revenue study in a format similar to the cost and revenue studies the Commission has used in recent years to determine whether to initiate NGA section 5 rate investigations of individual pipelines. As Southern Star and other pipelines recognize, pipelines have little discretion in how they fill out the FERC Form No. 501–G.[99] However, the Commission recognizes that the 2017 calendar year data reported in the pipeline's FERC Form No. 2 or 2–A may not be fully representative of the pipeline's current situation when it files the FERC Form No. 501–G in the fall of 2018. For example, shippers may have left the system after their contracts expired, the pipeline may have been unsuccessful in remarketing its capacity, or the pipeline may have restructured. Accordingly, the Commission is providing pipelines the opportunity to inform both it and other parties of significant changes in their situation by filing an Addendum to the FERC Form No. 501–G. The filing of such an Addendum is purely voluntary, but the information in such an Addendum should assist the Commission in determining what further steps to take with respect to the pipeline in question.

74. The Commission recognizes that deciding what information, if any, to include in an Addendum to the FERC Form No. 501–G may require the pipeline to exercise some degree of judgment. However, that fact does not require the pipeline to make the equivalent of an NGA section 4 rate filing or improperly shift to the pipeline the burden of justifying its existing rates in violation of NGA section 5. In *INGAA,* the D.C. Circuit rejected a contention similar to the one made here by Southern Star. The Commission in Order No. 637 had directed each pipeline to file *pro forma* tariff sheets showing how it intended to comply with a regulation requiring pipelines to permit segmentation [100] or to explain why its system's configuration justified curtailing segmentation rights. As in this rulemaking proceeding, the pipelines in the Order No. 637 proceeding contended that requiring them to submit these filings impermissibly shifted the burden of proof, and the Commission had in essence required pipelines to make NGA section 4 filings to defend their current rates. The court rejected this argument, finding that the Commission had stated that it ''will indeed shoulder the burden under [section] 5 of the NGA.'' [101] As pertinent here, the court expressly stated that:

> As to the Commission's determination *to extract information from pipelines relevant to the practical issues, we see no violation of the NGA.* The Commission has authority under [section] 5 to order hearings to determine whether a given pipeline is in compliance with FERC's rules, 15 U.S.C. [ ] 717d(a), and *under [section] 10 and [section]*

denied, 70 FERC ¶ 61,168, at 61,528 (1995), *affirmed, Ocean States Power* v. *FERC,* 84 F.3d 1453 (D.C. Cir. 1996) (unpublished opinion).

[91] *See, e.g., Natural Gas Pipeline Co. of America LLC,* 158 FERC ¶ 61,044 at P 1; *Wyoming Interstate Co., L.L.C.,* 158 FERC ¶ 61,040 at P 1; *Tuscarora Gas Transmission Co.,* 154 FERC ¶ 61,030 at P 1, *reh'g denied,* 154 FERC ¶ 61,273.

[92] *Consumers,* 226 F.3d at 777 (''Should FERC wish [the pipeline] to make periodic informational filings, it may of course so require pursuant to [section] 10a of the NGA.'').

[93] *Id.* at 781.

[94] *See, e.g., Hattiesburg Industrial Gas Sales, L.L.C.,* 134 FERC ¶ 61,236 at P 13 (imposing a five-year rate review requirement on Hattiesburg Industrial Gas Sales, L.L.C.).

[95] *Narragansett Electric Co.,* 155 FERC ¶ 61,159, at P 2 & n.15 (2016).

[96] *Id.*

[97] An interstate pipeline may also file a general NGA section 4 rate case. However, such a filing would not use the information in the One-time Report. Rather, a pipeline submitting a general section 4 rate case would be required to submit the statements and schedules set forth in 18 CFR 154.312 or 313.

[98] 866 F.2d 487 (D.C. Cir. 1989).

[99] *See* Southern Star Comments at 7.

[100] 18 CFR 284.7(d) (2011).

[101] *INGAA,* 285 F.3d at 38.

14 to require pipelines to submit needed information for making its [section] 5 decisions, 15 U.S.C. [] 717i & 717m(c).[102]

75. The Commission's decision in this Final Rule to authorize pipelines to submit an Addendum with their FERC Form No. 501–G fits even more easily with our NGA sections 10 and 14 information collection authority than Order No. 637's directive, affirmed in *INGAA,* that pipelines file *pro forma* tariff sheets showing how they intended to comply with the new segmentation regulation or explain why they should be exempted from that requirement. A pipeline's filing of an Addendum to the FERC Form No. 501–G is voluntary, unlike Order No. 637's mandatory requirement for each pipeline to state in its compliance proceeding how it believed shippers on its system should be permitted to segment their capacity in light of the operational requirements of their systems and to propose specific tariff language implementing the pipeline's proposed segmentation plan.[103]

76. Moreover, in this Final Rule, unlike in Order No. 637, we have not yet initiated any investigation of a pipeline's rates under NGA section 5. The Commission will review each pipeline's FERC Form No. 501–G and Addendum not to set rates (absent a voluntary limited NGA section 4 filing), but to determine whether to exercise our discretion to initiate a rate investigation under NGA section 5. If we decide based on the information in the One-time Report to initiate a section 5 investigation, we will, as in the Order No. 637 compliance filings addressed in *INGAA,* ''shoulder the burden under [section] 5 of the NGA.'' We discuss further details of the procedures to be used in addressing the pipeline One-time Reports below.

2. Burden of Proof

a. Comments

77. Several commenters request confirmation that filing the FERC Form No. 501–G will not affect the burden of proof in future NGA section 4 or 5 rate proceedings, be used as evidence against or a concession by the pipeline, limit the pipeline's ability to take contrary positions in the future, or otherwise constitute estoppel.[104] Commenters note that the Commission is collecting this information under its NGA sections 10 and 14 authority, not its NGA section 4 or 5 authority. Commenters also argue that, because the FERC Form No. 501–G ''hard-wires'' certain components of a pipeline's actual cost of service, such information would be inaccurate if used in a general ratemaking proceeding.[105]

b. Discussion

78. We clarify that statements in a FERC Form No. 501–G will constitute a valid form of evidence, as noted below, but will not otherwise bind or estop a pipeline in future proceedings. Most obviously, if a pipeline elects Option 1, the special limited NGA section 4 rate proceeding based upon the FERC Form No. 501–G, the One-time Report, including any adjustments the pipeline proposes, will constitute a major part of its case in chief.[106] We also clarify that the FERC Form No. 501–G can be used as evidence to the exact same extent that any other Commission form can be used as evidence. A pipeline will be responsible for the truthfulness of statements it makes in the One-time Report, but those statements must be evaluated in context, representing a necessarily incomplete picture of the company, under the constraints that are inherent in any one-size-fits-all form.

79. Although the Commission and other stakeholders will use information in the FERC Form No. 501–G, together with any other information provided by the pipelines and commenters, in deciding whether to initiate a section 5 proceeding to further investigate the justness and reasonableness of the pipeline's rates, the Commission or complainant will still bear the burden of proof in section 5 proceedings. Furthermore, the pipeline will be free to argue that the information it provided in the FERC Form No. 501–G is unrepresentative of its true cost of service; those statements will not otherwise limit or estop the pipeline in future proceedings.

3. Docketing and Comments

80. The Commission proposed to assign each pipeline's FERC Form No. 501–G filing an RP docket number and to notice the filing providing for interventions and protests. Based on the information in that form, together with any statement filed with the form and comments by intervenors, the Commission stated that it will consider whether to initiate an investigation under NGA section 5 of those pipelines that have not filed a limited NGA section 4 rate reduction filing or committed to file a general NGA section 4 rate case.[107] The Commission also stated that, if the pipeline makes a limited NGA section 4 filing to reduce its rates to reflect the reduced income taxes in the Tax Cuts and Jobs Act, the Commission would assign the limited section 4 filing a separate docket number.[108]

a. Comments

81. INGAA, Boardwalk, Williams, Spectra, Southern Star, and EQT Midstream argue that the Commission should eliminate the NOPR's proposal to assign each pipeline's FERC Form No. 501–G filing an RP docket number. The Commission, they continue, does not assign docket numbers to FERC Form No. 2 and other similar informational filings, nor does it subject these filings to intervention and protest. They further argue that the NOPR provides no basis for modifying this practice solely for the FERC Form No. 501–G reports, and there is no statutory authorization for treating a FERC Form No. 501–G submission as a rate filing pursuant to NGA sections 4 or 5.

82. These commenters also object to the Commission's proposal to formally notice and permit shippers to intervene and protest the filings. Boardwalk believes that the NOPR offered no basis for allowing protests to FERC Form No. 501–G filings. INGAA, Boardwalk, and Spectra state that this proposal ignores that the submission of FERC Form No. 501–G is not a voluntary rate filing by the pipeline subject to the Commission's approval pursuant to NGA section 4, nor is the FERC Form No. 501–G submission a response to Commission action under NGA section 5. They argue that the NOPR's proposal to allow protests to the FERC Form No. 501–G risks upsetting these fundamental requirements of the NGA, because the NOPR appears to contemplate that the dockets created for the informational FERC Form No. 501–G submission could be turned into rate proceedings without meeting the statutory standards of NGA sections 4 or 5. Thus, INGAA and Southern Star continue, pipelines will necessarily respond to any protest, converting an informational filing into a de facto rate filing. Southern Star concludes by stating that the Commission should treat the FERC Form No. 501–G filing similar to a FERC Form No. 2 filing and not permit intervention and comments.

83. These parties also assert that the proposal to allow interventions and

[102] *Id.* (emphasis added).

[103] *See, e.g., Columbia Gas Transmission Corp.,* 100 FERC ¶ 61,084, at PP 12–14 (2002), in which the pipeline described how its segmentation proposal complied with Order No. 637 in light of the operational characteristics of its system.

[104] EQT Midstream Comments at 20; Spectra Comments at 11–12; Tallgrass Pipelines Comments at 23–24; TransCanada Comments at 16.

[105] Spectra Comments at 12.

[106] *See* NOPR, FERC Stats. & Regs. ¶ 32,725 at PP 43–44.

[107] *Id.* P 29.

[108] *Id.* P 64.

protests of FERC Form No. 501–G filings is unnecessary and duplicative. INGAA, Boardwalk, and EQT Midstream argue that shippers can use FERC Form No. 501–G as a tool to assist their determination of whether to initiate NGA section 5 rate cases requesting reductions in pipelines' rates, in a separate proceeding. INGAA and Spectra also speculate that the Commission may be inviting duplicative and confusing efforts if pipelines subsequently file an actual rate proceeding. Similarly, Williams urges the Commission to not allow interventions and protests to the pipeline's filing of the report itself. Williams argues that foreclosing comments to the FERC Form No. 501–G would not leave shippers without a forum for stating their views on a pipeline's FERC Form No. 501–G filings.

b. Discussion

84. The Commission adopts the NOPR proposal to require pipelines to file FERC Form No. 501–G through eTariff,[109] assign each filing a separate RP root docket number, and notice the filing for interventions, comments, and protests. This method of processing the FERC Form No. 501–G does not convert the form into an NGA section 4 filing, nor do the results of FERC Form No. 501–G constitute a finding that the filer's rates are no longer just and reasonable or establish new just and reasonable rates pursuant to NGA section 5.

85. Contrary to some commenters' concerns, there is no NGA-required relationship between the assignment of a particular docket prefix and a particular provision of the statute. Docketing is a Commission administrative tool used to control workflow. Under NGA section 16, the Commission has the general statutory authority ''to perform any and all acts, and to prescribe, issue, make, amend and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this act.'' [110] Docketing FERC Form No. 501–G filings is an administrative function which creates no presumption that the filing is pursuant to NGA sections 4 or 5.

86. The commenters also argue that the proposed notice and opportunity for others to comment on the FERC Form No. 501–G filings is without precedent, and converts the filing of a financial report into a de facto NGA section 4 or 5 proceeding.

87. The proposed FERC Form No. 501–G, together with any comments and protests, is intended to assist the Commission in determining whether to initiate an investigation under NGA section 5 as to whether the subject jurisdictional natural gas pipeline may be collecting unjust and unreasonable rates in light of the recent reduction in the corporate income tax rate and change in the Commission's income tax allowance policies. Thus, the filing of the FERC Form No. 501–G does not itself initiate an NGA section 5 investigation, but rather gives all parties an opportunity to advise the Commission on whether it should initiate such an investigation.

88. The pipeline's filing of the FERC Form No. 501–G, together with any Addendum proposing adjustments to reflect updated information, gives the pipeline an opportunity to explain why no further investigation is needed. Noticing the pipeline's filing for comment and protest allows other interested parties to state their views as to whether an investigation is needed. As the commenters have noted, the Commission cannot simply require a pipeline to reduce its rates consistent with a known reduction in a single cost component of a cost-based rate. The Commission must look at other factors, including whether the pipeline is over recovering its overall cost of service and the applicability of any settlement rate moratorium. These other factors are not limited to those of interest to pipelines. Shippers and customers pay these cost-based rates and, for some pipelines, are parties to rate settlements. These parties also have an interest in whether the currently effective rates are no longer just and reasonable. The Commission believes allowing the parties to file comments will create a more complete record. That record will permit the Commission to better evaluate the pipelines' FERC Form No. 501–G filings and any additional statements or material that pipelines may file in determining whether to exercise its discretion to initiate an investigation of the pipeline's rates under NGA section 5.

89. If the Commission does decide to initiate an NGA section 5 investigation, it will issue an order establishing a proceeding for that purpose, similar to prior orders establishing NGA section 5 investigations of natural gas pipeline rates.[111] Thus, the Commission will require the pipeline to submit a cost and revenue study based on cost and revenue information for the latest 12-month period available. That cost and revenue study, not the FERC Form No. 501–G based on 2017 FERC Form No. 2 or 2–A data, will provide the evidentiary starting point for the actual NGA section 5 rate investigation. In short, the FERC Form No. 501–G, together with comments and protests thereto, will assist the Commission in evaluating whether to initiate a section 5 investigation, but will not be the record basis for any actual order requiring the pipeline to modify its rates pursuant to NGA section 5. A subsequent hearing ordered by the Commission will be necessary to develop the record on which any NGA section 5 action would be taken. The Commission agrees with the parties that such determinations must be performed on a pipeline-by-pipeline basis.

90. The second purpose of the FERC Form No. 501–G, together with any adjustments the pipeline may propose, is to serve as the evidentiary support for any limited NGA section 4 filing the pipeline may propose pursuant to this rule to reduce its rates to reflect the reduced income taxes under the Tax Cuts and Jobs Act and/or the *United Airlines* Issuances. As proposed by the NOPR, the Commission will assign a separate docket number to any such limited NGA section 4 filing,[112] and thus the limited NGA section 4 filing, and any protests thereto, will be considered in a separate proceeding from the docket established for the FERC Form No. 501–G itself.

91. Therefore, the proposed process adopted here, contrary to the concerns of these commenters, is not a requirement for the pipelines to file an NGA section 4 rate case, nor are the results from FERC Form No. 501–G a finding that the current rate is not just and reasonable or the specification of a new just and reasonable rate pursuant to NGA section 5. However, the process the Commission is adopting is intended to help identify which pipelines deserve closer attention.

92. Some commenters believe that permitting parties to comment on

[109] The Commission established eTariff Type of Filing Code (ToFC) 1430 for FERC Form No. 501–G filings.

[110] Such broad grants of authority have been held ''not restricted to procedural minutiae, and [to] . . . authorize means of regulation not spelled out in detail, provided the agency's action conforms with the purposes and policies of Congress and does not contravene any terms of the Act.'' *Mesa Petroleum Co.* v. *F.P.C.,* 441 F.2d 182, 187 (5th Cir. 1971) (citing *Niagara Mohawk Power Corp.* v. *F.P.C.,* 379 F.2d 158). *See also Public Service Comm'n of State of N.Y.* v. *F.P.C.,* 327 F.2d 893, 897 (D.C. Cir. 1964). (NGA Section 16 provides a basis for the Commission to cope with unforeseen problems, and is not confined to procedural regulations, but is a broad grant of authority).

[111] *See* cases cited *supra* note 22.

[112] *See* NOPR, FERC Stats. & Regs. ¶ 32,725 at P 64 (establishing an eTariff ToFC 1440 for the limited NGA section 4 filings, separate from the ToFC for the FERC Form No. 501–G filings). These different filing codes will produce separate root docket numbers for the two types of filing.

pipelines' FERC Form No. 501–G reports may be duplicative. Notwithstanding this possibility, we believe there is value in providing interested parties an opportunity to comment on a pipeline's FERC Form No. 501–G report, even if they might raise similar arguments later, should the Commission decide to initiate additional proceedings.

4. Rights of Intervenors

93. In the NOPR, the Commission stated:

> The Commission will assign each pipeline's filing of the FERC Form No. 501–G an RP docket number and notice the filing providing for interventions and protests. Based on the information in that form, together with any statement filed with the form and comments by intervenors, the Commission will consider whether to initiate an investigation under NGA section 5 of those pipelines that have not filed a limited NGA section 4 rate reduction filing or committed to file a general NGA section 4 rate case.[113]

a. Comments

94. In addition to the comments discussed above, LDC Coalition raises several questions about the role of parties intervening in One-time Report dockets. In particular, in the event that a party has questions or concerns about a given One-time Report, LDC Coalition asks:

> Will Commission Staff have access to the deficiency notice process?
>
> Does the Commission contemplate setting One-time Report proceedings for technical conference, hearing, and/or settlement judge proceedings?
>
> Will parties have the ability to seek discovery from the pipeline on its FERC Form No. 501–G inputs and calculations even before the Commission sets a One-time Report for technical conference, hearing, or settlement judge procedures?
>
> Will the Commission issue an Order in response to each FERC Form No. 501–G filing either closing out the proceeding or continuing the review in that or another docket?
>
> If the Commission intends to issue an order in each docket, will it state an expected timeline for doing so to provide customers certainty about the process?
>
> What actions will the Commission take if a pipeline does not submit an NGA section 4 filing or pre-filing settlement by the proposed deadline of December 31, 2018?
>
> What options do the Commission and pipeline customers have if a pipeline fails to timely submit a FERC Form No. 501–G or does not strictly follow Commission guidance in completing a submitted form?[114]

[113] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 29.

[114] LDC Coalition Comments at 12.

b. Discussion

95. We clarify that Subpart B of the Commission's Rules of Practice and Procedure[115] does not apply to the various reports required by Part 260 of the Commission's regulations. Rule 201 provides that Subpart B of the Rules of Practice and Procedure apply ''to any pleading, tariff or rate filing, notice of tariff or rate examination, order to show cause, intervention, or summary disposition;''[116] Part 260 reports fall into none of those categories. Therefore, the Commission clarifies the procedures to be used in noticing pipelines' filings of the FERC Form No. 501–G for intervention, protest, and comment, as well as addressing LDC Coalition's other procedural questions.

96. First, the Commission is revising the *Implementation Guide* for the FERC Form No. 501–G to provide that the Secretary will issue a notice of each pipeline's filing of its FERC Form No. 501–G, consistent with § 385.210 of the Commission's Rules of Practice and Procedure.[117] Unless the notice provides otherwise, interventions, protests, and comments will be due not later than 12 days after the filing of the subject FERC Form No. 501–G. This will mean that such interventions, protests, and comments will be due on the same day as interventions, protests, and comments are due on any limited NGA section 4 filing accompanying the FERC Form No. 501–G, as provided by § 154.210 of the Commission's Rules of Practice and Procedure. As revised, the *Implementation Guide* also states that interventions will be governed by § 385.214 of the Commission's Rules of Practice and Procedure,[118] and protests will be governed by § 385.211.[119]

97. Proceeding to LDC Coalition's list of questions, we clarify that Commission staff may issue data requests to pipelines if it identifies problems with their FERC Form No. 501–G.[120] However, the Commission will not set One-time Report proceedings for technical conference, hearing, and/or settlement judge proceedings, nor will it allow discovery; such actions would only be appropriate in the context of an NGA section 4 or 5 rate proceeding. The purpose of publicly docketing the One-time Reports is not to conduct a rate proceeding, but rather to allow for public discussion of whether the Commission should exercise its discretion to initiate an NGA section 5 investigation of the subject pipeline's existing rates because of the Tax Cuts and Jobs Act's reduction in income taxes or the *United Airlines* Issuances.

[115] 18 CFR part 385.

[116] 18 CFR 385.201.

[117] 18 CFR 385.210.

[118] 18 CFR 385.214.

[119] 18 CFR 385.211.

[120] *See* 18 CFR 375.307(b)(3)(ii) (delegating to the Office of Energy Market Regulation the authority to ''Issue and sign requests for additional information regarding applications, filings, reports and data processed by the Office of Energy Market Regulation.'').

98. If the Commission decides to initiate a section 5 investigation, it will, as described above, issue an order establishing a hearing under NGA section 5. If the Commission determines that the information in a pipeline's FERC Form No. 501–G does not justify initiating such an NGA section 5 proceeding, the Commission will issue a notice accepting the pipeline's One-time Report. That notice shall close the One-time Report proceeding. But the act of acceptance shall only constitute assurance that the Commission accepts the report, and does not constitute a statement or action on the pipeline's rates, nor does it foreclose the Commission from initiating a future NGA section 5 investigation based upon new information such as the pipeline's future FERC Form No. 2 or 2–A reports or for other reasons. The Commission will not establish a formal deadline for acting on each One-time Report, but will act as promptly as possible on all filings in order to promote rate certainty for pipelines and customers.

99. If a pipeline refuses to promptly submit a One-time Report, or to correct a patently erroneous or incomplete One-time Report, the Commission could consider the pipeline to be in violation of its reporting obligation.[121] Likewise, if a pipeline commits to submit an NGA section 4 filing or pre-filing settlement by the proposed deadline of December 31, 2018, but fails to do so, the Commission could consider the pipeline to be in violation of its reporting obligation.

5. Use of 10.55 Percent Indicative Return on Equity

100. A cost and revenue study requires an indicative return on equity (ROE). In the proposed FERC Form No. 501–G, the Commission used, consistent with Commission practice, the last litigated ROE applicable to situations involving existing plant.[122] The last litigated ROE was in *El Paso,* wherein the Commission adopted a ROE of 10.55 percent.[123]

[121] 15 U.S.C. 717t.

[122] *See, e.g., Southern Natural Gas Co. L.L.C.,* 139 FERC ¶ 61,237, at P 154 (2012); *Alliance Pipeline L.P.,* 140 FERC ¶ 61,212, at P 20 (2012); *Northern Natural Gas Co.,* 119 FERC ¶ 61,035, at P 37 (2007).

[123] *El Paso Natural Gas Co.,* Opinion No. 528, 145 FERC ¶ 61,040, at P 642 (2013), *reh'g denied,*

a. Comments

101. The Pipeline Commenters[124] argue that use of an indicative ROE of 10.55 percent in the FERC Form No. 501–G is arbitrary and capricious. They note that the *El Paso* ROE is based on test period data that is now about seven years old, that the Commission has not shown that the financial data underlying that proceeding is currently representative for any pipeline, let alone for all pipelines, and the indicative ROE is artificially low. Further, they contend that *El Paso* is not final as it has not been reviewed by the Court of Appeals. Citing previous Commission NGA section 5 show cause proceedings, Kinder Morgan argues that the Commission has not previously required pipelines to propose a ROE. The Pipeline Commenters request that the Commission clarify that the 10.55 percent ROE is to be used only for the purposes of completing FERC Form No. 501–G, and is not an indicative ROE or reflective of the ROE that would be determined in a general rate case proceeding. Dominion Energy, Spectra and Tallgrass request that pipelines be permitted to use their own ROEs.

102. Enable Interstate Pipelines argue that the Commission should permit ROEs derived during a rate proceeding or established pursuant to approved settlements that were used to set their current rates, or rely upon the methodology used to set such ROEs. Enable Interstate Pipelines also argue that if pass-through entities are not permitted to report an income tax allowance on the FERC Form No. 501–G, the Commission must increase the allowable ROE for such pipelines to allow them to report a higher ROE than corporate pipelines on the form. Alternatively, Enable Interstate Pipelines argue that the Commission should adjust the ROE upwards by eliminating the reduction in long-term growth rates for MLP pipelines.

b. Discussion

103. The Commission adopts the NOPR's proposal to require that each pipeline's FERC Form No. 501–G be completed using an indicative ROE of 10.55 percent, consistent with the ROE determined in *El Paso,* the last rate case where that issue was fully litigated. The One-time Report is an informational filing required pursuant to NGA sections 10 and 14 that serves two purposes: (1) To help determine whether to initiate NGA section 5 investigations of interstate natural gas pipelines' rates and (2) to support any limited NGA section 4 filings pipelines may choose to make to reduce their rates to reflect the Tax Cuts and Jobs Act or the *United Airlines* Issuances.

104. When used for the first purpose, the FERC Form No. 501–G is intended to provide a rough estimate of the pipeline's return on equity before and after the Tax Cuts and Jobs Act or the *United Airlines* Issuances. The data in the FERC Form No. 501–G, including the indicative ROE, will not be used to actually establish rates in any NGA section 5 investigation that the Commission may initiate. Rather, any rates determined in an NGA section 5 investigation, including ROE, will be based on the record developed in any hearing established by the Commission, and in such a hearing, the Commission will have the burden of persuasion under NGA section 5 on all issues, including ROE.

105. In addition, although the Commission recognizes that the 10.55 percent ROE determined in *El Paso* was based on financial data from 2011, no commenter has provided any updated ROE analysis using current financial data that the Commission could use in the FERC Form No. 501–G in place of the *El Paso* ROE. There is thus nothing in the comments to show that an updated ROE analysis would produce a significantly different ROE than that approved in *El Paso.* Instead, pipeline commenters request that they be permitted to use their own ROEs or ROEs derived in a rate proceeding or established pursuant to approved settlements. However, the last rate cases of many pipelines occurred as long ago as, or even before, the *El Paso* rate case. Moreover, many settlements are ''black box'' settlements that do not have a ROE. In these circumstances, the Commission finds that using the *El Paso* 10.55 percent ROE as the indicative ROE in all pipelines' FERC Form No. 501–G is preferable to pipelines using a variety of ROEs, which they claim represent their currently approved ROEs, but which in almost all cases were not fully litigated, in contrast to the *El Paso* ROE, and may be as old or older than the 10.55 percent *El Paso* ROE. However, if a pipeline believes that the 10.55 percent *El Paso* ROE does not represent a reasonable ROE for its system in light of its current circumstances, the pipeline may file an alternative ROE, together with support for that ROE as described below, as part of its Addendum to the required FERC Form No. 501–G.

106. The FERC Form No. 501–G does serve a ratemaking purpose in the narrow situation when it is used as support for the limited NGA section 4 filing this Final Rule authorizes a pipeline to voluntarily make to reduce its rates to reflect the Tax Cuts and Jobs Act or the *United Airlines* Issuances. Our requirement that pipelines use the *El Paso* 10.55 percent ROE in filling out the FERC Form No. 501–G does not mean that they must use that ROE in a limited section 4 filing. As just described, the pipeline may submit an Addendum with its FERC Form No. 501–G setting forth an alternative ROE and use that ROE in calculating its proposed percentage rate reduction in its limited NGA section 4 rate filing. When a pipeline proposes such an alternative ROE in a limited section 4 rate filing, the Commission would expect the pipeline to provide full support for its proposed ROE, including a Discounted Cash Flow (DCF) analysis of a proxy group consistent with Commission policy. Such support is not necessary if the pipeline proposes to reduce its rates by a percentage calculated consistent with the FERC Form No. 501–G, without any Addendum.

6. Use of Stated Capital Structure

107. In the NOPR, the Commission stated that the established policy in rate cases is that a company may use its actual capital structure only if it ''(1) issues its own debt without guarantees, (2) has its own bond rating, and (3) has a capital structure within the range of capital structures approved by the Commission.'' [125] Where these requirements are not met, the Commission will use the consolidated capital structure of the parent company or a hypothetical capital structure. The NOPR proposed that the One-time Report would follow this policy:

> The proposed form requests the respondent's FERC Form Nos. 2 or 2–A equity related balance sheet items. However, if that data does not satisfy the three-part test of Opinion No. 414, *et al.,* the form provides alternative data entries to reflect parent or hypothetical capital structures consistent with Opinion No. 414, *et al.*[126]

108. If neither the pipeline's own capital structure nor its parent's capital structure satisfies the Commission's policy, the proposed FERC Form No.

Opinion No. 528–A, 154 FERC ¶ 61,120 (2016) (*El Paso*).

[124] INGAA, Southern Star, Boardwalk, Dominion Energy, Williams, Tallgrass Pipelines, TransCanada, Enable Interstate Pipelines, Kinder Morgan, and Spectra.

[125] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 35 (citing *Transcontinental Gas Pipe Line Corp.,* Opinion No. 414–A, 84 FERC ¶ 61,084, at 61,413–61,415, *reh'g denied,* Opinion No. 414–B, 85 FERC ¶ 61,323 (1998), *petition for review denied sub nom. N.C. Utils. Comm'n* v. *FERC,* D.C. Cir. Case No. 99–1037 (Feb. 7, 2000) (per curiam)).

[126] *Id.* P 35.

501–G requires use of a 50 percent equity, 50 percent debt capital structure, with an implied debt rate of five percent.

a. Comments

109. Several pipeline commenters argue that pipelines should be permitted to use their capital structure as reported on the FERC Form No. 2 or 2–A, even if that capital structure does not comply with the Opinion No. 414, *et al.,* policy.[127] Boardwalk and INGAA argue that using a hypothetical capital structure attempts to shift to the pipeline the burden of justifying its own capital structure.[128] Boardwalk argues that requiring different data on the FERC Form No. 501–G than on the FERC Form No. 2 ''impermissibly blurs the distinction between NGA sections 4 and 5.'' [129] They also argue that the hypothetical capital structure that FERC Form No. 501–G requires when neither the pipeline's nor its parent's capital structure satisfies Commission policy is financially unrealistic, and that companies that attempt to actually implement them would harm their credit rating and financial viability. Enable Interstate Pipelines argue that the NOPR proposes only three possible choices of capital structure, but that ratemaking precedent allows other possibilities, such as using an intermediate subsidiary's structure. Enable Interstate Pipelines also argue that the FERC Form No. 501–G default 50/50 debt/equity ratio is inconsistent with ratemaking precedent concerning hypothetical capital structures, which they state uses the average capitalization of a proxy group to develop a hypothetical capital structure.[130]

110. Kinder Morgan notes that page 4 of the proposed FERC Form No. 501–G asks the respondent, ''does the Capital Structure and the Long-Term Debt from the cited source meet the requirements of Opinion No. 414, et al.?'' Kinder Morgan argues that this question impermissibly goes beyond a request for information, and instead would compel the respondent to provide a legal opinion. Kinder Morgan argues sections 10(a) and 14(a) of the NGA do not permit the Commission to solicit legal positions of a pipeline rather than information.[131] Kinder Morgan notes that the Commission has not asked this question or similar questions in its recent NGA section 5 show cause orders. Kinder Morgan argues that it is especially inconsistent to compel a respondent to take a legal position given that page 4 of the proposed FERC Form No. 501–G also compels certain respondents to report a hypothetical 50/50 debt/equity capital structure rather than choosing other lawful options, potentially prejudicing the pipeline in the limited section 4 filing under Option 1.

b. Discussion

111. We generally adopt the NOPR proposal regarding how capital structure must be reported on FERC Form No. 501–G, but make several changes to address concerns raised by the commenters. As discussed above, the One-time Report is an informational filing required pursuant to NGA sections 10 and 14 that serves two purposes: (1) To help determine whether to initiate NGA section 5 investigations of interstate natural gas pipelines' rates and (2) as support for limited NGA section 4 filings pipelines may choose to make to reduce their rates to reflect the Tax Cuts and Jobs Act or the *United Airlines* Issuances. When used for the first purpose, the FERC Form No. 501–G is intended to provide a rough estimate of the pipeline's return on equity before and after the Tax Cuts and Jobs Act or the *United Airlines* Issuances. Such an estimate will be one factor the Commission will refer to in deciding whether to exercise its discretion to initiate an NGA section 5 rate investigation. For that purpose, the Commission desires to design the form in a manner that will produce an estimated return on equity that is as accurate as possible. Therefore, the Commission seeks to use a capital structure that is consistent with Commission policy. For that reason, the Commission finds it appropriate for the FERC Form No. 501–G to use a different capital structure than that used in the pipeline's FERC Form No. 2 or 2–A, when it appears that the capital structure reported in the FERC Form No. 2 or 2–A does not comply with Commission policy.[132] Thus, as described below, the form will ask a series of factual questions, designed to result in a capital structure consistent with Commission policy. However, the form will not be used to actually establish rates in any NGA section 5 investigation that the Commission may initiate. Rather, any rates determined in a section 5 investigation, including the capital structure, will be based on the record developed in the hearing.

112. The Commission has used a similar approach to capital structure in its analysis of FERC Form No. 2 or 2–A data in recent years for purposes of deciding whether to initiate NGA section 5 rate investigations. Thus, when a pipeline has reported a capital structure in its FERC Form No. 2 or 2–A that appeared not to comply with the Commission's capital structure policy, the Commission has used a hypothetical capital structure to determine the return on equity shown by the pipeline's FERC Form No. 2 or 2–A cost and revenue data. For example, in its 2011 order establishing a hearing under NGA section 5 concerning the rates of Bear Creek Storage Company, L.L.C. (Bear Creek), the Commission stated that, because Bear Creek had used a 100 percent equity capital structure in its FERC Form No. 2, the Commission had used a hypothetical capital structure to estimate that Bear Creek's return on equity using Bear Creek's FERC Form No. 2 cost and revenue information was over 20 percent. However, the Commission was careful to state in its hearing order that ''in this order, we make no finding as to what should constitute a just and reasonable capital structure for Bear Creek. That is among the issues set for hearing in this order and should be decided consistent with the Commission capital structure policies.'' [133] The Commission intends to take a similar approach with respect to any NGA section 5 rate investigations it initiates based on the return on equity estimated in the FERC Form No. 501–G. The hearing order will make no finding as to what would constitute a just and reasonable capital structure for the pipeline in question, regardless of what

[127] Boardwalk Comments at 27–29; Enable Interstate Pipelines Comments at 22; INGAA Comments at 36–38; Kinder Morgan Comments at 23–26.

[128] Boardwalk Comments at 28; INGAA Comments at 36.

[129] Boardwalk Comments at 29.

[130] Enable Interstate Pipelines Comments at 24.

[131] Kinder Morgan Comments at 24.

[132] INGAA argues that, in order to use a different capital structure than that used in the FERC Form No. 2 or 2–A, ''the Commission must first show that the pipeline's submitted data is not just and reasonable.'' INGAA Comments at 28. However, data cannot be just or unjust, which is why NGA section 10 instead speaks of ''specific answers,'' ''full information,'' and ''adequate provision.'' The Commission is not modifying any rates pursuant to NGA section 5 in the FERC Form No. 501–G, but simply seeking to estimate the pipeline's current return on equity for purposes of deciding whether to initiate a rate investigation pursuant to NGA section 5.

[133] *Bear Creek Storage Co., L.L.C.,* 137 FERC ¶ 61,134, at P 8 n.6 (2011). *See also Dominion Energy Overthrust Pipeline, LLC,* 162 FERC ¶ 61,218, at Appendix, n.1 & 2 (2018); *Midwestern Gas Transmission Co.,* 162 FERC ¶ 61,219, at Appendix, n.1 & 2 (2018); *Natural Gas Pipeline Co. of America LLC,* 158 FERC ¶ 61,044, at Appendix, n.1 & 2 (2017); *Wyoming Interstate Co., L.L.C.,* 158 FERC ¶ 61,040, at Appendix, n.1 & 2 (2017); *Tuscarora Gas Transmission Co.,* 154 FERC ¶ 61,030, at Appendix, n.1 & 2 (2016); *MIGC LLC,* 137 FERC ¶ 61,135, at Appendix, n.3 (2011); *ANR Storage Co.,* 137 FERC ¶ 61,136, at Appendix, n.2 (2011).

type capital structure was required to be used in the FERC Form No. 501–G. The capital structure issue will be included in the hearing, and the Commission will have the burden of persuasion under NGA section 5 to support any rate reduction, including any capital structure used to support the rate reduction.

113. The Commission recognizes that when the FERC Form No. 501–G is used for its second purpose—as support for the percentage rate reduction proposed in a pipeline's limited NGA section 4 rate case filing—the FERC Form No. 501–G does serve a ratemaking purpose. However, as discussed above, pipelines are permitted to submit an Addendum to their FERC Form No. 501–G if they believe that the form inaccurately represents their financial situation. A pipeline may propose to use the percentage cost of service reduction calculated in its Addendum in its limited NGA section 4 rate filing. Thus, a pipeline may propose to use a capital structure other than that used in its FERC Form No. 501–G in its limited NGA section 4 rate filing. For example, Boardwalk provides comments on its specific financial situation; although this information is not relevant to developing a form for the entire natural gas pipeline industry, it may prove relevant in evaluating whether further procedures will be necessary to address the consequences of the Tax Cuts and Jobs Act for Boardwalk's pipelines, and we encourage Boardwalk to include such information when it submits its One-time Reports.

114. The Commission is making two changes to the treatment of capital structure in the FERC Form No. 501–G, as proposed in the NOPR. First, the Commission has modified page 4 of the proposed FERC Form No. 501–G in response to Kinder Morgan's concerns that, as proposed, the form requires the pipelines to state an opinion as to whether the capital structure reported in their FERC Form No. 2 or 2–A complies with the Commission's capital structure policies. Although the Commission does not concede the point that it lacks the authority under NGA section 10 or 14 to compel a pipeline to state whether it complies with an established policy, we recognize that such a requirement is unnecessary in order to achieve the goals of this rulemaking. Instead of asking the respondent its position with regard to whether its capital structure complies with Opinion No. 414–A, the form now includes a statement explaining how the Commission will use the respondent's data to perform our own Opinion No. 414–A analysis. Page 4 of the proposed FERC Form No. 501–G now asks respondents a series of factual questions about its actual capital structure. The form will automatically select from the data provided to show the Commission's default presumed capital structure under its Opinion No. 414–A analysis, but will not require the respondent to apply the Commission's position as if it was the pipeline's.

115. Second, as requested by Enable Interstate Pipelines, the Commission will modify the hypothetical capital structure used in the FERC Form No. 501–G, for those pipelines which the form considers ineligible to use their own or their parent's capital structure. As Enable Interstate Pipelines point out, in an NGA section 4 rate case in *HIOS* the Commission adopted a policy of basing a hypothetical capital structure on the average capital structure of the companies in the proxy group used for purposes of determining ROE. The Commission explained that ''this assures a match between the financial risk inherent in the DCF analysis used to develop return on equity and the hypothetical capital structure.'' [134] The FERC Form No. 501–G uses the 10.55 percent ROE determined in *El Paso.* The average capital structure of the proxy group in that rate case was approximately 57 percent equity and 43 percent debt.[135] Accordingly, the Commission is revising the FERC Form No. 501–G to use a hypothetical capital structure of 57 percent equity and 43 percent debt. This revision should also help address Boardwalk's concern that the 50 percent equity/50 percent debt capital structure in the proposed FERC Form No. 501–G is financially unrealistic in today's market conditions.

7. Accumulated Deferred Income Taxes

116. Accumulated Deferred Income Taxes (ADIT) balances are accumulated on the regulated books and records of interstate natural gas pipelines based on the requirements of the Commission's Uniform System of Accounts.[136] ADIT balances arise from differences between the method of computing taxable income for reporting to the IRS and the method of computing income for regulatory accounting purposes. The Commission's regulatory accounting requirements then serve to inform the development of a natural gas pipeline's rates, including the depreciation and ADIT ratemaking components. The most significant cause for differences between regulatory accounting and tax income is the use of straight-line depreciation rates for accounting and ratemaking purposes and the use of accelerated depreciation rates for federal income tax reporting purposes. As such, depreciation expense is higher for tax reporting purposes than that calculated for accounting and ratemaking purposes, resulting in higher taxes computed for accounting and ratemaking purposes than the taxes actually owed to the IRS authorities, in the early years of the property's service life. This creates an ADIT liability. In later years, depreciation expense is lower for tax reporting purposes than that calculated for accounting and ratemaking purposes, resulting in lower taxes computed for accounting and ratemaking purposes than the taxes actually owed to the IRS and reductions to the ADIT liability. Ultimately, at the end of the property's service life, the cumulative depreciation under either method are equal and the ADIT liability will be reduced to zero.

117. ADIT generally impacts regulated natural gas pipelines' ratemaking either by decreasing rate base, in the case of an ADIT liability, or increasing rate base, in the case of an ADIT asset. As a result of the reduction in the federal corporate income tax rate, taxes which have been previously deferred and reflected in ADIT will be owed to the IRS based on the 21 percent tax rate, rather than the 35 percent tax rate used to recognize the ADIT initially. The difference between the already recognized ADIT based on a 35 percent tax rate and the recomputed deferred taxes, which will actually be owed to the IRS, at a 21 percent tax rate requires an adjustment to ADIT balances for the excess or deficiency. Notwithstanding potential future Commission action in the ADIT NOI on how to treat excess ADIT or deficiency ADIT, these balances and the associated amortization are essential in appropriately computing a total cost of service.

118. As discussed, the Commission is implementing in this Final Rule FERC Form No. 501–G as a basis for determining whether a natural gas pipeline may be over-recovering its cost of service, and thus whether there should be further investigation pursuant to NGA section 5. FERC Form No. 501–G is designed to collect financial

[134] *High Island Offshore System, L.L.C.,* 110 FERC ¶ 61,043, at P 147 (2005).

[135] The Commission notes that this capital structure is also consistent with the capital structures the Commission typically approves in litigated rate cases for pipelines that do issue their own publically traded debt. *Transok, Inc.,* 70 FERC ¶ 61,177, at 61,554 (1995) (58.49 percent equity ratio); *Panhandle Eastern Pipe Line Co.,* Opinion No. 395, 71 FERC ¶ 61,228, at 61,827 (1996) (61.79 percent equity ratio); *Panhandle Eastern Pipe Line Co.,* Opinion No. 404, 74 FERC ¶ 61,109, at 61,359 (1996) (59.97 percent equity ratio); *Transcontinental Gas Pipe Line Corp.,* Opinion No. 414–A, 84 FERC ¶ 61,084, at 61,419 (1998) (57.58 percent equity ratio).

[136] 18 CFR part 201.

information to evaluate the impact of the Tax Cuts and Jobs Act and the *United Airlines* Issuances on the pipeline's cost of service, and to inform stakeholders, the Commission, and all interested parties regarding the continued justness and reasonableness of the pipeline's rates after the income tax reduction and elimination of MLP pipeline income tax allowances.[137]

119. As proposed, the FERC Form No. 501–G would require pipelines to use calendar year 2017 ADIT balances as reported in their 2017 FERC Form Nos. 2 and 2–A in calculating rate base.[138] The FERC Form No. 501–G would also require the pipelines to reduce their income tax allowance by an amount reflecting the first year's amortization of excess ADIT resulting the reduced income tax rates under the Tax Cuts and Jobs Act.[139]

a. Comments

120. Several commenters filed similar comments on this issue.[140] They are concerned that FERC Form No. 501–G's proposed treatment of ADIT and related amortization of excess ADIT is inextricably linked with the Commission's Notice of Inquiry on the effect of the Tax Cuts and Jobs Act on Commission jurisdictional rates.[141] These commenters insist that resolution of the requested areas of comment in the ADIT NOI on a number of issues regarding the details and effect of the appropriate treatment of ADIT as a result of the lower tax rates in the Tax Cuts and Jobs Act may impact the excess ADIT amounts that are entered in FERC Form No. 501–G, which will be filed with the Commission prior to any ADIT NOI resolution. According to these commenters, excess ADIT amounts are entered on Lines 13–17 on Page 2 of FERC Form No. 501–G for purposes of calculating rate base, and that results in the annual amortization figure entered in Line 31 on page 1 of the Form for purposes of calculating the tax allowance. These commenters note that the ADIT NOI seeks comments concerning potential adjustments to pipelines' rate base relating to, and amortization of, excess or deficient ADIT; whether and how excess or deficient ADIT should be reflected in pipelines' rates; and the treatment of excess ADIT associated with assets that pipelines sell or retire after the effective date of the Tax Cuts and Jobs Act. Without this guidance, they argue, pipelines will likely make individual judgments about the treatment of their ADIT balances, which will ultimately result in different inputs into their FERC Form No. 501–G from the final resolution. Thus, these commenters argue that the information would be highly varied and not comparable, which would hinder the Commission in evaluating pipelines' rates. With the lack of clarity for these outstanding issues, these commenters contend that it will be nearly impossible to choose from among the four options available. The commenters are concerned that the proposed information in FERC Form No. 501–G and related amortization in the indicative rate reduction will prejudge the outcome of the ADIT NOI rulemaking. These commenters insist that, as required by the Administrative Procedure Act, these issues should be addressed through adequate notice and comment procedures. In addition to the uncertainty originating from the resolution in the ADIT NOI, Berkshire Hathaway notes that the Commission is not the only regulatory agency evaluating the impact of the Tax Cuts and Jobs Act. Berkshire Hathaway further notes that both the Securities Exchange Commission (SEC) and the Financial Accounting Standards Board must set standards for financial reporting that address the reduction in the federal corporate income tax rate. Thus, Berkshire Hathaway states that although it has recorded the impacts of the Tax Cuts and Jobs Act in its FERC Form No. 2, it considers the amounts recorded, and the interpretations related to the financial reporting of bonus depreciation and regulatory liability amortization, to be provisional and subject to changes during the measurement period. Therefore, the commenters urge that the Commission consider the final resolution in the ADIT NOI proceeding before requiring the pipelines to file their FERC Form No. 501–G.

121. The Oklahoma AG believes that the NOPR does not include the effects of excess ADIT on the revenue requirements of interstate natural gas pipelines and does not agree with this approach. Instead, the Oklahoma AG believes that the most effective and efficient means for resolving excess ADIT for interstate natural gas pipelines would be to include the amortization of excess ADIT in the FERC Form No. 501–G rather than awaiting conclusion of the open-ended ADIT NOI process.

122. Enable Interstate Pipelines, Spectra, and National Fuel argue that establishing a generic policy regarding the treatment of ADIT ignores the complexity of the issue. They argue that the level of ADIT attributed to an entity depends on where (among other things) that entity's assets are in their depreciable lives (for tax purposes and for ratemaking purposes), what transactions the entity has engaged in in the past, what assets have been fully depreciated, and differences in timing between book depreciation and tax depreciation. National Fuel notes that because its fiscal year is not on a calendar year basis, the applicable federal tax rate for fiscal year 2018 will be a composite tax rate, not the 21 percent specified in FERC Form No. 501–G. National Fuel insists that requiring pipelines with non-calendar year bases to utilize a 21 percent federal tax rate will yield incorrect and invalid results. National Fuel notes that the Commission has approved differing rate treatments in its rate cases. Because of expected differences from the FERC Form No. 501–G assumptions, National Fuel requests that the Commission modify the form to allow flexibility in regards to the form's inputs in order to ensure a calculation of valid results.

123. Spectra argues that FERC Form No. 501–G has erroneous built-in features that reduce rate base by the total regulatory liability reported on page 278 of the 2017 FERC Form No. 2. Spectra states that for many pipelines, a substantial portion of that regulatory liability is related to deferred income taxes. Also, Spectra states that FERC Form No. 501–G requires a pipeline to reduce its cost of service by the annual amortization of the excess ADIT regulatory liability. According to Spectra, this reduces rates twice for the same regulatory liability.

124. LDC Coalition notes that pipelines will have adjusted their ADIT balances to reflect the change in the federal corporate income tax rate by the time they make their FERC Form No. 501–G filing. LDC Coalition speculates that pipelines may use several alternatives to recalculate ADIT and then account for the excess ADIT. LDC Coalition states that although the pipeline may simply be transferring a previously booked item from its FERC Form No. 2 to the FERC Form No. 501–G, the Commission and customers reviewing the pipeline filing will have

[137] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 26.

[138] *See* proposed FERC Form No. 501–G, page 2, lines 13–17. All references to FERC Form No. 501–G line numbers in this Final Rule are to the proposed form as contained in the NOPR. Certain line numbers have been modified in the final version of the form as discussed below.

[139] *See* proposed FERC Form No. 501–G, page 1, line 31.

[140] INGAA Comments at 22; Boardwalk Comments at 13–15; Spectra Comments at 7, 22; Kinder Morgan Comments at 28; National Fuel Comments at 4–6; Dominion Energy Comments at 3–4; EQT Midstream Comments at 8; Tallgrass Pipelines Comments at 7–8; Williams Comments at 9; Berkshire Hathaway Comments at 5; Southern Star Comments at 9.

[141] ADIT NOI, 162 FERC ¶ 61,223.

no transparency in how an adjustment potentially involving many millions of dollars was calculated. To obtain better transparency, LDC Coalition requests that the Commission require pipelines to file an accompanying spreadsheet that provides how they recalculated ADIT and excess ADIT balances. In addition, LDC Coalition requests that the Commission include within the scope of hearing issues whether a pipeline has properly calculated ADIT for purposes of its FERC Form No. 501–G and concurrent limited NGA section 4 rate reduction filing pursuant to proposed § 154.404. AGA and APGA also believe that ratepayers should be allowed to comment on a pipeline's proposed treatment of ADIT.

125. Commenters also raise concerns regarding the uncertainty surrounding the rate treatment of ADIT for those MLP pipelines or other pass-through entities that eliminate an income tax allowance pursuant to the *United Airlines* Issuances. For instance, Boardwalk argues that the uncertainty surrounding how to handle ADIT is particularly problematic for MLP pipelines that own pipelines that are no longer permitted an income tax allowance in their rates under the Revised Policy Statement but still have large ADIT balances on their FERC books.[142]

126. Spectra further argues that the proposed FERC Form No. 501–G treats certain entities as though they will not be permitted an income tax allowance going forward, but requires those same entities to carry-over historic ADIT-related balances and costs inputs. Spectra asserts that if there is no income tax liability, there should be no ADIT and associated adjustments. Accordingly, Spectra contends that FERC Form No. 501–G inappropriately requires such entities to reduce rate base by the amount of ADIT and reduce the total cost of service by the amortization of the excess ADIT Regulatory Liability balance. Spectra claims that, in the absence of an income tax allowance, ADIT is being used to provide a refund and violates precedent against retroactive ratemaking. Accordingly, Spectra argues that FERC Form No. 501–G data entry for ADIT amortization should be zero for entities that are disallowed an income tax allowance pursuant to the *United Airlines* Issuances.

127. In sum, commenters argue that the uncertainty regarding ADIT may (1) result in misleading or inaccurate information provided in the FERC Form No. 501–G filings, particularly the inputs related to ADIT;[143] (2) discourage pipelines from selecting the option to file a limited section 4 rate case;[144] and (3) reduce the likelihood pipelines and shippers will enter into settlements.[145] Commenters urge that the Commission consider the final resolution of the issues in the pending ADIT NOI proceeding before the issuance of the Final Rule in this proceeding or at least before pipelines are required to file their FERC Form No. 501–G.[146]

b. Discussion

128. The majority of pipeline commenters recommend that the Commission delay the requirement to file FERC Form No. 501–G until a Final Rule is issued in the ADIT NOI proceeding. The Commission concludes that such a delay is unnecessary in light of the steps we take below.

129. The Commission is setting forth its policy concerning the treatment of ADIT when the tax allowances of pass-through pipelines (including MLP pipelines) are eliminated, and the Commission modifies the FERC Form No. 501–G to reflect that policy. The Commission declines to make other changes from the NOPR proposal because, as explained below, the Commission's existing ADIT policies provide sufficient guidance for the purposes of this Final Rule.

i. Treatment of ADIT When a Pass-Through Pipeline's Income Tax Allowance Is Eliminated

130. In response to the concerns raised by Spectra, Boardwalk, and others, the Commission takes two steps to address treatment of ADIT when a pass-through entity eliminates its income tax allowance.

131. First, in the rehearing of the Revised Policy Statement (which is issuing concurrently with this Final Rule),[147] the Commission announces its intent to permit a pass-through pipeline to eliminate ADIT from its cost of service if that pass-through pipeline eliminates its income tax allowance pursuant to the *United Airlines* Issuances policy. Thus, the Commission does not intend to require a pass-through pipeline to return ADIT to its customers or to adjust its rate base by any outstanding ADIT balance. Although non-binding, this guidance should help pipelines more efficiently evaluate their options pursuant to the Final Rule. This clarification may also facilitate potential settlement negotiations between pipelines and customers.

132. Second, the Commission modifies the proposed Form No. 501–G so that, if a pass-through entity states that it does not pay taxes, the form will not only eliminate its income tax allowance, but will also eliminate ADIT.[148] Several reasons support this change. As an initial matter, this modification will provide that the FERC Form No. 501–G defaults to providing data consistent with the guidance the Commission is concurrently providing on rehearing of the Revised Policy Statement. Commission and IRS regulations regarding normalization (including ADIT) only apply to entities with an income tax allowance component in their regulated cost-of-service rates.[149] ADIT is a regulatory

[142] Boardwalk Comments at 14.

[143] INGAA Comments at 23; Boardwalk Comments at 14; Spectra Comments at 7–8; Kinder Morgan Comments at 28; Williams Comments at 9; Millennium Comments at 10; Tallgrass Pipelines Comments at 6, 9, 12; EQT Midstream Comments at 5, 8; Dominion Energy Comments at 4–5; National Fuel Comments at 5; Berkshire Hathaway Comments at 4–6; Southern Star Comments at 9–10. Similarly, LDC Coalition argues that the staggered timing of this proceeding and the ADIT NOI proceeding may make it difficult to determine how pipelines have adjusted their ADIT balances in calculating their costs in the FERC Form No. 501–G filings. LDC Coalition Comments at 22.

[144] INGAA Comments at 23; Boardwalk Comments at 14; Spectra Comments at 8; Williams Comments at 9; Millennium Comments at 10; Tallgrass Pipelines Comments at 12; EQT Midstream Comments at 2, 8–9; Dominion Energy Comments at 4.

[145] INGAA Comments at 23; Boardwalk Comments at 14; Williams Comments at 9–10; Millennium Comments at 10; TransCanada Comments at 3–4; Tallgrass Pipelines Comments at 12; EQT Midstream Comments at 9; Dominion Energy Comments at 4; National Fuel Comments at 6; Southern Star Comments at 3, 10.

[146] INGAA Comments at 4, 22–23; Boardwalk Comments at 5, 13–15; Spectra Comments at 6–9; Kinder Morgan Comments at 28–29; Williams Comments at 3, 9; Millennium Comments at 2, 9–10; Tallgrass Pipelines Comments at 4–9, 11–12; EQT Midstream Comments at 2, 8–9; Dominion Energy Comments at 2–5; National Fuel Comments at 4–6; Berkshire Hathaway Comments at 3–6; Southern Star Comments at 3, 9–10.

[147] *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs,* Order on Rehearing, 164 FERC ¶ 61,030 (2018).

[148] This change will reduce to zero on the FERC Form No. 501–G line items for Accumulated Deferred Income Taxes (Account 190), Accumulated Deferred Income Taxes–Other Property (Account 282), and Accumulated Deferred Income Taxes–Other (Account 283). *See* FERC Form No. 501–G, page 2, lines 13–15. The pipeline should also remove any sums related to ADIT from Other Regulatory Liabilities (Account 254) and Other Regulatory Assets (Account 182.3). *See* FERC Form No. 501–G, page 2, lines 16–17. The *Implementation Guide* includes more specific instructions for the FERC Form No. 501–G.

[149] *See* 18 CFR 154.305(a) (''An interstate pipeline must compute *the income tax component of its cost-of-service* by using tax normalization for all transactions.''); 18 CFR 154.305(b)(1) (''Tax normalization means computing *the income tax*

Continued

construct to ensure that regulated entities do not earn a return on cost-free capital based upon timing differences between federal and state tax liability and Commission ratemaking.[150] The purpose of normalization is matching the pipeline's cost-of-service expenses in rates with the tax effects of those same cost-of-service expenses.[151] If there is no income tax allowance in Commission rates, there is no basis for the ''matching'' function of normalization [152] and no liability for the deferred taxes reflected in ADIT. In the absence of ADIT, there is no ADIT adjustment to rate base or amortization allowance to be reflected in cost-of-service rates.

133. Moreover this modification to the FERC Form No. 501–G comports with retroactive ratemaking principles. The rule against retroactive ratemaking bars ''the Commission's retroactive substitution of an unreasonably high or low rate with a just and reasonable rate.'' [153] As relevant here, when a pass-through pipeline eliminates its income tax allowance consistent with the *United Airlines* Issuances policy, maintaining ADIT in cost of service would violate retroactive ratemaking by requiring pipelines to refund to shippers tax costs the pipeline collected in past rates for payment to the IRS pursuant to the Commission's pre-*United Airlines* policy. This analysis is supported by the D.C. Circuit's *Public Utilities* decision which held that requiring a pipeline to credit ratepayers for earnings on an excess ADIT balance or refund the balance to ratepayers violated retroactive ratemaking where the pipeline switched to statutory proscribed rate ceilings from cost-of-service rates, meaning that the rates no longer included a cost-of-service normalization of income tax costs.[154]

134. Finally, shippers have no equity interest in ADIT that justifies maintaining ADIT in rates or alleviates the above retroactive ratemaking concerns. The Commission and the D.C. Circuit have rejected arguments based on the misconception that ADIT is a cash reserve over which ratepayers have an ownership claim or equitable interest.[155] Consistent with these holdings, the Commission has also explained that ADIT is not a true-up or tracker of money owed to shippers.[156] Rather, under the Commission's pre-*United Airlines* policies involving tax allowances for pass-through entities, normalization in past rates required ratepayers to pay their properly allocated share of the pipeline's tax expenses as matched to the ratepayers' payment of straight-line depreciation costs.[157] ADIT is not money owed to past or future ratepayers, but rather deferred taxes that are ultimately owed to the government.[158]

135. Accordingly, the informational FERC Form No. 501–G is likely to be the most useful if it removes ADIT whenever the income tax allowance is eliminated. Furthermore, although the Commission has made this adjustment to the FERC Form No. 501–G, a pipeline may propose alternative treatment of ADIT in the Addendum.[159] Similarly, the removal of ADIT on FERC Form No. 501–G (or any subsequent adjustments in the Addendum) may be reflected in the optional limited section 4 rate filings. Given that these section 4 rate filings *reduce* the pipeline's rates and are entirely at the pipeline's discretion, we do not think this modification is inappropriate. The Commission also emphasizes that this modification only applies to the FERC Form No. 501–G (and the optional limited section 4 filings pursuant to § 154.404(a)). It does not establish a broader rule. Shippers and pipelines may advocate for a different treatment of ADIT in any future rate litigation.

ii. Other ADIT Issues

136. To the extent commenters request that the Commission delay issuance of this Final Rule until other issues raised in the ADIT NOI are resolved, the Commission believes that the commenters misconstrue the ADIT NOI proceeding. The ADIT NOI is a notice of inquiry that does not change or propose to change any existing ratemaking or accounting regulations. As noted by the Oklahoma AG, the ADIT NOI has an open ended process and may or may not result in any final rulemaking. The Commission has asked

component as if transactions recognized in each period for ratemaking purposes are also recognized in the same amount and in the same period for income tax purposes.''); 18 CFR 154.305(b)(4) (''*Income tax component* means that part of the cost-of-service that covers income tax expenses allowable by the Commission.''); 26 U.S.C. 168(i)(9)(A) (''the taxpayer must, in computing its *tax expense for purposes of establishing its cost of service for rate-making purposes* . . . use a method of depreciation with respect to such property that is the same as, and a depreciation period for such property that is no shorter than, the method and period used to compute its depreciation expense for such purposes. . . .'') (emphasis added). *Algonquin Gas Transmission Co.,* 76 FERC ¶ 61,075, at 61,449 (1996); *see also* 18 CFR 154.305(c)(2) (''rate base reductions or additions'' for ADIT ''must be limited to deferred taxes related to rate base, construction, or other *costs and revenues affecting jurisdictional cost-of-service*'') (emphasis added); 18 CFR 154.305(d)(1) (requirements relating to excess or deficient ADIT balances apply where the discrepancy is ''a result of changes in tax rates'' or where ''the rate applicant has not provided deferred taxes in the same amount that would have accrued had tax normalization always been applied.'').

[150] *Arco Pipe Line Co.,* Opinion No. 351, 52 FERC ¶ 61,055, at 61,238 (1990).

[151] ''The primary rationale for normalization is matching: The recognition in rates of the tax effects of expenses and revenues with the expenses and revenues themselves.'' *Regulations Implementing Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes,* Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,522 (1981), *reh'g denied,* Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 (1982), *aff'd, Public Systems* v. *FERC,* 709 F.2d 73 (D.C. Cir. 1983).

[152] *See Public Utilities,* 894 F.2d at 1382 (noting that ''[t]ax normalization sought to 'match' the timing of a customer's contribution toward a cost with enjoyment of any offsetting tax benefit,'' but finding the passage of the NGPA which resulted in El Paso no longer using cost-of-service rates ''mooted the whole question to which normalization was the answer'').

[153] *City of Piqua* v. *FERC,* 610 F.2d 950, 954 (D.C. Cir. 1979).

[154] *Public Utilities Comm'n of State of Cal.* v. *FERC,* 894 F.2d 1372 (D.C. Cir. 1990). Specifically, *Public Utilities* held that requiring a pipeline to credit ratepayers for earnings on an excess ADIT balance where the pipeline switched from cost-of-service rates to ceiling prices violated the rule against retroactive ratemaking. As the court found in *Public Utilities,* ADIT ''is composed entirely of rate revenue that [the pipeline] has already collected. Refund of such property, or its earnings, would effectively force [the pipeline] to return a portion of rates approved by FERC, and collected by [the pipeline].'' *Id.* at 1383. The D.C. Circuit explained that to the extent any basis for requiring the credit to ratepayers rested on the view that the pipeline's prior cost-of-service rates were ''in retrospect too high'' or ''unjust and unreasonable'' then the credit for earnings on previously accumulated ADIT sums violated the rule against retroactive ratemaking. *Id.* at 1380, 1382.

[155] *Public Systems,* 709 F.2d at 85 (rejecting the notion ''that ratepayers have an ownership claim'' to the ADIT balance); *Public Utilities,* 894 F.2d at 1381 (''The Commission and this Court have both rejected'' ''the notion that under normalization accounting customers enjoy an equitable interest in a utility's deferred tax account.''); Order No. 144, FERC Stats. & Regs. ¶ 30,254 at 31,539 (addressing the ''erroneous premise that a loan is being made by ratepayers to utilities'' through the normalization process'' and stating that ratepayers do not ''have an ownership claim or equitable entitlement to the 'loaned monies'''); *id.* at 31,539 n.75 (''This is not to say that customers do not pay rates that recover deferred taxes. They do. But paying deferred taxes in rates does not convey and ownership or creditor's right.'').

[156] *Lakehead Pipe Line Co. L.P.,* 75 FERC ¶ 61,181, at 61,594 (1996). Moreover, there would be practical problems with maintaining such a tracker as many oil pipeline rates have never have been subject to a cost-of-service rate proceeding. For these pipelines, there is no cost-of-service income tax allowance which has been established.

[157] The Commission's primary justification for its decision to adopt tax normalization was ''the matching principle: as a matter of fairness, customers who pay an expense should get the tax benefit that accompanies the expense. . . .'' *Public Systems,* 709 F2d at 80.

[158] For example, ADIT is eliminated (not returned to shippers) when the pipeline must pay these deferred taxes to the federal government as a result of a sale of the asset. *Enbridge Pipelines (KPC),* 100 FERC ¶ 61,260, at PP 158–162 (2002).

[159] Of course, we anticipate that any pass-through entity claiming an income tax allowance in the Addendum to Form No. 501–G will include the previously accumulated sums in ADIT.

for comment from the public on numerous ADIT-related questions as they relate to the proper implementation procedures on the various effects on cost-of-service rates resulting from the Tax Cuts and Jobs Act and the *United Airlines* Issuances. To the extent the Commission does change its ratemaking and accounting regulations, the implementation of any new instructions and policies will have only a prospective application. In the meantime, natural gas pipelines must follow the Commission's existing ratemaking and accounting regulations concerning ADIT described below.

137. Commenters argue that without the guidance resulting from the ADIT NOI proceeding, individual natural gas companies may not populate FERC Form No. 501–G in a consistent manner. However, we believe that this is not the case, because all ADIT-related data elements are to be taken directly from the natural gas companies' FERC Form Nos. 2 and 2–A and their existing accounting records. The FERC Form Nos. 2 and 2–A data largely originates from the Commission's Uniform System of Accounts (USofA) instructions. As such, the Commission's existing USofA, among other things, contains instructions on balance sheet and statement of income accounts related to ADIT.[160] Natural gas companies report all ADIT balances on their FERC Form Nos. 2 and 2–A. Thus, 2017 FERC Form Nos. 2 and 2–A prepared consistent with existing guidance should provide the amounts of the excess or deficiency ADIT balances as of December 31, 2017, after the enactment date of December 22, 2017 of the Tax Cuts and Jobs Act.

138. Finally, the IRS has accepted two methods to flow back any excess or deficiency ADIT since at least the Tax Reform Act of 1986. The Commission, consistent with current guidance and the Tax Cuts and Jobs Act directives,[161] will continue to allow the use of either of these two methods: (1) The Average Rate Assumption Method (ARAM), which is the primary method, and (2) the Reverse South Georgia Method (RSGM), which is permitted as an exception, if a rate regulated company does not have vintage records for its plant assets to support the reversal of book/tax differences.

139. When the Tax Cuts and Jobs Act passed on December 22, 2017, the effect of the federal income tax reduction from 35 percent to 21 percent became known. Therefore, consistent with the Commission's current accounting guidance in Docket No. AI93–5–000, natural gas companies are required to adjust their ''deferred tax liabilities and assets for the effect of the change in tax law or rates *in the period that the change is enacted*.'' [162] This guidance means that, as the Tax Cuts and Jobs Act was *enacted* before the end of the 2017 calendar year, all natural gas companies' 2017 FERC Form Nos. 2 and 2–A filed April 2018 should have reflected recalculated deferred tax liabilities and assets consistent with the Tax Cuts and Jobs Act, even though the Tax Cuts and Jobs Act did not become effective until January 1, 2018. Specifically, the Commission's AI93–5–000 Guidance at Question 8 provides the following:

> The adjustment shall be recorded in the proper deferred tax balance sheet accounts (Accounts 190, 281, 282 and 283) based on the nature of the temporary difference and the related classification requirements of the accounts. If as a result of action by a regulator, it is probable that the future increase or decrease in taxes payable due to the change in tax law or rates will be recovered from or returned to customers through future rates, an asset or liability shall be recognized in Account 182.3, Other Regulatory Assets, or Account 254, Other Regulatory Liabilities, as appropriate, for that probable future revenue or reduction in future revenue. That asset or liability is also a temporary difference for which a deferred tax asset or liability shall be recognized in Account 190, Accumulated Deferred Income Taxes or Account 283, Accumulated Deferred Income Taxes Other, as appropriate.

140. Moreover, it has been a long-standing policy for the Commission to require natural gas companies to flow back the effects of timing differences between the Commission approved income tax allowances and the IRS tax liabilities.[163] This Final Rule is also premised on the Commission's concern that natural gas pipelines may be collecting unjust and unreasonable rates in light of the recent reduction in the federal corporate income tax rate in the Tax Cuts and Jobs Act, and that it may be appropriate to direct natural gas pipelines to reduce their rates to reflect the effects of the Tax Cuts and Jobs Act, or to establish proceedings to determine whether natural gas companies' existing rates are no longer just and reasonable and establish new just and reasonable rates.[164]

141. With the precondition satisfied, the Commission's guidance in AI93–5–000 at Question 8 continues with regard to the recognition of ADIT regulatory assets or liabilities:

> . . . [A]n asset or liability shall be recognized in Account 182.3, Other Regulatory Assets, or Account 254, Other Regulatory Liabilities, as appropriate, for that probable future revenue or reduction in future revenue. That asset or liability is also a temporary difference for which a deferred tax asset or liability shall be recognized in Account 190, Accumulated Deferred Income Taxes or Account 283, Accumulated Deferred Income Taxes Other, as appropriate.

142. Further, the Commission's USofA instructions for each of the referenced balance sheet accounts provide detailed guidance on how the accounting journal entries for the regulatory asset, in the case of a deficiency ADIT, or regulatory liability, in the case of excess ADIT, should be established and amortized to account for the flow-back of the deficiency or excess ADIT through the appropriate income statement accounts based on current guidance.[165]

143. With the amounts recorded in the appropriate accounts, consistent with the Commission's existing instructions and guidance, there should be only limited variation in the natural gas companies' financial information reported in their FERC Form Nos. 2 and 2–A and the proposed FERC Form No. 501–G. To the extent that further explanations for the reported financial information are necessary, natural gas companies are advised to provide such explanations in the footnotes to their financial statements.[166] Any explanations or differences in reported financial information can also be provided in the optional Addendum that pipelines are permitted to file along with their FERC Form No. 501–G. As the Commission already has in place sufficient guidance in regards to classification and recording of ADIT-related amounts, the Commission does not expect any significant variations in how natural gas companies account for such amounts. Further, to the extent a natural gas pipeline did not prepare its 2017 FERC Form Nos. 2 and 2–A consistent with the prior Commission guidance discussed above, the company

[160] *See, e.g., Accounting For Income Taxes,* Docket No. AI93–5–000 (April 23, 1993), *available at http://www.ferc.gov/enforcement/acct-matts/docs/AI93-5-000.asp* (AI93–5–000 Guidance).

[161] *See* Tax Cuts and Jobs Act 13001(d), 131 Stat. at 2099–2100.

[162] AI93–5–000 Guidance, Question 8: Changes In Tax Law Or Rates (emphasis added).

[163] *Tax Normalization for Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes,* Order No. 144, FERC Stats. & Regs. ¶ 30,254 (1981) (cross-referenced at 15 FERC ¶ 61,133), *order denying reh'g, lifting stay and clarifying order,* Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 (1982) (established 18 CFR 154.63a). The content of § 154.63a was later updated and moved to 18 CFR 154.305: Tax Normalization. *Filing and Reporting Requirements for Interstate Natural Gas Co. Rate Schedules and Tariffs,* Order No. 582, FERC Stats. & Regs. ¶ 31,025 (1995) (cross-referenced at 72 FERC ¶ 61,300).

[164] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 4.

[165] 18 CFR part 201.

[166] *Id.* at General Instructions, No. VIII.

must make the appropriate corrections.[167]

144. FERC Form No. 501–G largely requires natural gas companies to transfer financial data directly from their FERC Form Nos. 2 and 2–A for purposes of examining their costs of service. FERC Form No. 501–G calculates an indicated cost of service (page 1) and rate base (page 2). The ADIT amounts that natural gas companies enter on lines 13–17 of page 2 for purposes of calculating their rate base must be transferred directly from the companies' 2017 FERC Form Nos. 2 and 2–A. The 2017 FERC Form Nos. 2 and 2–A do not necessarily provide the figure for Amortization of Excess/Deficiency ADIT that the FERC Form No. 501–G requires natural gas companies to enter on page 1, line 31, for purposes of calculating the tax allowance included in cost of service. That is because this information will be reported in subsequent periods. However, as explained above, natural gas companies should already have this amount determined based on previous Commission and IRS guidance. Specifically, under current guidance, the Commission expects the flow-back of the excess regulatory liability or deficiency regulatory asset to occur over the remaining book life of the associated plant assets, because depreciation of plant assets is the primary driver of timing differences in taxes as they relate to natural gas companies. The Commission expects insignificant differences between proposed amortization periods by the natural gas companies and approved amortization periods by the Commission as they relate to items other than plant assets. Whenever there is a need for noting potential differences, natural gas companies may provide explanations in the optional Addendum that pipelines are permitted to file along with their FERC Form No. 501–G.

145. Additionally, FERC Form No. 501–G appropriately considers the amortization of excess ADIT balances as part of calculating the tax allowance included in cost of service. This is a requirement codified at § 154.305(d) of the Commission's regulations.[168] As described above, FERC Form No. 501–G, page 1, requires Amortization of Excess ADIT as part of the indicated cost of service. Further, FERC Form No. 501–G appropriately adjusts rate base for ADIT balances. This is consistent with current guidance under § 154.305(c) of the Commission's regulations.[169] On FERC Form No. 501–G, page 2, the rate base calculation removes the excess ADIT balance and adds the deficiency ADIT balance from/to rate base. As discussed above, Spectra and Boardwalk expressed concern that proposed FERC Form No. 501–G provides that entities not permitted an income tax allowance going forward are still required to carry-over historic ADIT-related balances and costs inputs. Consistent with the discussion above, the Commission has modified FERC Form No. 501–G's treatment of ADIT balances and amortization of excess or deficient ADIT. For pipelines that indicate that they are not a separate income taxpaying entity on FERC Form No. 501–G, page 1, Line 4, page 2 eliminates the ADIT adjustment to rate base and does not require the pipeline to estimate the amortization of excess or deficient ADIT on page 1, Line 31.

146. In summary, the Commission has existing and currently applicable regulations, instructions, and guidance necessary for natural gas companies to account properly for the effects of the Tax Cuts and Jobs Act. Further, § 154.305 of the Commission's regulations establishes the default treatment of ADIT balances and amortization thereof in rate base and the cost of service. For all the stated reasons discussed above, the Commission does not find persuasive commenters' argument that there is a lack of guidance on how to account for and flow-back ADIT balances.

147. National Fuel advocates that the Commission should permit pipelines flexibility in ADIT treatment in FERC Form No. 501–G. National Fuel states that the Commission has permitted differing rate treatment, including National Fuel's. However, National Fuel does not provide any specific examples or citations. Therefore, it is not clear as to the nature of flexibility National Fuel is advocating. Further, as to National Fuel's own cost of service, the Commission notes that National Fuel informed the Commission that the settlements underlying its currently effective rates are ''black box'' settlements.[170] As is the case with most black box settlements, National Fuel's May 22, 2012 and September 29, 2015 Settlements did not contain cost-of-service work papers. Therefore, it is not possible to confirm National Fuel's claim that the Commission afforded differing treatment of ADIT in National Fuel's currently effective rates.[171] With regard to ADIT, the May 22, 2012 Settlement provides that the settlement rates are consistent with IRS regulations with respect to normalization of any excess and/or deficiency in deferred income taxes.[172] Commission normalization requirements are not inconsistent with the IRS normalization regulations.[173] Notwithstanding, natural gas pipelines may suggest alternative ADIT treatment as part of an Addendum.

148. National Fuel notes that because its fiscal year is not on a calendar year basis,[174] the applicable federal tax rate for fiscal year 2018 will be a composite tax rate, not the 21 percent specified in FERC Form No. 501–G. National Fuel

[167] *See Entergy Services, Inc.,* Opinion No. 545, 153 FERC ¶ 61,303, at P 156 (2015); *as clarified* 156 FERC ¶ 61,196, at P 150 (2016) (Finding that past FERC Form No. 1s must be refiled to correct an ADIT amortization period mistake.).

[168] 18 CFR 154.305(d):

(d) Special rules.

(1) This paragraph applies: . . . . or (ii) If, as a result of changes in tax rates, the accumulated provision for deferred taxes becomes deficient in, or in excess of, amounts necessary to meet future tax liabilities.

(2) The interstate pipeline must compute the income tax component in its cost-of-service by making provision for any excess or deficiency in deferred taxes.

[169] 18 CFR 154.305(c):

(c) Reduction of, and addition to, Rate Base.

(1) The rate base of an interstate pipeline using tax normalization under this section must be reduced by the balances that are properly recordable in Account 281, ''Accumulated deferred income taxes-accelerated amortization property''; Account 282, ''Accumulated deferred income taxes—other property'': and Account 283, ''Accumulated deferred income taxes—other.'' Balances that are properly recordable in Account 190, ''Accumulated deferred income taxes,'' must be treated as an addition to rate base. Include, as an addition or reduction, as appropriate, amounts in Account 182.3, Other regulatory assets, and Account 254, Other regulatory liabilities, that result from a deficiency or excess in the deferred tax accounts (see paragraph (d) of this section) and which have been, or are soon expected to be, authorized for recovery or refund through rates.

(2) Such rate base reductions or additions must be limited to deferred taxes related to rate base, construction, or other costs and revenues affecting jurisdictional cost-of-service.

[170] National Fuel Gas Supply Corp., May 22, 2012 Settlement filed in Docket No. RP12–88, Article I, approved *National Fuel Gas Supply Corp.,* 140 FERC ¶ 61,114 (2012). This provision of the May 22, 2012 Settlement remains unchanged and continues pursuant to Article II of the September 29, 2015 Supplemental Stipulation and Agreement filed in Docket No. RP15–1310–000, approved *National Fuel Gas Supply Corp.,* 153 FERC ¶ 61,170 (2015).

[171] Further, even if there had been such a provision or work papers, it would have had no precedential value: ''The Commission's order approving this Stipulation shall not constitute approval or acceptance of any concept, theory, principle, or method underlying any of the rates or charges or any other matter identified in this Stipulation or in this proceeding.'' May 22, 2012 Settlement at Article XIII.

[172] *Id.* at Article VII.

[173] *See Koch Gateway Pipeline Co.,* 74 FERC ¶ 61,088, at 61,277 (1996) (''While the Commission is not bound to follow an IRS ruling for ratemaking purposes, we are reluctant to take action which would endanger a pipeline's right to favorable tax treatment from the IRS.'').

[174] National Fuel reports its fiscal year is October 1 through September 30. National Fuel's 2017 FERC Form No. 2, page 122.9 (filed April 16, 2018).

believes that requiring pipelines with non-calendar year bases to utilize a 21 percent federal tax rate will yield incorrect and invalid results. The Commission disagrees. National Fuel's ADIT balances, as reported in its 2017 FERC Form No. 2, should be recalculated to reflect the known reduction in the level of federal income tax as the result of the Tax Cuts and Jobs Act as of the enactment date of December 22, 2017 of the new law. Although National Fuel's recalculation of its excess or deficiency ADIT may be more complex than that of other pipelines, if the recalculation is done consistent with the Commission's USofA and the AI93–5–000 Guidance, the FERC Form No. 2 data should be sufficient to determine the needed adjustment to rate base. Further, with regard to FERC Form No. 501–G, the Commission notes that the Commission has assigned National Fuel to reporting Group III. That group is not required to file their FERC Form No. 501–Gs until 84 days after the effective date of this Final Rule. By that required reporting time, National Fuel's fiscal year issue will be moot, and its FERC Form No. 501–G results will be valid.

149. Spectra notes that FERC Form No. 501–G reduces rate base by the full ADIT balance existing at the end of calendar year 2017 without any adjustment for the amortization of excess ADIT, but at the same time the FERC Form No. 501–G reduces the tax allowance included in the cost of service by an amount equaling the annual amortization of excess ADIT. Spectra contends that such treatment reduces rates twice for the same regulatory liability. Spectra is incorrect. The Commission's rationale for subtracting accumulated deferred taxes from rate base was discussed in Order No. 144–A:

> The deduction of accumulated deferred taxes from rate base . . . is intended to reflect the lower cost of service that a utility achieves by its use of the cash flow from deferred taxes in place of debt and equity capital.[175]

150. The Commission is modifying FERC Form No. 501–G in response to Spectra's argument that the amortization of excess ADIT balances in the cost of service (in combination with a rate base adjustment reflecting the full ADIT balance) reduces rates twice. As a pipeline amortizes its excess ADIT (*i.e.,* credits excess ADIT in determining the current period's tax allowance), the ADIT balance subtracted from rate base will decline, with the result that net rate base will be higher than it would be absent the amortization of excess of ADIT. The Commission acknowledges that the FERC Form No. 501–G in the NOPR was based upon an historic test period with only a single static adjustment to cost of service to account for the change in the income allowance as a result of the Tax Cuts and Jobs Act. The effect of Spectra's request is to make the adjustment dynamic by reflecting an initial amortization of excess ADIT in rate base. The Commission is making a change to reflect a reduction to Other Regulatory Liabilities for the Net Amortization of Excess and/or Deficient ADIT in the FERC Form No. 501–G.

151. LDC Coalition requests that the Commission require natural gas companies to file an accompanying spreadsheet that provides how companies recalculated ADIT and excess ADIT balances. In addition, LDC Coalition and AGA request that the Commission discuss within the scope of hearing issues whether a natural gas company has properly calculated ADIT for purposes of its FERC Form No. 501–G and concurrent limited NGA section 4 rate reduction filing pursuant to proposed § 154.404. The Commission declines to do so. The Commission has previously provided guidance to natural gas companies on how to properly recalculate ADIT balances and determine amortization amounts of excess or deficiency ADIT balances. With regard to all the financial data reported in FERC Form Nos. 2 and 2–A, natural gas companies are required to attest to the conformity of that data, in all material respects, with the Commission's applicable USofA and to have the submission signed by an independent certified public accountant. FERC Form No. 501–G is not the vehicle for parties to challenge the validity of FERC Form Nos. 2 and 2–A data. In addition, the data underlying the calculation of natural gas companies' amortization of excess or deficiency ADIT balances can be extensive, and the calculation itself requires iterative calculations extending over the longer of the Commission's or the IRS' depreciation schedules. Providing that data as part of the FERC Form No. 501–G filing requirement would significantly increase the burden on the natural gas companies for a form with the limited purpose of assisting the Commission, the pipelines and the parties to screen which pipelines deserve additional attention. Similarly, permitting parties to challenge or protest recalculated ADIT balances and amortization amounts on excess and deficient ADIT amounts in the section 1543.404 limited section 4 rate filings would undermine the objective of expediting rate reductions.

152. Enable Interstate Pipelines argue that, to the extent that significant amounts of capital previously available to a natural gas company by virtue of the ADIT balance are to be removed from rate base, the result would be to render erroneous any FERC Form No. 501–G, page 4, estimate of debt cost based on access to the ADIT balance, given the increasing financial risk and hence the cost of capital that would be incident to the ADIT change. However, Enable Interstate Pipelines appear to assume that the ADIT balances have been invested in jurisdictional natural gas activities. If a natural gas company chose to invest funds generated by deferred income tax, then its rate base would have been increased by a like amount,[176] and the effect of the ADIT adjustment to rate base would be an offset. The Commission's policy to adjust rate base stems from the fact that tax rules may, in effect, defer payment for tax liabilities beyond the timing provided for in rates. The pipeline collects the customers' payment while obtaining the benefits of the tax deferral.[177] To reflect the timing difference, the Commission requires natural gas companies to deduct the deferred tax from rate base, with the effect that the customers need not pay in current rates the time value of the money previously paid.[178] FERC Form No. 501–G reflects Commission policy and the § 154.305(c) requirement that rate base be adjusted for ADIT balances.

8. Who Must File

153. In the NOPR, the Commission proposed that ''every natural gas company that is required . . . to file a Form No. 2 or 2–A for 2017 and has cost-based rates for service . . . must prepare and file with the Commission a FERC Form No. 501–G.'' [179] The Commission also proposed to exempt pipelines that, as of the deadline for filing their FERC Form No. 501–G, are the subject of an ongoing general rate case under section 4 or rate

[175] Order No. 144–A, FERC Stats. & Regs. ¶ 30,340 at 30,128.

[176] *El Paso Natural Gas Co., L.L.C.,* 152 FERC ¶ 61,039, at P 88 (2015) (*El Paso*).

[177] *See Distrigas Mass. Corp.* v. *FERC,* 737 F.2d 1208, 1212 (1st Cir. 1984) (describing the tax deferral as ''highly advantageous'' to regulated entities, noting that service providers ''obtain the use of the 'saved tax' money until the time it falls due''). *See also United Gas Pipeline Co.,* Opinion No. 99, 13 FERC ¶ 61,044, at 61,096 (1980) (excluding undistributed subsidiary earnings from equity because funds not available for investment in jurisdictional activities).

[178] *El Paso,* 152 FERC ¶ 61,039 at P 89.

[179] NOPR, FERC Stats. & Regs. ¶ 32,725 at proposed 18 CFR 260.402(b)(1)(i); *see id.* P 26.

investigation under NGA section 5.[180] In addition, the Commission proposed that any pipeline that files an uncontested pre-packaged settlement of its rates after the March 26, 2018 publication of the NOPR in the **Federal Register** and before the deadline for their One-time Report need not file that report.[181]

a. Comments

154. Hampshire notes that it has a cost-of-service tariff that provides for automatic adjustment for changes in income tax rates, and requests that such pipelines be exempt from the One-time Report.[182]

155. Numerous other commenters weigh in on whether, and under what circumstances, filing an uncontested settlement should exempt the pipeline from the One-time Report. Under the NOPR, the Commission would exempt any pipeline that filed an uncontested rate settlement after the March 26, 2018 date of the NOPR but before the deadline for its One-time Report. CAPP supports the proposal as is. NGSA and Southern Companies argue for a stricter proposal, under which the Commission would require further information in order to ensure that any settlements result in rates that are just and reasonable in light of the effects of the Tax Cuts and Jobs Act. Similarly, APGA argues not only that pipelines under settlement moratoria should be subject to the One-time Report, but also that the Commission should be prepared to commence investigations on such pipelines prior to the expiration of the moratoria, given the inevitable delays under NGA section 5 in proceeding from an investigation to a final rate.[183] Indicated Shippers request that the Commission clarify that any pipeline precluded from making changes to its rates due to a settlement moratorium would be required to comply with the FERC Form No. 501–G filing requirement once the settlement moratorium has expired.[184]

156. Several other commenters present overlapping arguments for expanding settlement-related exemptions. Commenters request exemptions from the One-time Report for pipelines with rate settlements that pre-date the NOPR, but also (1) contain a rate moratorium clause;[185] (2) post-date the Tax Cuts and Jobs Act;[186] or (3) expressly contemplate future changes to tax rates.[187] Similarly, commenters request a FERC Form No. 501–G exemption for pipelines that, whether voluntarily or due to a settlement comeback clause, elect Option 2, that is, to file a new general section 4 rate case or settlement shortly after the filing deadline for the One-time Report.[188]

157. For each of these four categories, commenters argue that filing the One-time Report ''would serve no purpose . . . since the rates would not be affected.'' [189] Commenters argue that filing the One-time Report would cut against the Commission's longstanding policy of not disturbing accepted settlements.[190] In particular, commenters argue that filing the FERC Form No. 501–G would prejudice the pipeline by presenting an incomplete or confusing picture of how the tax changes affect the pipeline's rates.[191]

b. Discussion

158. The Commission clarifies that pipelines such as Hampshire that have formula rates which provide for automatic rate adjustment to account for changes in income tax rates are not covered by this rulemaking. Accordingly, the Commission is revising proposed §§ 154.404(b)(2) and 260.402(b)(1), to clarify that the authorization to file a limited NGA section 4 filing and the requirement to file a FERC Form No. 501–G only apply to natural gas pipelines that have cost-based, *stated* rates.

159. We decline to adopt commenters' other proposals to expand the proposed exemptions from filing the FERC Form No. 501–G, and instead adopt the proposal in the NOPR, providing an automatic exemption from filing FERC Form No. 501–G only to (1) pipelines who file an uncontested, prepackaged settlement of their rates between the March 26, 2018 date the NOPR was published in the **Federal Register** and the date their FERC Form No. 501–G would otherwise be due and (2) pipelines whose rates are being examined in a general rate case under NGA section 4 or a rate investigation under NGA section 5 as of the deadline for filing their FERC Form No. 501–G. However, we clarify that pipelines may, on a case-by-case basis, request waivers of the filing requirement.

160. With regard to settlements, the Commission finds it appropriate to limit the exemption to settlements filed after the March 26, 2018 publication of the NOPR in the **Federal Register**. It is only in that circumstance, that the Commission is willing to presume that all the settling parties were aware of, and took into account, both the NOPR and the *United Airlines* Issuances concerning MLP pipeline tax allowances when they agreed to the settlement, and therefore no further change in the pipeline's rates is needed. However, when a settlement was filed before March 26, 2018, the Commission will not prejudge what action to take with respect to the subject pipeline's rates until interested persons have been provided a process in which to state their views concerning how the settlement should affect the Commission's decision. Based on those comments, the Commission can determine whether no change in the pipeline's rates is justified at this time because (1) the settlement reflects an agreement by the parties that the pipeline's revised rates reasonably reflect the reduced income taxes provided by the Tax Cuts and Jobs Act and the *United Airlines* Issuances and/or (2) any rate moratorium in the settlement should be interpreted as prohibiting changes to the settlement rates to reflect the Tax Cuts and Jobs Act and the *United Airlines* Issuances during the term of the rate moratorium.

161. With regard to rate moratoria, as the Commission stated in the NOPR, ''the Commission generally does not disturb a settlement during a rate

[180] *Id.* n.49, proposed 18 CFR 260.402(b)(1)(ii).

[181] *Id.* PP 4, 26, proposed 18 CFR 260.402(b)(1)(ii).

[182] Hampshire Comments at 3.

[183] AGA Comments at 8.

[184] Indicated Shippers Comments at 14–15.

[185] Boardwalk Comments at 18; Dominion Energy Comments at 14; Kinder Morgan Comments at 29; National Fuel Comments at 1–2; Spectra Comments at 13; TransCanada Comments at 14; Williams Comments at 5.

[186] INGAA Comments at 28; Kinder Morgan Comments at 30–31.

[187] Cove Point Comments at 2; Dominion Energy Comments at 15; Williams Comments at 5–6.

[188] Dominion Energy Comments at 14; INGAA Comments at 29; Kinder Morgan Comments at 31; National Fuel Comments at 2; Tallgrass Pipelines Comments at 15.

[189] *See, e.g.,* Boardwalk Comments at 18.

[190] *Id.* at n.44:

[T]he Commission ''recognize[s] the role of settlements in providing rate certainty,'' and has stated that in deciding whether to exercise its discretion to initiate a section 5 proceeding, it would ''take into account the parties' interest in maintaining a Settlement.'' (quoting *Nat. Gas Pipeline Co. of Am. LLC,* 162 FERC ¶ 61,009, at P 29 (2018)). The Commission has explained that, without rate moratoria, ''the utility of settlements for resolving cases would be severely jeopardized. No settlement could ever be truly final, because the rates resulting from the settlement would always be subject to reopening based on subsequent Commission or Court decisions.'' *See Iroquois Gas Transmission Sys. L.P.,* 69 FERC ¶ 61,165, at p. 61,631 (1994), *reh'g denied,* 70 FERC ¶ 61,181 (1995). The Commission also noted that its decision not to order a modification to a settlement was ''consistent with the principle that approved settlements are binding on the parties and should not be modified simply because it later appears that 'the result is not as good as it ought to have been.' '' *Id.* (quoting *Tex. E. Transmission Corp.* v. *FPC,* 306 F.2d 345, 348 (5th Cir. 1962)).

See also Kinder Morgan Comments at 30 & n.84.

[191] INGAA Comments at 29; Kinder Morgan Comments at 32.

moratorium.'' [192] However, this policy only extends to rate changes that would violate the terms of the rate moratorium in the settlement at issue. Some settlement rate moratoria include exceptions for certain types of rate changes, which might include rate changes resulting from generic policy changes of the type at issue here. Accordingly, if a pipeline contends that its rates are subject to a rate moratorium, the Commission finds it reasonable to give other interested persons an opportunity to state whether they agree that the rate moratorium is applicable to the reduced tax costs at issue here.

162. A pipeline's filing of the FERC Form No. 501–G, together with any explanation it wishes to provide of why its rate settlement justifies not adjusting its rates at this time, will give interested persons the requisite opportunity to present their views on whether the settlement has reasonably modified the pipeline's rates to reflect the Tax Cuts and Jobs Act and/or the *United Airlines* Issuances and whether any rate moratorium prohibits a rate change at this time. However, if an individual pipeline believes that the issue of whether a pre-March 26, 2018 settlement justifies not adjusting its rates at this time can be resolved without the need to file the FERC Form No. 501–G, it may file a request for a waiver of the requirement to file the FERC Form No. 501–G, with an explanation of why its pre-March 26, 2018 settlement justifies no change in its rates to reflect the Tax Cuts and Jobs Act and/or the *United Airlines* Issuances.[193] The pipeline should file such a request at least 30 days before the date its FERC Form No. 501–G is due. Any such request will be noticed for interventions, protests, and comments, and, based upon all the pleadings, the Commission will determine whether to grant the waiver.

163. In the NOPR, the Commission proposed to exempt pipelines from filing the FERC Form No. 501–G, if they file a general NGA section 4 rate case or a prepackaged rate settlement before the deadline for filing their form.[194] The Commission rejects the request that this automatic exemption be expanded to include pipelines that commit to file a general section 4 rate case or prepackaged settlement within some period after the otherwise applicable deadline for filing the form. Given the Commission's lack of refund authority under NGA section 5, the Commission is unwilling to automatically exempt pipelines from filing the FERC Form No. 501–G based on commitments to file rate cases or settlements at some time in the future. The Commission also rejects contentions that providing the information required by the FERC Form No. 501–G will prejudice settlement talks or unduly burden the pipeline. As several commenters acknowledge, any pipeline hoping to reach a future settlement would inevitably grant shippers access to even more information than the FERC Form No. 501–G would collect. However, on a case-by-case basis, individual pipelines may file requests for waiver of filing the FERC Form No. 501–G if they are in settlement negotiations. In deciding whether to grant such waivers, the Commission will consider whether other interested parties support or do not oppose the request. We encourage pipelines to file such requests for waiver as soon as practicable to allow time for the Commission to issue a decision on the request. We note that pipelines are obligated to meet their FERC Form No. 501–G filing obligation by the deadline outlined in the *Implementation Guide* unless the Commission has issued an order affirmatively granting the requested waiver on or before that deadline.

164. Eastern Shore argues that it should be exempt from filing the One-time Report because it has already filed to lower its rates, in response to a settlement provision triggered by the Tax Cuts and Jobs Act, and its filing was accepted on April 24, 2018.[195] However, Eastern Shore's referenced filing was a compliance filing made March 1, 2018,[196] pursuant to a rate case settlement it filed on December 13, 2017 that the Commission approved on February 28, 2018.[197] The December 13, 2017 settlement was prior to the Commission's issuances of the NOPR and *United Airlines* Issuances. Parties to the settlement could not have been aware of these Commission orders. As discussed above, the Commission will not presume what the parties' positions may be with respect to settlements filed prior to March 26, 2018. The Commission will not exempt Eastern Shore from filing a FERC Form No. 501–G in this Final Rule. But, as discussed above, it may file a separate request for a waiver of the FERC Form No. 501–G filing requirement which interested persons may comment upon.

165. EQT Midstream and Tallgrass Pipelines request that the Commission ''provide other pipelines with the ability to request a waiver,'' or an extension of time, with both citing the example of a publicly announced corporate restructuring.[198] We clarify that pipelines have the same right to request waiver or an extension of time of the One-time Report for any reason as they do to request waiver or an extension of time of any informational reporting requirement. We caution, however, that the Commission bears no obligation to grant any request that would have the effect of delaying rate relief, and as stated above, pipelines must file the FERC Form No. 501–G by the required deadline, unless the Commission has affirmatively granted a requested waiver.

9. Miscellaneous Changes to FERC Form No. 501–G

a. Comments and Discussion

166. Boardwalk and INGAA state line 34 of page 1 of the proposed FERC Form

[192] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 49 (citing *Iroquois Gas Transmission System L.P.,* 69 FERC at 61,631; *JMC Power Projects* v. *Tennessee Gas Pipeline Co.,* 69 FERC ¶ 61,162, *reh'g denied,* 70 FERC at 61,528, *aff'd, Ocean States Power,* 84 F.3d 1453). *See also Natural Gas Pipeline Co.,* 162 FERC ¶ 61,009, at P 29 (2018) (stating that in deciding whether to initiate an NGA section 5 rate investigation, ''the Commission would take into account the parties' interest in maintaining a settlement.'').

[193] For administrative efficiency, the Commission requires any request for an exemption from filing the FERC Form No. 501–G to be filed using the same Type of Filing Code as used by the FERC Form No. 501–G: ToFC 1430.

[194] Although the NOPR preamble clearly limited this exemption to situations where pipelines had filed a general rate case or prepackaged settlement ''before the deadline for their One-time Report,'' (NOPR, FERC Stats. & Regs. ¶ 32,725 at P 26) the proposed regulatory text in § 260.402(b)(1)(ii) was less clear on this point. Accordingly, we are revising that section to clearly limit this exemption to situations where the relevant filing was made before the deadline for the pipeline's FERC Form No. 501–G. Since March 26, 2018, five pipelines have made such filings. On May 2, 2018, Granite State Gas Transmission, Inc. (Granite State) filed a prepackaged uncontested settlement in Docket No. RP18–793–000 (approved at *Granite State Gas Transmission, Inc.,* 163 FERC ¶ 61,224 (2018)). On May 31, 2018, MoGas Pipeline LLC (MoGas) filed a general NGA section 4 rate case in Docket No. RP18–877–000. On June 29, 2018, Empire Pipeline, Inc. (Empire), Enable Mississippi River Transmission, LLC (Enable), and Trailblazer Pipeline Co. LLC, (Trailblazer) filed general section 4 rate cases in Docket Nos. RP18–940–000, RP18–923–000, an RP18–922–000 respectively. As such, Granite State, MoGas, Empire, Enable, and Trailblazer are not required to file FERC Form No. 501–G.

Additional pipelines may choose to file NGA section 4 rate filings before this Final Rule is effective; those pipelines would not be required to file the FERC Form No. 501–G. Because the numbers are dynamic and may continue to change (reducing the number of filers of the FERC Form No. 501–G), we are retaining a conservative estimate of 129 pipelines who may be required to file the FERC Form No. 501–G.

[195] Eastern Shore Comments at 4 (citing *Eastern Shore Natural Gas Co.,* 163 FERC ¶ 61,054 (2018)).

[196] *Eastern Shore Natural Gas Co.,* 163 FERC ¶ 61,054 at P 1.

[197] *Eastern Shore Natural Gas Co.,* 162 FERC ¶ 61,183 (2017).

[198] EQT Midstream Comments at 13–14; Tallgrass Pipelines Comments at 19–20.

No. 501–G is labeled the ''Indicated Rate Reduction'' and provides the results from completing the form. Boardwalk and INGAA argue this label is misleading, and if not modified, would create adverse consequences for pipelines. Boardwalk claims line 34 shows only the potential modification to a pipeline's cost of service due to tax policy changes, without regard for changes that may occur to a pipeline's billing determinants, discount adjustments, and other issues impacting recourse rates. INGAA states that the FERC Form No. 501–G does not show what a pipeline's rate reduction would be if the pipeline were to modify its rates in response to the new policies on income tax and other factors that would be considered in a full review of its costs and revenues in an NGA sections 4 or 5 rate proceeding. To prevent line 34 from being misleading, Boardwalk and INGAA propose that the Commission should label it ''Indicated Cost of Service Reduction.'' [199]

167. The Commission adopts Boardwalk's and INGAA's proposal to change the label for page 1, line 34 to ''Indicated Cost of Service Reduction'' in the FERC Form No. 501–G.

168. Indicated Shippers request the following additions, in order to ensure that the proposed FERC Form No. 501–G provides shippers and the Commission with sufficient information to determine the level of cost reductions due to the Tax Cuts and Jobs Act and Revised Policy Statement:

a. Page 1, Lines 6–10—The Commission should include a line for storage gas losses recorded in Account No. 823, which are not appropriately included in a pipeline's cost of service.

b. Page 1, Lines 7–9 and 12–13—The Commission should provide separate lines for gas fuel cost exclusions, electric power cost exclusions, and miscellaneous fuel costs (such as fuel cost exclusions for building heat).

c. Page 1, Line 15 and Page 3, Lines 1–6—The Commission should include a line item detailing ACA [Annual Charge Adjustments] costs, as well as a line for exclusion of ACA revenues. These costs and revenues are not typically included in pipeline costs of service for ratemaking purposes, given that ACA costs are collected through a surcharge.

d. Page 1, Line 17—The Commission should include a separate line item for any negative salvage amounts, as well as any amortization of asset retirement obligations.

e. Page 2, Line 13—The Commission should add two separate lines to reflect the effect on the ADIT balance due to changes in the tax rate. One line would show the temporary differences between book and accelerated depreciation rates, and the other line would show permanent differences due to the change in the tax rates under the Tax Cuts and Jobs Act.

f. Page 2, Lines 13–15—The Commission should require pipelines to submit footnotes that reflect FERC Form No. 2 footnote data referenced on these lines.

g. Page 2, Lines 16–17—The Commission should require pipelines to specify whether the recourse rates are based upon a levelized rate design versus a traditional rate design. This could be accomplished via a separate line that displays the regulatory asset or liability associated with the rate levelization, if applicable.

h. Page 3, Lines 1–6—The Commission should include a line that shows revenues reserved for refunds. Page 301 of FERC Form No. 2 requires gross revenues and reservations for refunds to be reported. Reserved revenues have book/tax implications in the ADIT amounts.

i. Page 3, Lines 7–8—The Commission should include an option for the pipeline to state whether it recovers both fuel gas and electric fuel costs through its fuel tracking and true-up mechanism.

j. Page 4, Lines 8–10 and Lines 29–30—The Commission should require the pipeline to provide the time period and SEC Form 10K reference supporting the parent company capital structure claimed, in addition to the Ticker and Company Name.

k. Page 4, Line 13—The Commission should include a separate line item specifying ''other interest,'' and the pipeline should list only those items that are properly included in a cost of service.

l. Page 5, Lines 11–24—The Commission should require the pipeline to provide the year of the owner data provided. There is often a lag in the data related to ownership percentages (for example, the 2017 data would likely only include 2016 ownership percentages).[200]

169. The Commission declines Indicated Shippers' requests, except for Items j and l noted above.

170. Indicated Shippers' request in Item a asks the Commission to include a line that shows storage gas losses recorded in Account No. 823, which are not included in a pipeline's cost of service. Account No. 823 can be recorded differently by each pipeline and may be included in a pipeline's cost of service. It is not possible to account for all the differences between pipelines so the Commission declines to include a separate line for Account No. 823.

171. For Items b and d, Indicated Shippers request to disaggregate the gas exclusions and negative salvage data provided on the FERC Form No. 501–G. However, this request would not provide additional information to evaluate the impact of the Tax Cuts and Jobs Act and the *United Airlines* Issuances on a pipeline's cost of service. Therefore, the Commission finds this request unnecessary and declines Indicated Shippers' request.

172. For Item c, Indicated Shippers state that ACA cost and revenue are not typically included in a pipeline cost of service for ratemaking purposes. Indicated Shippers conflate a cost-of-service item with cost recovery. ACA costs are a recoverable cost-of-service item. FERC Form No. 501–G is focused on costs, not on revenues. The Commission finds that the ACA cost is appropriately included in the FERC Form No. 501–G data and that there is no need to modify the form for ACA revenues. Therefore, the Commission denies Indicated Shippers' request.

173. For Item e, Indicated Shippers request that the Commission add two lines to reflect changes to the ADIT balance due to changes in the tax rate. The FERC Form No. 501–G already reflects changes in ADIT due to the changed tax rate, as the data is brought over from the pipeline's FERC Form Nos. 2 and 2–A. As is explained elsewhere in this order,[201] the 2017 FERC Form Nos. 2 and 2–A ADIT balances are required to be recalculated reflecting the Tax Cuts and Jobs Act. There is no need to show the level of the required adjustment. Indicated Shippers' request is denied.

174. For Item f, Indicated Shippers request that the Commission require pipelines to supply any associated footnotes that may have been provided in FERC Form Nos. 2 and 2–A. The Commission finds that there is no need to require pipelines to submit footnotes when they are already provided in the pipeline's Form No. 2 or 2–A. Any interested party may simply reference the pipeline's Form No. 2 or 2–A footnotes.

175. For Item g, Indicated Shippers request to disaggregate the data in the FERC Form No. 501–G by requiring pipelines to specify whether the recourse rates are based upon a levelized rate design versus a traditional rate design by adding a separate line to

[199] INGAA Comments at 39; Boardwalk Comments at 30.

[200] Indicated Shippers Comments at 15–17.

[201] *See supra* P 144.

display the regulatory asset balance attributable to the levelized rate design. The FERC Form No. 501–G already carries over the FERC Form Nos. 2 and 2–A data that includes regulatory assets or liabilities attributable to levelized rates. Indicated Shippers do not identify what purpose would be served by the additional level of disaggregation. The Commission finds Indicated Shippers' request unnecessary.

176. Indicated Shippers request in Item h to add a line to show revenues reserved for refunds. FERC Form No. 501–G focuses on a pipeline's cost of service. Funds reserved for refunds are pipeline revenues. FERC Form No. 501–G is focused on costs, and not on revenues. The Commission rejects Indicated Shippers' proposed change.

177. For Item i, Indicated Shippers request to include an option to state whether a pipeline recovers both fuel gas and electric fuel costs through its fuel tracking and true-up mechanism. The Commission is aware that pipelines record gas and electric fuel, lost and accounted for gas, and related gas sales and purchases, in a variety of accounts. On page 3, Lines 2–4 capture the major accounts. Lines 7 and 8 request information as to whether a pipeline has a true-up mechanism for fuel or stated rates. The Commission acknowledges that the FERC Form No. 501–G adjustments for fuel and related costs will not be complete. However, as the major accounts are accounted for, the end result should not significantly impact the use of the form as a screening tool.

178. For Item k, Indicated Shippers request to include a separate page 4 line item specifying ''other interest'' and list only those items that are properly included in a cost of service. The Commission denies this request. This request would require a pipeline to make a cost allocation determination, which would vary by pipeline. As previously stated, the purpose of FERC Form No. 501–G is to create a screen to determine whether additional procedures are required. The form is not designed to duplicate each and every pipeline's cost-of-service design.

179. The Commission will incorporate Indicated Shippers' requests for Items j and l, wherein they request the pipelines to provide references to the data provided on FERC Form No. 501–G, page 4, capital structure, and page 5, ownership data, respectively. For Item j, instead of requiring pipelines to provide the time period of the SEC Form 10K reference in addition to the ticker and company name, the Commission will add a separate cell in the FERC Form No. 501–G where pipelines can provide a hyperlink to the referenced SEC Form 10K. For Item l, the Commission will add a separate cell to the FERC Form No. 501–G for pipelines to specify the year of the owner data provided.

180. Berkshire Hathaway requests the Commission modify the FERC Form No. 501–G, pages 1–3 to eliminate market-based costs and revenues. Berkshire Hathaway claims during the course of traditional rate proceeding, these revenues and costs would not be included as part of the cost-of-service calculation, and therefore, should not be part of the FERC Form No. 501–G reporting.[202] TransCanada raises similar concerns that the FERC Form No. 501–G should exclude all incremental cost of service and revenue components from FERC Form No. 2 pages 217 and 217a.[203]

181. The Commission rejects Berkshire Hathaway's and TransCanada's proposal to exclude costs and revenues from the FERC Form Nos. 2 and 2–A, pages 217 and 217a. Contrary to Berkshire Hathaway's claims that the non-traditional cost and revenue would not be included in a cost-of-service calculation, general rate case filings pursuant to Part 154 of the Commission's regulations require pipelines to provide a complete cost of service, including non-jurisdictional functions and costs associated with service for which the pipeline does not propose to change the rates.[204] As the Commission has explained, a complete cost-of-service filing is required to permit examination and allocation of common costs.[205] A complete cost of service would include market-based rate and incremental services. Incomplete rate case filings may be rejected.[206] If, as a matter of functionalization, cost allocation or rate design,[207] a pipeline believes that the data in FERC Form No. 501–G should be adjusted, they may do so in an Addendum to the FERC Form No. 501–G filing.

182. In addition, Berkshire Hathaway argues that on FERC Form No. 501–G's page 1, lines 7–9 and 12–13, and page 3, lines 2–5, all revenues and expense should be included in the cost of service and return on equity calculations; therefore, page 1, lines 7–9 and 12–13, and page 3, lines 2–5 related to fuel and gas balances are not necessary. Berkshire Hathaway explains pipelines without fuel, unaccounted for gas, or other trackers could have potential gains or losses associated with the fuel revenues collected and sales expenses associated with such activity, which should flow through the cost of service and return on equity calculations as part of the FERC Form No. 501–G calculation. Berkshire Hathaway states excluding these accounts would fail to capture those gains and losses. Conversely, pipelines with trackers should not have any gains or losses on fuel or sale expense; therefore, including all of these accounts would ensure that the net amount is zero. In either case, Berkshire Hathaway asserts no adjustments are necessary.[208]

183. The Commission denies Berkshire Hathaway's request. FERC Form No. 501–G is designed to create a non-gas cost of service. The form is designed in this manner as most pipelines have some form of fuel tracker that should result in cost and revenue neutrality. As noted above in discussing Indicated Shippers' Item i, the Commission is aware that the listed accounts will not capture all the accounts that may include fuel and gas balance accounts. However, a form designed to be used by approximately 130 pipelines cannot achieve the cost of service and rate design granularity to accurately reflect every pipeline's individual circumstance. The Commission is aware that pipelines with stated fuel rates may not have cost and revenue neutrality. That is why FERC Form No. 501–G, page 3, lines 7–8 request information as to whether the pipeline's tariff provides for a fuel tracker or stated fuel rates. For pipelines with a stated fuel rate, the form is consistent in its treatment of that cost-of-service item as every other cost-of-service item. Additionally, FERC Form No. 501–G, page 3, line 5 requests the removal of any other fuel related

[202] Berkshire Hathaway Comments at Ex. A.

[203] TransCanada Comments at 16.

[204] 18 CFR 154.313.

[205] *See, e.g., Equitrans, L.P.,* 109 FERC ¶ 61,214, at P 14 (2004).

[206] *Id.; Williston Basin Interstate Pipeline Co.,* 55 FERC ¶ 61,340 (1991); *National Fuel Gas Supply Corp.,* 69 FERC ¶ 61,253 (1994); *CNG Transmission Corp.,* 80 FERC ¶ 61,137 (1997), *reh'g denied,* 81 FERC ¶ 61,031 (1997).

[207] The five steps of rate design are (1) determining the pipeline's cost of service, (2) functionalizing the pipeline's costs among the pipeline's various operations, (3) classifying the pipeline's fixed and variable costs to reservation and usage charges of the pipeline's rates, (4) allocating the costs classified as fixed or variable among the pipeline's various rate zones and services, and (5) designing per unit rates for each service. *Pipeline Service Obligations & Revisions to Regulations Governing Self-Implementing Transportation; & Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,431, *order on reh'g,* Order No. 636–A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g,* Order No. 636–B, 61 FERC ¶ 61,272 (1992), *order on reh'g,* 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos.* v. *FERC,* 88 F.3d 1105 (D.C. Cir. 1996), *order on remand,* Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[208] Berkshire Hathaway Comments at Ex. A.

revenues from any source that are not recognized as part of its non-fuel cost of service.

184. Millennium observes that page 1 of FERC Form No. 501–G automatically assumes an income tax allowance of zero for any pass-through entities' costs of service, while page 5 of FERC Form No. 501–G reflects an income tax allowance for pass-through entities calculated pursuant to the Commission's 2005 Policy Statement. Accordingly, Millennium asserts that the form is internally inconsistent.

185. The Commission clarifies that there is no inconsistency. The information requested on page 5 provides the current income tax allowance reflected in the current rates of the pipeline prior to the Tax Cuts and Jobs Act and the *United Airlines* Issuances. By comparing a cost of service containing the income tax allowance applicable to current rates with a cost of service containing the reduced or eliminated income tax allowance consistent with § 154.404(a)(2), FERC Form No. 501–G determines the Indicated Cost of Service Reduction on line 34 of page 1.

186. Furthermore, the Commission clarifies that any pipeline that answers ''no'' to the question on line 4 of page 1 in the FERC Form No. 501–G, ''Is the Pipeline a separate income taxpaying entity?'' must answer lines 13–26 of page 5 in the FERC Form No. 501–G and include the most recent date the marginal taxes rates represent. This applies whether or not the pipeline seeks the limited section 4 filing pursuant to § 154.404(a)(2). The Commission requests this information because it is not available to the public and provides useful data for assessing the effect of the tax policy changes on pipeline cost of service. The Commission is adding this guidance to both the FERC Form No. 501–G and to the FERC Form No. 501–G *Implementation Guide.*

187. Spectra argues the proposed FERC Form No. 501–G is not structured appropriately to account for joint venture ownership of pipelines. Spectra explains that many of the fields in the form and the hard-wired formulae and outputs from those fields simply do not apply to joint ventures. For example, Spectra points to page 5 of the form that provides a list breaking down equity owners but does not reference joint ventures. Spectra also argues the FERC Form No. 501–G does not address how to include an income tax allowance for pipelines owned in part by corporations and in part by MLP pipelines. Spectra asserts the form should be revised to clearly address joint venture pipelines and allow for inclusion of an income tax allowance for these entities, or to allow pipelines the opportunity to reflect such ownership and appropriate cost-of-service components in the FERC Form No. 501–G.[209]

188. The Commission will accept in part and deny in part Spectra's request to revise the FERC Form No. 501–G. To account for each pipeline's unique situation is not feasible and may overly complicate the FERC Form No. 501–G. Instead, pipelines may make adjustments to individual line items in additional work sheets attached as an Addendum to the FERC Form No. 501–G to properly reflect their situation.[210] If Spectra or any other pipeline proposes any adjustments, it must fully explain and support the adjustments in the Addendum. All adjustments should be provided in a manner similar to that required in adjustments to base period numbers provided in statements and schedules required by § § 154.312 and 154.313 of the Commission's regulations.[211]

189. TransCanada notes that as proposed, FERC Form No. 501–G requires pipelines to input the cost of capital from FERC Form No. 2 page 218a to complete lines 3 through 5. TransCanada argues this data is inappropriate to determine a pipeline's capital structure, as that data is used for calculating AFUDC, and as a result, it includes prior year-end balances.[212] The Commission acknowledges that in certain situations, this may result in slightly out-of-date capital structures. This timing problem should be ameliorated by the revision of page 4 of FERC Form No. 501–G to re-rank the capital structure analysis. In the event that any responses on the One-time Report nevertheless reflect inaccurate capital data, we encourage respondents to explain the inaccuracy in an Addendum to their report.

C. Additional Filing Options for Natural Gas Companies

190. In the NOPR, the Commission proposed that, upon filing of the FERC Form No. 501–G, interstate natural gas pipelines would have four options. The first two options—filing a limited NGA section 4 rate filing or a general NGA section 4 rate case—would allow the pipelines to voluntarily make a filing to address the effects of the Tax Cuts and Jobs Act and the Revised Policy Statement. Under the third option, pipelines could file an explanation why no rate change is necessary. Finally, pipelines could file the FERC Form No. 501–G described above, without taking any other action at this time. As discussed below, in this Final Rule, the Commission adopts all four of these options, with various clarifications.

1. Limited NGA Section 4 Filing (Option 1)

a. NOPR

191. The Commission proposed that, together with its FERC Form No. 501–G, an interstate natural gas pipeline could file a limited NGA section 4 filing to allow interstate pipelines to reduce their rates to reflect the reduced income tax rates and elimination of the MLP pipeline income tax allowance on a single-issue basis, without consideration of any other cost or revenue changes. In other words, the Commission proposed to allow interstate natural gas pipelines to file a limited NGA section 4 filing, pursuant to proposed § 154.404, to reduce their reservation charges and any one-part rates that include fixed costs by the percentage reduction in their costs of service calculated in the FERC Form No. 501–G resulting from the reduced corporate income tax rates provided by the Tax Cuts and Jobs Act and the elimination of MLP tax allowances by the Revised Policy Statement. The Commission proposed to require MLP pipelines to eliminate their income tax allowances in any limited NGA section 4 filing, but permitted other pass-through entities to either eliminate their income tax allowances or justify why they should continue to receive an income tax allowance and to reduce their rates to reflect the decrease in federal income tax rates applicable to partners pursuant to the Tax Cuts and Jobs Act. The Commission stated that interested parties may protest the limited NGA section 4 filing, but that the Commission would only consider arguments relating to matters within the scope of the proceeding.[213]

192. The Commission noted that it generally does not permit pipelines to change any single component of their cost of service outside of a general NGA section 4 rate case but that the Commission believes an exception to that policy is justified in this case in order to permit interstate pipelines to voluntarily reduce their rates as soon as possible to reflect a reduction in a single cost component—their federal income tax costs—so as to flow through that benefit to consumers. The Commission also noted that the proposed requirement that all interstate pipelines

[209] Spectra Comments at 28.

[210] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 39.

[211] 18 CFR 154.312 and 154.313.

[212] TransCanada Comments at 16–17.

[213] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 42.

file the abbreviated cost and revenue study in FERC Form No. 501–G would enable pipelines and all other interested parties to evaluate whether there are significant changes in other cost components or revenues that affect the need for a rate reduction with respect to taxes.[214]

b. Comments

193. Several commenters argue that the Commission should impose a moratorium on NGA section 5 actions if a pipeline chooses to make the limited NGA section 4 filing.[215] INGAA argues that pipelines electing to make the limited NGA section 4 filing will be implementing a rate decrease sooner than would be required in a section 5 rate proceeding and that pipelines will have no incentive to make the limited NGA section 4 filing absent a firm assurance that it will not immediately be subject to an additional NGA section 5 proceeding.[216] Some commenters suggest a moratorium of at least three years would be appropriate.[217]

194. INGAA and Kinder Morgan argue that a pipeline that elects to file a limited section 4 rate case should not be required to complete page 3 of FERC Form No. 501–G, which collects the data necessary to calculate an estimated ROE.[218] INGAA argues that the Commission stated that it will only consider protests of the limited NGA section 4 filings that are directly related to the reduced income tax rates and elimination of the MLP pipeline income tax allowances.[219] INGAA contends that this information serves no purpose, would not lead to additional rate modifications under the limited NGA section 4 option, and the information could be used as a basis for a complaint by shippers seeking to initiate a section 5 proceeding.[220]

195. Commenters ask for clarification regarding whether a pipeline is limited to using the data provided in the FERC Form No. 501–G without adjustment when reducing its rates under the limited NGA section 4 option or whether a pipeline is permitted to incorporate into its calculations the supported adjustments included in the Addendum that are permitted under the NOPR.[221]

196. APGA contends that not all interstate natural gas pipelines employ a straight fixed-variable rate design where all fixed costs are collected through the reservation charge and that the Commission should allow a pipeline to revise usage rates as well if there are fixed costs collected in usage rates.[222]

197. APGA asks the Commission to clarify that a limited NGA section 4 rate filing (to reduce a pipeline's reservation charges and any one-part rates that include fixed costs by the percentage reduction in its cost of service calculated in the FERC Form No. 501–G) may be made prior to the due date for FERC Form No. 501–G.[223]

c. Discussion

198. The Commission adopts proposed § 154.404 authorizing natural gas pipelines to submit limited NGA section 4 filings to reduce their rates to reflect the Tax Cuts and Jobs Act and the *United Airlines* Issuances, with three modifications. First, as already discussed, the Commission is removing the requirement that MLP pipelines eliminate their tax allowances in any limited NGA section 4 filing. Instead, like other pass-through entities, MLP pipelines may either eliminate their tax allowances or reduce their rates to reflect the reduced income tax expenses provided by the Tax Cuts and Jobs Act. Second, as discussed below, we grant in part commenters' request for a moratorium on NGA section 5 investigations in the event a pipeline chooses the limited NGA section 4 option. Third, as discussed below, the Commission is also revising proposed § 154.404 to recognize that pipelines that do not use a straight fixed-variable rate design may include fixed costs in their usage charges and thus require that such pipelines' limited NGA section 4 filings include a percentage reduction of any usage charges including fixed costs.

199. We grant, in part, commenters' request for a moratorium on NGA section 5 investigations in the event a pipeline chooses to make a limited NGA section 4 rate reduction filing. Such a filing is an efficient and expeditious method of passing along to ratepayers the benefit of the reduction in the corporate income tax rate or the elimination of the MLP income tax allowance, without the need for the costly and time-consuming litigation entailed in an NGA section 5 rate investigation. Accordingly, it is reasonable to provide pipelines an incentive to make such limited NGA section 4 rate reduction filings. On the other hand, it is possible that a pipeline could make a limited NGA section 4 rate reduction filing and yet still have a significantly excessive ROE. In order to balance these concerns, the Commission has determined that it will not initiate an NGA section 5 investigation into the rates of a pipeline for three years from the effective date of the rate reduction resulting from the pipeline's limited NGA section 4 filing if the pipeline's filing meets certain requirements. A pipeline would qualify for the NGA section 5 investigation moratorium if (1) the Commission accepts its limited NGA section 4 filing and (2) its Total Estimated ROE after the filing, as calculated on page 3, line 26, column (E) of its FERC Form No. 501–G, is 12 percent or less.[224] For purposes of determining whether a pipeline qualifies for the NGA section 5 investigation moratorium, the Commission will rely on data in the FERC Form No. 501–G itself, without considering any adjustments the pipeline may include in an Addendum, so as to minimize any disputes as to whether the pipeline qualifies for the moratorium. However, as discussed below, the pipeline is free to calculate the percentage rate reduction proposed in its limited NGA section 4 filing using the adjusted data in its Addendum to its FERC Form No. 501–G.

200. The Commission uses its discretion when deciding whether to initiate an NGA section 5 investigation.[225] Using a 12 percent Total Estimated ROE threshold to determine whether a pipeline qualifies for a moratorium will allow for a more

[214] *Id.* P 44.

[215] INGAA Comments at 29; Dominion Energy Comments at 11; Williams Comments at 8; EQT Midstream Comments at 12–13; Kinder Morgan Comments at 33.

[216] INGAA Comments at 29.

[217] *Id.*; Williams Comments at 8; EQT Midstream Comments at 12–13; Kinder Morgan Comments at 33.

[218] INGAA Comments at 30; Kinder Morgan Comments at 33.

[219] INGAA Comments at 30 (citing NOPR, FERC Stats. & Regs. ¶ 32,725 at P 42).

[220] *Id.*

[221] EQT Midstream Comments at 18–19; Tallgrass Pipelines Comments at 22.

[222] APGA Comments at 7 (noting that proposed § 154.404(c) permits the pipeline to reduce only its reservation rates).

[223] APGA Comments at 4–5.

[224] FERC Form No. 501–G includes a new column titled ''Rate Moratorium Option 12% ROE Test.'' In that column, the effect of a limited section 4 rate reduction is measured by reducing a pipeline's total adjusted revenues (adjusted for non-base rate and non-jurisdictional activities) by the indicated cost-of-service reduction. The Commission is aware this adjustment is a proxy for a detailed revision to rates and does not reflect any discount adjustment, negotiated rates or treatment of fixed and variable cost components. With that caveat, the ROE calculation for the three-year rate moratorium begins with the adjusted revenue and subtracts the operating costs to obtain revised income before income taxes. That amount is further reduced to reflect the new tax rates for a C Corp or elimination thereof for a pass-through entity to calculate net income. The net income is compared to the pipeline's rate base to develop the test ROE to determine whether the pipeline qualifies for the moratorium.

[225] *See General Motors Corp* v. *FERC,* 613 F.2d at 944 (''[A]n administrative agency's decision to conduct or not to conduct an investigation is committed to the agency's discretion.'') (citations omitted).

efficient use of the Commission's resources and provide an additional incentive for pipelines to choose the limited NGA section 4 filing option so that customers will receive a rate reduction sooner than if the Commission initiated an NGA section 5 investigation.

201. The Total Estimated ROE calculated in the FERC Form No. 501–G need not be 12 percent or less for the Commission to accept a limited NGA section 4 filing. Further, a FERC Form No. 501–G with a Total Estimated ROE higher than 12 percent will not necessarily result in a NGA section 5 rate investigation. For pipelines that are not covered by the moratorium, the Commission will take many factors into consideration when determining whether to exercise its discretion to initiate a NGA section 5 investigation, including whether a pipeline chooses the limited NGA section 4 option, any information the pipeline provides in an Addendum to its FERC Form No. 501–G, or any other explanation the pipeline may provide as to why the Commission should not initiate a NGA section 5 rate investigation. Finally, we note that the NGA section 5 investigation moratorium would not prevent customers from filing an NGA section 5 complaint.

202. We agree with APGA that not all interstate natural gas pipelines employ a straight fixed-variable rate design where all fixed costs are collected through the reservation charge and that a pipeline should be able to revise usage rates using the limited NGA section 4 option if there are fixed costs collected in usage rates. Accordingly, we have revised proposed § 154.404 to require that the authorized limited NGA section 4 filing include a percentage reduction of a usage charge that includes fixed costs.

203. We also affirm that pipelines must complete FERC Form No. 501–G in its entirety, including page 3, even when choosing the limited NGA section 4 filing option. Page 3 of the report requires the pipeline to report its revenues from which the cost-of-service items, as detailed on page 1, are subtracted. Thus, the information reported on page 3 of the report is necessary to calculate the pipeline's ROE before and after the reduction in income taxes provided by the Tax Cuts and Jobs Act and the elimination of the MLP pipeline income tax allowance by the *United Airlines* Issuances. Although such ROE information may not be relevant to calculating the rate reduction included in a limited NGA section 4 rate filing, it is relevant to determining whether the Commission should initiate an investigation of the pipeline's rates under NGA section 5 despite the pipeline's limited NGA section 4 filing, and that information is necessary for purposes of applying the moratorium discussed above. Thus, the pipeline must complete the entire FERC Form No. 501–G regardless of the subsequent filing option chosen by the pipeline.

204. In response to questions regarding whether a pipeline may calculate the percentage reduction in its rates for the limited NGA section 4 option using the adjustments in its Addendum to the FERC Form No. 501–G, we clarify that such adjustments may be reflected in the calculation of the limited NGA section 4 rate reduction, subject to the following conditions. As stated in the NOPR, the limited NGA section 4 option is meant to ''allow interstate pipelines to reduce their rates to reflect the reduced income tax rates and elimination of the MLP pipeline income tax allowance on a single-issue basis, without consideration of any other cost or revenue changes.'' [226] Thus, the pipeline may not offset the percentage reduction in its cost of service resulting from the Tax Cuts and Jobs Act and the *United Airlines* Issuances with unrelated increases in its cost of service. However, the pipeline may take into account adjustments included in its Addendum to the FERC Form No. 501–G for the purpose of accurately calculating the percentage reduction in its cost of service caused by the Tax Cuts and Jobs Act or the *United Airlines* Issuances. For this purpose, in calculating the percentage reduction in its cost of service related to the reduction or elimination of its tax allowance, the pipeline should include the cost-of-service adjustments in its Addendum in its cost of service for the periods both before and after the Tax Cuts and Jobs Act and *United Airlines* Issuances. As noted above, for purposes of the NGA section 5 investigation moratorium, the Commission will use the pipeline's unaltered FERC Form No. 501–G to determine whether it qualifies for the moratorium.

205. In response to APGA's request, we clarify that a pipeline may file its FERC Form No. 501–G and limited NGA section 4 filing in advance of the due date of its FERC Form No. 501–G, and encourage pipelines to do so. A pipeline cannot, however, make the limited NGA section 4 filing described in this Final Rule without also filing the FERC Form No. 501–G.

[226] *See* NOPR, FERC Stats. & Regs. ¶ 32,725 at P 42.

2. General NGA Section 4 Filing or Prepackaged Uncontested Settlement (Option 2)

a. NOPR

206. The Commission proposed in the NOPR that an interstate natural gas pipeline could include with its FERC Form No. 501–G a commitment to file either a prepackaged uncontested settlement or, if that is not possible, a general NGA section 4 rate case to revise its rates based upon current cost data.[227] The Commission stated that a pipeline choosing this option would also indicate an approximate time frame regarding when it would file the settlement or the NGA section 4 filing. The Commission also proposed that if the pipeline commits to make such a filing by December 31, 2018, the Commission would not initiate an NGA section 5 investigation of its rates prior to that date.[228]

b. Comments

207. Several commenters argue that pipelines that elect to file a pre-packaged settlement or general NGA section 4 rate case should be granted additional time to make such a filing.[229] INGAA argues that the proposed deadline of December 31, 2018 does not give pipelines sufficient time after the filing of FERC Form No. 501–G to negotiate uncontested rate settlements, and, if such negotiations do not succeed, to prepare a general NGA section 4 rate case. Tallgrass Pipelines contend that the December 31, 2018 deadline is unduly burdensome, especially for companies that own and operate multiple jurisdictional natural gas pipelines and shippers that ship on multiple pipelines.[230] EQT Midstream contends that a pipeline's deadline to submit its FERC Form No. 501–G is directly tied to the date when a Final Rule is issued and that a pipeline may only have a matter of months to file an uncontested settlement agreement or a general NGA section 4 rate case with the proposed static deadline of December 31, 2018.[231] INGAA argues that the proposed deadline discourages uncontested settlements because a pipeline may not want to allocate its limited resources to negotiations and instead use those resources to prepare a

[227] *Id.* P 47.

[228] *Id.*

[229] INGAA Comments at 23–25; Dominion Comments at 12–14; Southern Star Comments at 10; EQT Midstream Comments at 9–12; Tallgrass Pipelines Comments at 13–15; Kinder Morgan Comments at 34–35; Spectra Comments at 9.

[230] Tallgrass Pipelines Comments at 15.

[231] EQT Midstream Comments at 10.

general NGA section 4 rate case.[232] Dominion Energy argues that shippers are unlikely to be ready to negotiate until a pipeline's FERC Form No. 501–G has been submitted.[233] Commenters argue that, instead of imposing a fixed December 31, 2018 filing deadline upon all pipelines that elect option 2, the Commission should allow pipelines to file pre-packaged uncontested settlements or general NGA section 4 rate cases up to 180 days following their deadline for filing FERC Form No. 501–G, and that the Commission should also permit parties to request waivers or extensions of the filing deadline for pre-packaged uncontested settlements or rate cases if publically-announced settlement discussions are underway but parties have not yet resolved all issues.[234] EQT Midstream argues that the Commission should provide pipelines additional time to commit to filing a general NGA section 4 rate case if pipelines choose to engage in publicly-noticed prefiling settlement negotiations with shippers but fail to reach an agreement by December 31, 2018.[235]

208. Spectra asks for clarification regarding the December 31, 2018 deadline and whether that is the date pipelines should notify the Commission whether they will file a pre-packaged settlement/general NGA section 4 rate case or whether that is the date pipelines must make those filings.[236]

209. Several commenters argue that the Commission should not require prepackaged settlements to be uncontested.[237] EQT Midstream and Tallgrass Pipelines contend that prepackaged settlements submitted pursuant to option 2 should be reviewed under the Commission's normal standard for reviewing contested settlement filings and that prepackaged settlements should not be automatically rejected because they are not uncontested at the time the agreement is filed with the Commission.[238] Dominion Energy argues that requiring prepackaged settlements to be completely uncontested is too high a bar and will likely cause few pipelines and customers to attempt that option.[239]

210. Commenters also argue that the Commission should not allow shippers with negotiated rates to withhold consent from an otherwise uncontested prepackaged settlement.[240] EQT Midstream argues that, given that negotiated rate shippers are not impacted by a reduction to a pipeline's recourse rate through an NGA section 4 or 5 filing,[241] the Commission should clarify that shippers do not have the ability to veto an otherwise unopposed settlement.[242]

c. Discussion

211. In the NOPR, the Commission stated that, if a pipeline commits to file an uncontested prepackaged settlement or a general NGA section 4 rate case on or before December 31, 2018, the Commission would not initiate an NGA section 5 rate investigation before that date. In other words, the Commission proposed to grant all pipelines who make the above described commitment a guaranteed safe harbor from an NGA section 5 rate investigation until December 31, 2018. A number of pipeline commenters request that the Commission extend this guaranteed safe harbor from the initiation of an NGA section 5 rate investigation until a later date in order to give them more time to negotiate settlements with their customers and others.

212. We deny this request. We recognize that pipelines must expend time and resources to reach a settlement or prepare an NGA section 4 rate case, but it is important to implement rate reductions as a result of the Tax Cuts and Jobs Act and the *United Airlines* Issuances. The proposed December 31, 2018 end of the guaranteed safe harbor is already one year after the effective date of the Tax Cuts and Jobs Act. We also note that pipelines need not wait until the FERC Form No. 501–G deadline to begin discussions with customers or to begin preparing a general NGA section 4 rate case. Indeed, the Commission encourages pipelines to begin discussions with their customers immediately, if those discussions have not already begun.

213. However, we clarify that, if a pipeline is engaged in productive settlement negotiations as the December 31, 2018 end of the safe harbor period approaches, it may file a request for an extension of the safe harbor period. The filing of such requests will give other interested parties an opportunity to state whether they agree that productive settlement negotiations are underway. In determining whether to grant an extension, the Commission will consider whether other interested parties support the request.

214. Commenters argue that the Commission should not require prepackaged settlements to be uncontested. The Commission notes that prepackaged rate change filings typically do not contain all the supporting documents as required by § 154.312 of the Commission's regulations. As such, there is likely no record evidence upon which the Commission can approve a prepackaged settlement over the objections of a protesting party. Although prepackaged tariff filings are not technically settlements filed pursuant to § 385.602 of the Commission's regulations, the Commission typically applies Rule 602 standards in evaluating these filings. Under Rule 602 the Commission "may decide the merits of the contested settlement issues, if the record contains substantial evidence upon which to base a reasoned decision. . . ."[243] Without substantial evidence upon which to base a reasoned decision, and without additional procedures, the Commission could not approve a protested prepackaged filing.

215. In regards to arguments that the Commission should not allow shippers with negotiated rates to withhold consent from an otherwise uncontested prepackaged settlement, we determine that the effect of opposition by a negotiated rate customer can be considered on a case-by-case basis.

3. Statement That No Adjustment in Rates Needed (Option 3)

a. NOPR

216. In the NOPR, the Commission proposed that a pipeline could include with its FERC Form No. 501–G a statement explaining why no adjustment in its rates is needed. The Commission recognized that a rate reduction may not be justified for a significant number of pipelines for a number of reasons. For example, a number of pipelines may currently have rates that do not fully recover their overall cost of service. Therefore, a reduction in those pipelines' tax costs may not cause their rates to be excessive. The Commission stated that the proposed FERC Form No. 501–G would provide information as to whether an interstate pipeline may fall into this category. The Commission stated that the pipeline could provide a

[232] INGAA Comments at 23–25.

[233] Dominion Energy Comments at 13.

[234] INGAA Comments at 25; Dominion Energy Comments at 13; EQT Midstream Comments at 11–12; Tallgrass Pipelines Comments at 14; Kinder Morgan Comments at 34–35.

[235] EQT Midstream Comments at 11.

[236] Spectra Comments at 9.

[237] EQT Midstream Comments at 19; Dominion Energy Comments at 11–12; Tallgrass Pipelines Comments at 22–23.

[238] EQT Midstream Comments at 19; Tallgrass Pipelines Comments at 22–23.

[239] Dominion Energy Comments at 12.

[240] EQT Midstream Comments at 19; Tallgrass Pipelines Comments at 23.

[241] EQT Midstream Comments at 19 (citing NOPR, FERC Stats. & Regs. ¶ 32,725 at P 15).

[242] *Id.*

[243] 18 CFR 385.602(h)(1)(i); *see also Mobil Oil Corp.* v. *FPC,* 417 U.S. 283, 314 (1974).

full explanation of why, after accounting for its reduction in tax costs, its rates do not over recover its overall cost of service and therefore no rate reduction is justified. The pipeline would provide this statement along with any additional supporting information it deems necessary.

217. The Commission also stated that an interstate pipeline might explain that an existing rate settlement provides for a moratorium on rate changes that applies to any rate changes that might result from the Tax Cuts and Jobs Act or the *United Airlines* Issuances. The Commission stated that interested parties would have an opportunity to comment on any assertion by a pipeline that no adjustment to its rates is needed, and the Commission would then determine whether further action is needed with respect to that pipeline.[244]

b. Comments

218. Indicated Shippers argue that the Commission should thoroughly examine any assertion by a pipeline that its rate case settlement includes a rate moratorium preventing any rate change to reflect the reduction in its tax expenses. Indicated Shippers assert that some settlements state that the rate moratorium does not apply to industry-wide Commission mandated changes to rates to account for tax cost savings, and the Commission should require those pipelines to implement rate changes to take into account the effects of the tax changes.[245]

219. Indicated Shippers also request that the Commission clarify that any pipeline that is precluded from making rate changes due to a settlement moratorium will be required to comply with the FERC Form No. 501–G filing requirement once the moratorium has expired. LDC Coalition similarly argues that the Commission should clarify how it will encourage pipelines with rate case filing moratoria but no requirement to file a new rate case after the moratorium expires to reflect the impact of the Tax Cuts and Jobs Act and the Revised Policy Statement on its rates.[246]

220. LDC Coalition asks the Commission to specify how soon a pipeline must file a general NGA section 4 rate case in the context of pipelines filing an explanatory statement using a comeback provision as justification for why an adjustment to its rates is not needed.[247]

221. Direct Energy and Range argue that the Commission should establish a process for requiring immediate rate reductions to reflect the reduction in the corporate tax rate or tax allowance pursuant to NGA section 5.[248] Direct Energy argues that the Commission should order an immediate proportional rate reduction under NGA section 5 for pipelines with revenues so far in excess of their actual cost of service that the rates are presumptively unjust and unreasonable under NGA section 5 based on a review of the information provided in the FERC Form No. 501–G.[249]

c. Discussion

222. As explained in the NOPR, despite the reduction in the corporate income tax and the change in policy concerning MLP tax allowances, a rate reduction may not be justified for a significant number of pipelines. For example, the pipeline's existing rates may not fully recover its cost of service or a rate moratorium may prohibit rate changes at this time. Pipelines may include with their filing of the FERC Form No. 501–G a statement explaining why these or other reasons justify their not changing their rates at this time.

223. As discussed previously, the Commission will notice the filing of each pipeline's FERC Form No. 501–G and permit interested persons to file interventions, protests, and comments. If any person disagrees with a pipeline's explanation of why it believes no rate change is justified at this time, that person may intervene and protest the pipeline's filing. For example, if a party that believes that a rate case moratorium relied on by the pipeline should be interpreted as permitting rate changes related to the Tax Cuts and Jobs Act and the change in policy concerning MLP tax allowances, that party may provide a full explanation of why it interprets the settlement as it does, and the Commission will consider the views of both the pipeline and other intervening parties in deciding what action to take with respect to that pipeline.

224. Indicated Shippers request that the Commission clarify that any pipeline precluded from making changes to its rates by a settlement moratorium will be required to file a FERC Form No. 501–G after the settlement moratorium. LDC Coalition also suggests that the Commission might continue the FERC Form No. 501–G process beyond the one-time aspect of the proposed requirement for any pipeline with a settlement rate moratorium that extends past the compliance filing dates. The Commission rejects these requests. The Commission is adopting the FERC Form No. 501–G process as a one-time filing requirement enabling the Commission to consider what actions to take to address the rate effects of the Tax Cuts and Jobs Act. All pipelines with cost-based, stated rates are required to make their filings by the deadlines established in the *Implementation Guide.* Pipelines with rate moratoria currently in effect must comply with their applicable deadline and may include an explanation of why their settlement moratorium prevents a rate change at this time. If the Commission agrees that a rate moratorium prevents a rate change at this time, there is no need to require the subject pipeline to file another FERC Form No. 501–G at such time as the rate moratorium expires. The Commission intends to continue its existing practice of reviewing pipeline FERC Form No. 2 and 2–A filings every year to determine whether to initiate rate investigations under NGA section 5. Therefore, when a pipeline's rate moratorium expires, the Commission will examine that pipeline's most recent FERC Form No. 2 and 2–A filings as of that date and all other relevant factors in order to determine whether an NGA section 5 investigation of that pipeline's rates is justified.

225. In response to arguments by commenters that the Commission should immediately reduce pipelines' rates pursuant to NGA section 5, as explained in the NOPR, the Commission recognizes that some pipelines need not change their rates at this time[250] and, therefore, an immediate reduction in all pipeline rates pursuant to NGA section 5 would not be appropriate. We also reject the request to immediately reduce rates based on a review of the information provided in the FERC Form No. 501–G. The FERC Form No. 501–G is only designed to estimate the percentage reduction in the pipeline's cost of service resulting from the Tax Cuts and Jobs Act and the *United Airlines* Issuances and the pipeline's current ROEs before and after the reduction in corporate income taxes and, if applicable, income tax allowance.[251] However, as discussed above, FERC Form No. 501–G cannot capture all the intricacies of a fully developed cost of service, allocation and rate design for all pipelines. The FERC Form No. 501–G does not provide enough information by itself for the Commission to determine the just and

[244] NOPR, FERC Stats. & Regs. ¶ 32,725 at PP¶ 49–50.

[245] Indicated Shippers Comments at 14–15.

[246] LDC Coalition Comments at 19–21.

[247] *Id.* at 21.

[248] Direct Energy Comments at 4–5, 8; Range Comments at 11–13.

[249] Direct Energy Comments at 8.

[250] *See* NOPR, FERC Stats. & Regs. ¶ 32,725 at P 28.

[251] *Id.* P 32.

reasonable rate pursuant to NGA section 5.

4. Take No Action (Option 4)

a. NOPR

226. Upon filing FERC Form No. 501–G, a pipeline may choose to take no action other than submitting FERC Form No. 501–G (Option 4).

b. Comments

227. Some entities commented on this option,[252] generally stating that the Commission should require pipelines choosing this option to include at least a statement of the basis for that decision.[253] Indicated Shippers similarly comment that the Commission should combine Option 4 with Option 3 and clarify that a pipeline electing the take no action option must submit a notice that it will not be adjusting rates with its FERC Form No. 501–G filing, including an explanation for why the pipeline is doing nothing.[254] NGSA suggests that the Commission eliminate Option 4 altogether, stating that it provides pipelines with an incentive to delay the process of providing rate relief to customers and consumers.[255]

c. Discussion

228. The Commission declines to provide the requested clarification or to require statements of explanation as suggested by the commenters. As stated in the NOPR, the ''no action'' option is consistent with the fact that the Commission lacks authority to order an interstate pipeline to file a rate change under NGA section 4.[256] Although the Commission is permitting interstate pipelines to voluntarily file a limited NGA section 4 filing or commit to make a general NGA section 4 filing to modify their rates to reflect the reduction in the income tax rates or elimination of the MLP pipeline income tax allowance, the Commission is not requiring interstate pipelines to make such filings. As the Commission also stated, however, based on the information contained in the individual pipeline's FERC Form No. 501–G, and comments by interested parties on that information, the Commission will consider initiating an NGA section 5 investigation of a particular pipeline's rates if it appears those rates may be unjust and unreasonable.

D. Negotiated Rates

229. In the NOPR, the Commission stated that it has granted most interstate natural gas pipelines authority to negotiate rates with individual customers that are not bound by the maximum and minimum rates in the pipeline's tariff. The Commission noted that before it permits a pipeline to implement a negotiated rate a pipeline must have a cost-based recourse rate on file with the Commission, so that a customer always has the option of entering into a contract at the cost-based recourse rate rather than a negotiated rate if it chooses.[257]

230. The Commission stated that changes to a pipeline's recourse rates occurring under NGA sections 4 and 5 would not affect a customer's negotiated rate because that rate is negotiated as an alternative to the customer taking service under the recourse rate.[258] By allowing the pipeline to negotiate individualized rates, the Commission permitted pipelines, as a means of providing rate certainty, to negotiate a fixed rate or rate formula that would continue in effect regardless of changes in the pipeline's maximum recourse rate.[259] Therefore, the Commission found that, ''unless a negotiated rate agreement expressly provides otherwise, the rates in such agreements will be unaffected by any reduction in the pipeline's maximum rate . . . resulting from the policies adopted in the rulemaking proceeding, whether in a limited or general NGA section 4 rate proceeding or a subsequent NGA section 5 investigation.'' [260]

1. Comments

231. Boardwalk argues that the Commission has specifically recognized the role of negotiated rate agreements in providing rate certainty to pipelines and their shippers,[261] and maintains that the Commission should not reduce any negotiated rates due to recent tax policy changes (unless the agreement specifically requires such a reduction).

232. Boardwalk argues that this position is consistent with the *Mobile-Sierra* doctrine,[262] because the courts require that in order to modify such contracts, the Commission must satisfy the *Mobile-Sierra* standard, under which the Commission must ''presume that the rate set out in a freely negotiated contract meets the just and reasonable requirement imposed by law.'' [263] Boardwalk asserts that the Commission may only modify a contract under *Mobile-Sierra* if it demonstrates ''that the contract seriously harms the public interest,'' which generally requires ''a finding that the existing rate might impair the financial ability of [the pipeline] to continue its service, or that the rate would cast upon other consumers an excessive burden, or be unduly discriminatory, or that there are other circumstances of unequivocal public necessity.'' [264] Boardwalk maintains that a change in the corporate tax rate or Commission policy cannot satisfy this high threshold.

233. Indicated Shippers argue that the Commission has the authority to revise negotiated rate contracts under the *Mobile-Sierra* doctrine to revise any contract if the public interest requires a modification [265] and therefore, the Commission should ensure that each negotiated rate contract is examined. They assert that given the change in circumstances related to reductions in income tax rates, as well as the need to remove any unjust and unreasonable windfall for the natural gas pipeline companies, the Commission could find that the public interest requires such a finding.

234. However, Indicated Shippers maintain that because many pipelines have a *Memphis* clause [266] in their

[252] Indicated Shipper Comments at 13; NGSA Comments at 6; Southern Companies Comments at 5; Direct Energy Comments at 8–9.

[253] Southern Companies Comments at 5.

[254] Indicated Shippers Comments at 13.

[255] NGSA Comments at 6.

[256] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 51 & n.71 (citing *Pub. Serv. Comm. of New York* v. *FERC,* 866 F.2d 487, 492 (D.C. Cir. 1989)).

[257] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 14 (citing *Negotiated Rate Policy Statement,* 104 FERC ¶ 61,134, *order on reh'g and clarification,* 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification,* 114 FERC ¶ 61,304).

[258] *Id.* P 15.

[259] *Id.* P 45 (citing *Columbia Gulf Transmission Co.,* 109 FERC ¶ 61,152, at P 13, *reh'g denied,* 111 FERC ¶ 61,338 (2005)). *See also Iberdrola Renewables, Inc.* v. *FERC,* 597 F.3d 1299, 1305 (D.C. Cir. 2010).

[260] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 45.

[261] Boardwalk Comments at 17 (citing *Columbia Gulf Transmission Co.,* 109 FERC ¶ 61,152 at P 13 (''To the extent a pipeline and its shipper want to obtain rate certainty by agreeing to a rate that will remain in effect throughout the term of the service agreement, the Commission provides them an opportunity to do so by entering into a negotiated rate agreement.''), *reh'g denied,* 111 FERC ¶ 61,338, *aff'd, Columbia Gulf Transmission Co.* v. *FERC,* 477 F.3d 739 (D.C. Cir. 2007)).

[262] Boardwalk Comments at 16 (citing *Dominion Transmission* v. *FERC,* 533 F.3d 845, 852–53 (D.C. Cir. 2008) (citing *United Gas Pipe Line Co.* v. *Mobile Gas Serv. Corp.,* 350 U.S. 332 (1956); *FPC* v. *Sierra Pac. Power Co.,* 350 U.S. 348 (1956) (*Mobile-Sierra*))).

[263] *Id.* (citing *Dominion Transmission,* 533 F.3d at 853 (internal punctuation and citations omitted)).

[264] *Id.*

[265] Indicated Shippers Comments at 6 (citing *Mobile,* 350 U.S. 332; *Sierra,* 350 U.S. 348).

[266] Indicated Shippers Comments at 7 (citing *United Gas Pipe Line Co.* v. *Memphis Light, Gas, & Water Division,* 358 U.S.103 (1958) (*Memphis*)). In *Williston Basin Pipeline Co.* v. *FERC,* the Court stated:

The label ''*Memphis* clause'' derives from the Supreme Court's decision in *United Gas Pipe Line Co.* v. *Memphis Light, Gas & Water Division,*

Continued

service agreements and individual negotiated rate agreements, the Commission would only need to make a ''just and reasonable'' determination to revise negotiated rates.[267] Indicated Shippers maintain that the Commission should establish a process to review each negotiated rate contract and examine the language set forth in each negotiated rate agreement to determine whether that agreement contains an explicit prohibition on rate reductions.

235. Indicated Shippers assert that one way for the Commission to allow negotiated rate contracts to share in the subject cost reductions would be to implement a negative surcharge, applicable to all volumes on a particular system. Indicated Shippers assert that the Commission has implemented positive surcharges in certain instances [268] and many pipelines already have mechanisms in place for the return of over-collected amounts via a negative surcharge.

236. Range requests that the Commission find, under the *Mobile-Sierra* doctrine, that existing jurisdictional contracts between interstate pipelines and shippers including negotiated rate contracts which do not reflect the subject reduction in the corporate tax rate, are unjust and unreasonable under the NGA. Range states that the dramatic reduction in pipeline tax rates provides one of the few instances where the public interest requires the Commission to modify the rates under all shipper/pipeline transportation contracts.

237. If the Commission declines to make such a *Mobile-Sierra* finding, Range argues that the Commission has not provided a valid basis for excluding negotiated rate contracts from the Tax Cuts and Jobs Act rate reduction. Range asserts that the Commission's reliance on the *Negotiated Rate Policy Statement* to exclude negotiated rate contracts from sharing in the Income Tax Reduction is misplaced. Range states that although the Commission allowed pipelines to negotiate individualized rates as a means of allowing the pipeline to provide rate certainty by the negotiation of a fixed rate or rate formula that would continue in effect regardless of changes in the pipeline's maximum recourse rate, such permission does not support the Commission's finding that a negotiated rate agreement will be unaffected by any reduction in the pipeline's maximum rate reductions resulting from the policies adopted in the instant rulemaking unless the negotiated rate contract provides otherwise.'' [269]

238. Range states that the courts allow the Commission to exercise ''light-handed'' regulation, but asserts that such regulation still is tied to the NGA and the ''just and reasonable'' standard. Range asserts that in *INGAA,* the court held that the ''overarching criterion'' was that such regulation based on other than only cost should be justified by ''a showing that . . . the goals and purposes of the statute will be accomplished,'' and to satisfy that standard, the court ''demanded that the resulting rates be expected to fall within a 'zone of reasonableness, where [they] are neither less than compensatory nor excessive.' '' [270] Range states that *INGAA* also held that ''[w]hile the expected rates' proximity to cost was a starting point for this inquiry into reasonableness . . . 'non-cost factors may legitimate a departure from a rigid cost-based approach,' '' and that ''we said that FERC must retain some general oversight over the system, to see if competition in fact drives rates into the zone of reasonableness 'or to check rates if it does not.' '' [271] Moreover, Range states that the courts have held that competition normally provides a reasonable assurance that rates will approximate cost, at least over the long run.[272] Range reasons that because the Commission assumes the negotiated rates approximate competitive rates, it follows that such rates must also approximate cost-based rates. Range alleges that the Commission has failed to apply these principles in excluding negotiated rate contracts from the tax reduction. Range asserts that this result is discriminatory, arbitrary and capricious, and not based on substantial evidence or reasoned decision-making.

239. IOGA asserts that the Commission must review the language in individual contracts and aggressively use its NGA section 5 power to ensure that negotiated rates are just and reasonable. IOGA argues that the Commission's suggestion in the NOPR that negotiated rate agreements would be unaffected in an NGA section 5 investigation [273] is inconsistent with precedent and the presumption set out by the *Mobile-Sierra* doctrine that such contracts are just and reasonable.[274] IOGA states that such a presumption can be overcome with a public interest showing in an NGA section 5 proceeding. IOGA asserts that although the public interest standard may pose a high bar, the Commission should make clear in the Final Rule that it did not intend to suggest in the NOPR that NGA section 5 relief was unavailable to negotiated rate shippers.

240. IOGA asserts that because not all shippers have equal bargaining leverage and often there is no firm capacity available at the recourse rate, the Commission should consider the context of the negotiated rate bargain in determining whether above maximum negotiated rates should be reduced like recourse rates. IOGA argues that although the parties may have bargained for a fixed negotiated rate the pipeline bargained for a rate that recovers its

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holding that a contract provision allowing a party to seek a rate adjustment under a suitable provision of the Natural Gas Act ([section] 4 for the utility, [section] 5 for the customer) obviates the need to apply *Mobile-Sierra's* ''public interest'' criterion. The *Memphis* Court could see ''no tenable basis of distinction between the filing of [a new rate under section 4 of the NGA] in the absence of a contract and a similar filing under an agreement which explicitly permits it.'' Thus, a *Memphis* clause simply entitles a party to file for changes under an applicable provision of the NGA.

519 F.3d 497, 499 (2008) (internal citations omitted).

[267] Indicated Shippers maintain that the Commission has a long court and Commission precedent to follow to allow for negotiated rate contracts to benefit from rate reduction through the application of the *Memphis* clause, unless there is a specific provision that explicitly prohibits changes to the negotiated rate or the applicability of the *Memphis* clause. Indicated Shippers Comments at 8 (citing *Union Pac. Fuels* v. *FERC,* 129 F.3d 157, 161 (D.C. Cir. 1997); *Papago Tribal Util. Auth.* v. *FERC,* 723 F.2d 950, 953 (D.C. Cir. 1983); *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities,* 151 FERC ¶ 61,047, at P 84 (2015) (Modernization Policy Statement); *Sea Robin Pipeline Co., LLC,* Opinion No. 516–A, 143 FERC ¶ 61,129, at PP 85–213 (2013)).

[268] Indicated Shippers assert that the Commission utilized such a methodology for Account No. 858 costs, *Natural Gas Pipeline Co. of America,* 70 FERC ¶ 61,317, at 61,967–61,968 (1995); and hurricane-related costs, *Sea Robin Pipeline Co.,* 128 FERC ¶ 61,286, at PP 38–42 (2009*), order on reh'g,* 130 FERC ¶ 61,191, at PP 11–13 (2010), *Sea Robin Pipeline Co., LLC,* Opinion No. 516, 137 FERC ¶ 61,201 (2011), order on reh'g, Opinion No. 516–A, 143 FERC ¶ 61,129 at PP 146–151; *High Island Offshore System, LLC,* 145 FERC ¶ 61,155, at PP 16–20 (2013).

[269] Range Comments at 10 (citing NOPR, FERC Stats. & Regs. ¶ 32,725 at P 45).

[270] *Id.* (citing *INGAA,* 285 F.3d at 31 (quoting *Farmers Union Cent. Exch.* v. *FERC,* 734 F.2d 1486, 1502 (D.C. Cir. 1984), *cert. denied,* 469 U.S. 1034 (1984))).

[271] *Id.*

[272] *Id.* (citing *Elizabeth Gas Co.* v. *FERC,* 10 F.3d 866, 870 (D.C. Cir. 1993)).

[273] IOGA Comments at 7 (citing *Dominion Transmission, Inc.,* 135 FERC ¶ 61,239, at P 30 (2011)).

[274] *Id.* (citing *Mobile, 350 U.S. 332; Sierra, 350 U.S. 348; Morgan Stanley Capital Group, Inc.* v. *Public Utility District No. 1 of Snohomish County, Wash.,* 554 U.S. 527, 530 (FERC ''must presume that the rate set out in a freely negotiated wholesale-energy contract meets the 'just and reasonable' requirement imposed by law. The presumption may be overcome only if FERC concludes that the contract seriously harms the public interest.''); *Iberdrola Renewables, Inc.* v. *FERC,* 597 F.3d at 1301 (''[N]egotiated rate customers are not left without redress if they think the rate has become unjust and unreasonable over time. They can always challenge the established rate under [S]ection 5. . . .'')).

federal income taxes and other costs that it recovers in the maximum recourse rate, not a rate that over-recovers its costs. IOGA maintains that it is neither just nor reasonable nor in the public interest for the Commission to permit such over-collection. IOGA concludes that the Commission should require any pipeline that declines to adjust negotiated rates to explain why an adjustment is not needed.

241. NGSA also argues that negotiated rate contract holders should not be excluded from this tax reduction process because this would run contrary to Commission policy that allows the application of surcharges for extraordinary circumstances. NGSA argues that negotiated contracts often contain language with surcharge provisions to capture unforeseen items or special circumstances that are not part of the standard ratemaking process.[275] NGSA maintains that if shippers with negotiated rate contracts are expected to share in costs incurred by pipelines for special situations, such as hurricanes or modernizations, then the Commission should also require that shippers share in cost reductions received by pipelines in special situations.

242. NGSA requests that the Commission implement a negative surcharge mechanism, as warranted, for shippers with negotiated rate contracts. NGSA claims that this will ensure that all parties are afforded the opportunity to appropriately share in the benefits of the Tax Cuts and Jobs Act and Revised Policy Statement, and that pipeline rates are just and reasonable.

243. AGA requests that the Commission confirm that where the pipeline required that the rate for capacity awarded under a negotiated rate agreement be no less than the pipeline's otherwise applicable tariff rate, such that the negotiated rate is now equal to the otherwise applicable tariff rate, and the tariff rate is reduced pursuant to proceedings related to the Tax Cuts and Jobs Act, any such negotiated rate be similarly reduced.

244. CAPP argues that the use of negotiated rates does not warrant the continuation of excessive recourse rates. CAPP argues that the rationale for this rate review extends to all pipelines, irrespective of the prevalence of negotiated rates on the pipeline. CAPP asserts that the fundamental purposes for which recourse rates are maintained is to provide an alternative to negotiated rates and a check on the exercise of market power. Therefore, CAPP argues that if a pipeline experiences a decline in income tax expense that warrants a reduction in its tariff rates, the use of negotiated rates and the impact of such contracting practices on its revenues has no impact on the justification for re-computing maximum tariff rates.

2. Discussion

245. The Commission declines to establish a process under which it would review every currently effective negotiated rate contract in order to determine whether that contract can and should be modified to reflect the pipeline's reduced tax costs as a result of the Tax Cuts and Jobs Act or the elimination of MLP tax allowances. For the reasons discussed below, the Commission believes that, as a general matter, such contracts should be allowed to remain in effect without change. However, an individual shipper under such a contract is free to file a complaint pursuant to NGA section 5 presenting evidence as to why its negotiated contract is unjust and unreasonable or contrary to the public interest and must be modified. Alternatively, if a shipper believes that the terms of its negotiated contract provide for a reduction in the negotiated rate to reflect the pipeline's reduced tax costs and the pipeline has failed to comply with the contract, the shipper may file a complaint or seek to enforce the contract in a court.

246. As the Commission has explained, the negotiated rate program allows ''pipelines to negotiate individualized rates that [are] not constrained by the maximum and minimum rates in the pipeline's tariff. . . . Additionally, it permit[s] pipelines as a means of providing rate certainty, to negotiate a fixed rate that would continue in effect regardless of changes in the pipeline's maximum rate.'' [276] In the Negotiated Rate Policy Statement establishing the negotiated rate program, the Commission explained that the program ''would dispense with cost of service regulation for an individual shipper when mutually agreed upon by the pipeline and its shipper,'' and ''a recourse service found in the pipeline's tariff would be available for those shippers preferring traditional cost of service rates.'' [277] Indeed, as the court found in *Iberdrola,* the:

> premise of the negotiated rate regime is that FERC will not review freely negotiated rates, which are presumed to be reasonable when a recourse rate is also offered.[278]

247. Thus, when a shipper enters into a negotiated rate agreement, it should be aware that it is agreeing to a rate that is not based on traditional cost of service regulation and will not be reduced simply because the pipeline's maximum recourse rate may, at some future date, be lower than the negotiated rate. Because the shipper's negotiated rate is not based on cost of service regulation, there is no reason why a reduction in the pipeline costs, including a reduction in its tax costs, should necessarily lead to a reduction in the negotiated rate. Indeed, the Commission's consistent practice in pipeline rate proceedings, whether conducted under NGA section 4 or 5, has been to address only the pipeline's recourse rates and not make any modifications in any shipper's negotiated rate. In these circumstances, the Commission finds it reasonable to presume that a shipper's freely negotiated rate contract continues to meet the just and reasonable requirement in the NGA, regardless of a reduction in the pipeline's tax costs, absent a particular shipper filing a complaint that presents compelling reasons to initiate an NGA section 5 investigation.[279]

248. Commenters take various positions on whether, if a complaint is filed, the *Mobile-Sierra* ''public interest'' presumption would apply to the negotiated rate agreement. Indicated Shippers assert that because many pipelines have *Memphis* clauses in their

[275] NGSA Comments at 8 (citing *Sea Robin Pipeline Company, LLC,* 130 FERC ¶ 61,261 (2010); *High Island Offshore Sys., L.L.C.,* 138 FERC ¶ 61,114 (2012) as relying on the contracts containing a *Memphis* clause to permit the pipelines to impose a surcharge on fixed, negotiated rate contracts).

[276] *Northern Natural Gas Co.,* 105 FERC ¶ 61,299 at PP 15–16. *See also Columbia Gulf Transmission Co.,* 109 FERC ¶ 61,152, at P 13, *reh'g denied,* 111 FERC ¶ 61,338, emphasizing that:

> To the extent a pipeline and its shipper want to obtain rate certainty by agreeing to a rate that will remain in effect throughout the term of the service agreement, the Commission provides them an opportunity to do so by entering into a negotiated rate agreement.

[277] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines; Statement of Policy and Request for Comments,* 74 FERC ¶ 61,076, at 61,225–226 (1996), *order on clarification,* 74 FERC ¶ 61,194 (1996), *order on reh'g,* 75 FERC ¶ 61,024, reh'g denied, 75 FERC ¶ 61,066, reh'g dismissed, 75 FERC ¶ 61,291 (1996), petition denied sub nom. *Burlington Res. Oil & Gas Co.* v. *FERC,* 172 F.3d 918 (D.C. Cir 1998).

[278] *Iberdrola Renewables, Inc.* v. *FERC,* 597 F.3d at 1304.

[279] *Dominion Transmission, Inc.* v. *FERC,* 533 F.3d 845, 852–53 (D.C. Cir. 2008) (noting that FERC must ''presume that the rate set out in a freely negotiated . . . contract meets the 'just and reasonable' requirement imposed by law.'' *See also Marathon Oil Co.* v. *Trailblazer Pipeline Co.,* 111 FERC ¶ 61,236, at P 64 (2005) (''Absent a compelling reason, the Commission does not believe it should second-guess the business and economic decisions between knowledgeable business entities when they enter into negotiated rate contracts.'').

service agreements and individual negotiated rate agreements, the Commission would only need to make a ''just and reasonable'' determination to revise negotiated rates for such negotiated rates. IOGA and other shippers state that the *Mobile-Sierra* public interest standard would apply, but suggest that the public interest standard may be satisfied in the context of changes in law such as the Tax Cuts and Jobs Act.

249. The Commission need not resolve these issues in this Final Rule. Rather, the Commission will address these issues, as relevant, in the context of an individual complaint that may be filed.

E. Miscellaneous Clarifications

250. Boardwalk comments that the Commission should recognize the effects of competition on the natural gas industry and the Commission's rate making policies. Boardwalk asserts that pipelines have had no choice but to discount their transportation service rates to attract retail shippers in the face of competition. Thus, in Boardwalk's view, such pipelines are already in a state of cost under-recovery. Boardwalk states that the NOPR and its contemplated approach of having transportation rates set arithmetically based on the content of FERC Form No. 501–G have exacerbated this problem and affected the pipelines' ability to attract capital.[280] It also claims that although *customers* receive the benefit of competition in discounted rates, the *pipelines,* under the referenced NOPR approach, do not receive a commensurate benefit when the market propels rates upward. Boardwalk claims that this imbalance between pipelines and their investors and customers and consumers is ''out of step'' with the competitive market intended by the Commission's policies, and that the NOPR worsens this imbalance by favoring one set of affected parties. It also claims that the processes contemplated by the NOPR are inconsistent with the Commission's prohibition on single issue ratemaking. Accordingly, Boardwalk states that the Commission should expressly state that the ''same processes offered here to adjust rates in light of the [Tax Cuts and Jobs Act] and revised Policy Statement will also be available to pipelines should there be a change to future tax policy, or any other policy affecting a key component of ratemaking.'' [281]

251. The Commission declines to speculate on future potential actions, or what measures it may take should there be a future increase in the federal corporate tax rate. However, the Commission recognizes the importance of market issues and the potential for under-recoveries.[282] The Commission takes the financial impact of its policies very seriously. The Commission will continue to consider the issues raised by Boardwalk as such issues arise in specific proceedings and as part of the Commission's ongoing reevaluation of its policies.

252. Further, regarding this Final Rule, the Commission recognizes that it cannot simply require a pipeline to reduce its rates consistent with a known reduction in a single cost component of a cost-based rate, but rather must consider other factors, including whether the pipeline is over-recovering its cost of service on an overall basis. The Commission, in deciding whether to exercise its discretion to initiate an NGA section 5 action, will take into account whether a rate reduction may not be justified because a pipeline's rates do not over-recover its cost of service on an overall basis.

253. Southern Star comments that the Commission should allow pipelines to reinvest any monetary savings resulting from the Tax Cuts and Jobs Act into their respective systems and infrastructure instead of flowing through the benefits to customers and consumers.[283] Southern Star claims that rate reductions provided to ultimate consumers as a result of the tax reduction will be nominal, and that it would be a better use of those savings to permit pipelines to invest those dollars in infrastructure improvements that would benefit customers and ratepayers, and would obviate the need for the FERC Form No. 501–G filings. Southern Star asserts that such reinvestment would be consistent with the underlying purpose of the Tax Cuts and Jobs Act, namely to make more products in the United States and to ''bring back our companies.''

254. The Commission rejects Southern Star's proposal. As noted, the purpose of the Final Rule is to provide a process for considering whether to initiate NGA section 5 investigations of the cost-based recourse rates of interstate natural gas pipelines that do not voluntarily reduce those rates to reflect the reduction in the federal corporate tax rate or elimination of MLP tax allowances, in accordance with our obligation under the NGA to ensure that natural gas pipeline rates are just and reasonable. Contrary to Southern Star's suggestion that it would be more efficient to reinvest these dollars in pipeline infrastructure than to return them to customers and consumers, a just and reasonable cost-based rate must be designed to provide the pipeline an opportunity to recover its cost of service, including a reasonable return on equity.[284] The Commission lacks the authority to approve recourse rates that would allow pipelines to over-recover their cost of service. Pipelines are, of course, free to invest in additional pipeline facilities. If they do so, they may propose to adjust their rates to recover the costs of the new investment as part of their NGA section 7 initial rate proposal or in an NGA section 4 filing, and that rate adjustment could offset a rate reduction related to the pipeline's reduced tax costs under the Tax Cuts and Jobs Act.

255. AGA and LDC Coalition comment that the Commission should clarify that the FERC Form No. 501–G filing, or any other limited NGA section 4 actions by a pipeline pursuant to the Final Rule, does not constitute a ''recent rate review'' sufficient for the purposes of the Commission's Modernization Policy Statement on cost recovery mechanisms for modernization of natural gas facilities.[285] The commenters state that the Modernization Policy Statement requires a pipeline seeking a modernization cost tracker to demonstrate that its current base rates are just and reasonable and reflect the pipeline's current costs and revenues. LDC Coalition notes that the Modernization Policy Statement provides that the rate review condition may be satisfied in different ways—an NGA section 4 rate case or a collaborative effort between a pipeline and its customers. They also comment that the Commission left open the possibility that pipelines could justify their existing rates through ''alternative

[280] Boardwalk Comments at 10–13.

[281] *Id.* at 13.

[282] *See Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity,* 123 FERC ¶ 61,048, at PP 3, 47 (2008) (citing *Fed. Power Comm'n* v. *Hope Natural Gas Co.,* 320 U.S. 591 (1944)); *see also Williston Basin Interstate Pipeline Co.,* 110 FERC ¶ 61,210 (2000) (balancing the Commission's pro-competitive policies with the pipeline's ability to focus discounts on less utilized parts of the system), and *El Paso Natural Gas Co.,* 163 FERC ¶ 61,078, at PP 128–137 (2018) (Order No. 538–B) (rejecting request to design pipeline's rates so as to require it to share in the costs of its discounting).

[283] Southern Star Comments at 11–12.

[284] *Alabama Elec. Coop* v. *FERC,* 684 F2d 20, 27 (D.C. Cir. 1982) (''[R]ates should be based on the costs of providing service to the utility's customers, plus a just and fair return on equity.'').

[285] AGA Comments at 2 (citing Modernization Policy Statement, 151 FERC ¶ 61,047 (Modernization Policy Statement)); LDC Coalition Comments at 13.

approaches.'' [286] Thus, they seek clarification that a pipeline's FERC Form No. 501–G filing would not be considered among the alternative approaches that the Commission would consider sufficient for a pipeline to justify its existing rates for purposes of the Modernization Policy Statement. Commenters argue that the information to be included in the FERC Form No. 501–G filings is abbreviated cost and revenue information that would not allow for the ''full exchange of information'' regarding existing rates between the pipeline and its customers required for a modernization cost surcharge.

256. The Commission provides the following clarification. Above, the Commission, in response to several pipeline comments, clarified that FERC Form No. 501–G is not an NGA section 4 filing and that the indicated cost of service and estimated ROE are not NGA section 5 findings. The Commission has noted the statutory limits upon which the data collection is based, and acknowledges the limitations inherent in a form designed to collect data from a large number of pipelines with many unique cost of service, allocation and rate design factors underlying their currently effective rates. Thus, by the same token, these same limitations will hinder a pipeline from using its FERC Form No. 501–G filing, designed to look at a pipeline's overall non-gas cost of service, to demonstrate that its modernization surcharges are just and reasonable. We also clarify that a limited NGA section 4 filing made pursuant to the Final Rule does not constitute a ''recent rate review'' sufficient for the purposes of the Commission's Modernization Policy Statement on cost recovery mechanisms for modernization of natural gas facilities. The Modernization Policy Statement established certain standards a pipeline would have to satisfy for the Commission to approve a proposed modernization cost tracker or surcharge including a requirement for ''a review of the pipeline's existing base rates by means of an NGA general section 4 rate proceeding, a cost and revenue study, or through a collaborative effort between the pipeline and its customers.'' [287] As described in the NOPR and the Final Rule, the limited NGA section 4 filing option is intended to allow interstate pipelines to reduce their rates to reflect the reduced income tax rates and elimination of the MLP pipeline income tax allowance on a single-issue basis, without consideration of any other cost or revenue changes. Due to the limited nature of this single-issue rate filing, it does not meet the rate review requirement described in the Modernization Policy Statement.

257. LDC Coalition also seeks clarification that processes proposed in the NOPR do not obviate a pipeline's settlement obligation to file an NGA general section 4 rate case.[288] Specifically, they argue that any Final Rule should make clear that a pipeline cannot use the FERC Form No. 501–G filing, coupled with a limited NGA section 4 rate reduction filing, to satisfy a come-back obligation under a Commission-approved settlement. LDC Coalition asserts that the limited cost and revenue information in FERC Form No. 501–G, and the limited NGA section 4 process, are not valid substitutes for a general NGA section 4 rate case filing, which provides parties the opportunity to review all the components of the pipeline's cost of service. LDC Coalition comments further that such ''come-back'' provisions are ''often hard-fought settlement components critical to garnering support from customer parties.'' [289] Thus, it requests that the Commission clarify that a pipeline that ''has committed to file a general NGA section 4 rate case as a negotiated component of a Commission-approved settlement must fulfill that settlement commitment.'' [290]

258. The Commission declines to make the broad clarification sought by LDC Coalition. As LDC Coalition points out, the terms and details regarding a pipeline's obligation to make future filings are likely provisions negotiated between the parties to the settlement, and as such are governed by the settlement itself. Thus, we will not make a general clarification that may inhibit or impinge on negotiated provisions of Commission approved settlements.

259. LDC Coalition also states that the Commission should incorporate the FERC Form No. 501–G *Implementation Guide* into the Final Rule and into proposed regulation § 260.402.[291] It asserts that such inclusion is necessary to ensure that Commission staff and interested parties are able to access the information necessary to adequately assess the pipeline's report. LDC Coalition asserts that incorporation of the *Implementation Guide* into the Final Rule and Regulation, rather than just a reference to it in the proposed regulations, ''would make clear that the Commission intends for customers and interested stakeholders to have access to the [report], and would help ensure compliance with the Commission's desired filing processes.'' [292]

260. The Commission will not incorporate the FERC Form No. 501–G *Implementation Guide* into the Final Rule or into the proposed regulation or regulatory text. As LDC Coalition points out, the Commission included a Microsoft Excel version of the FERC Form No. 501–G and a proposed *Implementation Guide* as attachments to the NOPR, and thus made those files available in elibrary. The Commission intends to do the same for the Final Rule, and finds that the processes set forth in the guide, and data to be provided in the reports, will be adequately accessible to any interested parties in that manner.

F. Implementation Schedule for Informational Filings

1. NOPR

261. In the NOPR, the Commission proposed a staggered filing schedule. The Commission identified 133 interstate natural gas pipelines with cost-based rates that would be required to file the FERC Form No. 501–G, and divided them into four groups. The Commission proposed that the due date for the first group be 28 days from the effective date of any Final Rule in this proceeding, and the due date for each subsequent group be 28 days from the previous group's due date. The NOPR stated that pipelines may file their FERC Form No. 501–G earlier than the proposed dates and respondents may include with this filing, as appropriate, an Addendum explaining why no adjustment in their rates is needed, or their commitment to make a general NGA section 4 rate case filing in lieu of a limited NGA section 4 filing as permitted by § 154.404.[293]

2. Comments

262. Some commenters advocate for a delayed schedule. EQT Midstream urges the Commission to delay the FERC Form No. 501–G filing deadline for the first group of pipelines. EQT Midstream argues that the NOPR and Revised Policy Statement have made it unclear how to apply several ratemaking principles. EQT Midstream also argues that the 28 day deadline is not conducive to promoting settlements, as some parties may be wary to settle ''knowing that a Commission order addressing ADIT and the Revised Policy

[286] AGA Comments at 7.

[287] Modernization Policy Statement, 151 FERC ¶ 61,047 at P 31.

[288] LDC Coalition Comments at 15–16.

[289] *Id.* at 16.

[290] *Id.*

[291] *Id.*

[292] *Id.* at 18.

[293] NOPR, FERC Stats. & Regs. ¶ 32,725 at P 62.

Statement may subsequently be issued and may upset any agreed-to terms.'' [294]

263. Other commenters advocate for an accelerated schedule. The Oklahoma AG requests that the Commission reduce the time period between FERC Form No. 501–G filings, then moving forward the final due date for filing rate cases.[295] Process Gas requests that the Commission require all pipelines to file FERC Form No. 501–G within 28 days of the effective date of the Final Rule, rather than using a staggered schedule. Similarly, Range requests that the Commission require all pipelines to file FERC Form No. 501–G within 30 days of the effective date of the Final Rule, rather than using a staggered schedule.

264. Process Gas states that it is not aware of any reason why any pipeline would need more than the 28 days allowed for the first group of pipelines to complete the form, especially since the 2017 FERC Form No. 2 data was due to be filed April 18, 2018. Range notes that pipelines have been planning for their filings ever since the issuance of the NOPR. Process Gas and Range concede that Commission staff may need time to process all of the filings, but argue that the solution is to stagger the issuance of the final orders, not the receipt of the filings. They argue all parties would benefit from having the FERC Form No. 501–G posted promptly. For those pipelines planning to voluntarily reduce their rates, Process Gas and Range argue, an earlier filing date would provide their customers with the benefit of lower rates as soon as possible. For those pipelines planning not to voluntarily reduce their rates, Process Gas argues, an earlier filing date would provide earlier insight into the pipeline's rationale, allowing customers and Commission Staff more time to evaluate the filing and prepare an appropriate response.[296]

3. Discussion

265. The Commission adopts the implementation schedule proposed in the NOPR, with one modification. The Commission has determined to combine the third and fourth groups of pipelines into a single group and require all those pipelines to file their FERC Form No. 501–Gs within 28 days after the deadline for the second group of pipelines. This will allow the filing of all the FERC Form No. 501–Gs to be completed by early December of this year, rather than having the filing process extend into next year. We see no compelling reason to make any other changes in the implementation schedule. The Final Rule does not take effect instantly, but rather after a delay of 45 days after publication in the **Federal Register**, and the first set of pipeline filings is not due until 28 days after that. As a practical matter, then, pipelines in the initial filing group have over two months from the Commission's approval of the Final Rule to prepare.

266. We also decline to accelerate the filing schedule for the three pipeline groups. Commenters raise valid points in favor of requiring all pipelines to file simultaneously and instead staggering the target dates for final orders. We find, however, that the modified staggered schedule described above will allow the Commission to process the filings in a more efficient and orderly manner. We note that pipelines may file their FERC Form No. 501–G earlier than the proposed dates, and we especially encourage them to do so in instances where an early filing would ease the process of reaching a rate settlement with their customers.

G. NGPA Section 311 and Hinshaw Pipelines

1. NOPR

267. In the NOPR, the Commission found that its existing regulations and policy concerning the rates charged by NGPA section 311 and Hinshaw pipelines are generally sufficient to provide shippers reasonable rate reductions with respect to the Tax Cuts and Jobs Act and the Revised Policy Statement. Accordingly, the Commission did not propose requiring NGPA section 311 and Hinshaw pipelines to file the FERC Form No. 501–G or make any other immediate filing. Instead, the Commission proposed a separate method for updating NGPA section 311 and Hinshaw pipelines' rates, in keeping with their history of light-handed regulation.

268. Under pre-existing policy, the Commission reviews the rates of each NGPA section 311 and Hinshaw pipeline every five years.[297] The Commission proposed using this five-year rate review process as the primary mechanism to consider changes to reflect the Tax Cuts and Jobs Act.

269. The Commission proposed to act ahead of this five-year schedule only when a state regulatory agency requires any of these pipelines to reduce their intrastate rates to reflect the decreased income tax. Under pre-existing policy, any pipeline that elected to use state-derived rates pursuant to § 284.123(b)(1) is already required to file with the Commission a new rate election 30 days after a state regulatory agency adjusts its intrastate rates.[298] In the NOPR, the Commission proposed, for the purposes of the Tax Cuts and Jobs Act only, to expand this requirement to include intrastate pipelines that use Commission-established cost-based rates pursuant to § 284.123(b)(2), as well as pipelines that use state-derived rates pursuant to § 284.123(b)(1). Accordingly, the Commission proposed a new § 284.123(i) requiring that, if an intrastate pipeline's rates on file with a state regulatory agency are reduced to reflect the reduced income tax rates adopted in the Tax Cuts and Jobs Act, the intrastate pipeline must file a new rate election within 30 days after the reduced intrastate rate becomes effective. The Commission reasoned that this requirement would give the same rate reduction benefit to any interstate shippers on those pipelines as the intrastate shippers receive, thereby ensuring that the two groups of shippers are treated similarly.

2. Comments

270. The Texas Railroad Commission, NiSource LDCs, and AGA commented on the portion of the NOPR affecting NGPA section 311 and Hinshaw pipelines. The Texas Railroad Commission, which is the state regulatory agency in Texas having jurisdiction over intrastate pipeline rates, supports this portion of the NOPR. The Texas Railroad Commission states that its experience with NGPA section 311 and Hinshaw rates ''is substantially the same as the Commission's experience described in the . . . [NOPR].'' [299] The Texas Railroad Commission notes that almost all intrastate contracts under Texas Railroad Commission jurisdiction are based on market conditions, and result in rates substantially lower than the maximum lawful rate. The Texas Railroad Commission states that it has already begun adjusting intrastate rates on local distribution systems. For transportation pipelines, the Texas Railroad Commission states that it intends to follow a process similar to

[294] EQT Midstream Comments at 5.

[295] Oklahoma AG Comments at 5.

[296] Process Gas Comments at 7; Range Comments at 14.

[297] Order No. 735, FERC Stats. & Regs. ¶ 31,310 at P 96. Pipelines using state-approved rates pursuant to § 284.123(b)(1) may certify that those rates continue to meet the requirements of § 284.123(b)(1) on the same basis on which they were approved.

[298] 18 CFR 284.123(g)(9)(iii). *See also Lobo Pipeline Co. L.P.,* 145 FERC ¶ 61,168, at P 5 (2013) and *Atmos Pipeline—Texas,* 156 FERC ¶ 61,094, at P 8 (2016).

[299] Texas Railroad Commission Comments at 2 (citing NOPR, FERC Stats. & Regs. ¶ 32,725 at PP 58, 61).

that described in the NOPR, revising existing rates as they are reviewed in the ordinary course of business.

271. NiSource LDCs state that two of its affiliates are Hinshaw pipelines providing interstate transportation service under limited jurisdiction certificates issued by the Commission under § 284.224 of its regulations. NiSource LDCs agrees with the assessment in the NOPR that decisions on whether to reduce those rates to reflect the effects of the Tax Cuts and Jobs Act are ''in the hands of the state regulatory agency.'' [300] NiSource LDCs states that, if a state commission requires a reduction in such intrastate rates to reflect the impact of the Tax Cuts and Jobs Act, § 284.123(b) requires the company to make a corresponding rate filing with FERC within 30 days after the reduced intrastate rate becomes effective, and notes that it has already made one such filing with the Commission.[301] NiSource ''urge[s] the Commission to adopt this procedure with respect to companies holding limited jurisdiction certificates that have elected to charge state-approved transportation rates.'' [302]

272. AGA, whose members own or operate numerous Hinshaw pipelines, requests clarification of several points in the NOPR. AGA states that it ''supports the efforts in the NOPR to obtain the information necessary'' to ensure that interstate pipeline rates are just and reasonable,[303] but argues that ''any final rule should be consistent with the Commission's focus on reducing regulatory burdens on [Hinshaw pipelines] not subject to full Commission-jurisdiction.'' [304] AGA argues that Hinshaw services are generally very small in relation to interstate services, and that the Final Rule should, correspondingly, impose lesser requirements on Hinshaw services than on interstate services.

273. AGA requests clarification of what action by a state commission triggers the obligation for an intrastate pipeline to file a new rate election under proposed § 284.123(i). AGA asks whether a pipeline must file with the Commission if the adjusted state-approved rate is not comparable, or if the applicable state-approved rate references the Commission-established rate. AGA also notes that proposed new § 284.123(i) refers to ''intrastate'' pipelines, and asks whether ''the proposed text of paragraph (i) could be read to exclude § 284.224 certificate holders—Hinshaw pipelines and other local distribution companies—although it appears in the NOPR that the Commission intends to apply its requirements to intrastate pipelines and Hinshaw pipelines.'' [305] AGA also asks that the Commission limit new § 284.123(i) to only apply to pipelines with § 284.123(b)(2) Commission-established cost-based rates, reasoning that pipelines with § 284.123(b)(1) rates already must file within 30 days after a change in state rates.

274. AGA also raises several timing issues. AGA notes that proposed new § 284.123(i) would require entities to file a new rate election with the Commission ''not later than 30 days after the reduced intrastate rate becomes effective.'' AGA notes that this may cause confusion for any intrastate pipelines whose reduced rates at the state level become effective before the Commission issues a Final Rule. AGA also argues that local distribution companies are likely to need more time to prepare and file the new rate election with the Commission, and therefore proposes that the deadline in new § 284.123(i) instead read: ''not less than ninety (90) days after the latter of: the effective date of the final rule; or the effective date of the reduced intrastate rate (if effective after the effective date of a final rule).'' [306] AGA also requests that any LDC that is subject to multiple state jurisdictions be permitted to wait until all jurisdictions have reviewed its rates before filing with the Commission. Finally, AGA states that the NOPR does not provide clear guidance to intrastate pipelines who have had rates approved in 2017 or 2018, who have currently pending proceedings, or who are due to make five-year rate review filings in the near future before the Final Rule takes effect.

275. Similarly, AGA notes that the NOPR does not address whether filings to address the Tax Cuts and Jobs Act will re-set the five-year review period. AGA requests that the Commission confirm in any Final Rule that the filing of a rate election filing under § 284.123(i) would re-set the currently applicable five-year review.

276. Finally, AGA notes that the NOPR is unclear in terms of whether the Commission expects Hinshaw pipelines to file a fully updated cost and revenue study. AGA argues that unless it is made in the context of a regular five-year review, Hinshaw pipelines should have the option to simply re-file their rates on the limited issue of the Tax Cuts and Jobs Act impact. AGA also proposes that the Commission waive the filing fee for such filings.

3. Discussion

277. Noting the support for the NOPR as it applies to NGPA section 311 and Hinshaw pipelines, we generally adopt the NOPR's proposal concerning those pipelines in this Final Rule, but also provide additional guidance on the points raised by AGA.

278. First, new § 284.123(i) applies to § 284.224 certificate holders. As § 284.224(a)(3) states, Hinshaw pipelines and other local distribution companies, by accepting a certificate, are regulated ''to the same extent that and in the same manner that intrastate pipelines are. . . .'' [307] Therefore, the reference in new § 284.123(i) to ''intrastate pipelines'' in no way excludes Hinshaw pipelines and other local distribution companies that hold § 284.224 certificates. Moreover, the use of ''intrastate pipelines'' in § 284.123(i) is consistent with the remainder of § 284.123, which refers to ''intrastate pipelines'' throughout.

279. Second, we decline to revise new § 284.123(i) to exclude § 284.123(b)(1) state-derived rates. Although it is current Commission policy to include in orders approving an intrastate pipeline's state-derived rates a requirement that the pipeline must file a new rate election whenever the state-approved rate used in the rate election is changed, the Commission may not have included such a requirement in every such currently approved state-derived rate. Accordingly, we find that § 284.123(i) should apply to both § 284.123(b)(1) state-derived rates and § 284.123(b)(2) Commission-established cost-based rates so as to ensure that, if the intrastate pipeline's rates on file with the state regulatory agency are reduced to reflect the reduced income tax rates adopted in the Tax Cuts and Jobs Act, the intrastate pipeline will file a new rate election for its interstate rates. However, we are revising proposed § 284.123(i) in several respects in order to clarify how § 284.123(i) applies to these two different types of intrastate rates for interstate service.

280. AGA requests that we clarify what type of rate change by a state regulatory agency triggers the § 284.123(i) filing requirement. Under current Commission policy, an intrastate pipeline using state-derived rates under § 284.123(b)(1) must file a new rate election whenever the state-approved rate used for its election is

[300] NiSource LDCs Comments at 5 (quoting NOPR, FERC Stats. & Regs. ¶ 32,725 at P 57).

[301] Columbia Gas of Maryland, Inc., Docket No. PR18–40–000 (filed April 3, 2018).

[302] NiSource LDCs Comments at 5.

[303] AGA Comments at 4.

[304] *Id.* at 11.

[305] *Id.* at 13.

[306] *Id.* at 14.

[307] 18 CFR 284.224(a)(3).

changed. Consistent with that policy, we clarify that § 284.123(i) only requires such pipelines to make a new rate election when the state regulatory agency reduces the state-approved rate used for its rate election to reflect the reduced income taxes adopted in the Tax Cuts and Jobs Act. However, we find that a change by a state regulatory agency to the rate for any intrastate service due to the Tax Cuts and Jobs Act will trigger the § 284.123(i) filing requirement for intrastate pipelines whose existing interstate rates are Commission-established cost-based rates pursuant to § 284.123(b)(2). Interstate rates approved under § 284.123(b)(2) are not based on any particular state-approved rate. In these circumstances, we find it reasonable for intrastate pipelines with § 284.123(b)(2) interstate rates to reduce those rates if the state regulatory agency reduces their rates for any intrastate service to reflect the reduced income taxes resulting from the Tax Cuts and Jobs Act. This ensures that interstate shippers receive a similar rate reduction as those intrastate customers whose rates are reduced and avoids the need to consider whether the intrastate rates reduced by the state regulatory agency are for an intrastate service comparable to the interstate service of the intrastate pipeline.

281. AGA asks whether new § 284.123(i) applies to any intrastate pipeline whose reduced intrastate rates ''become effective before the Commission issues a final rule.'' [308] This is indeed the case. However, the Commission cannot impose a rule that has not yet gone into effect. Accordingly, in this Final Rule we modify proposed § 284.123(i) to clarify that the deadline for the required rate reduction filings will be 30 days after the later of (1) the effective date of the new § 284.123(i) or (2) the effective date of the reduction in the pipeline's intrastate rates.

282. AGA proposes that NGPA section 311 and Hinshaw pipelines should have 90 days from the effective date of the reduced intrastate rate to file with the Commission instead of 30 days. AGA also proposes that any local distribution companies subject to multiple state jurisdictions be permitted to wait until the last state government finishes its rate review before filing. We reject these proposals. Although individual pipelines are free to seek waiver if good cause exists, AGA's proposals would only serve to delay the implementation of fair and equitable NGPA section 311 and Hinshaw rates. A 90-day filing requirement in new § 284.123(i) would also create an unjustifiable difference in how the Commission treats pipelines with § 284.123(b)(2) rates versus pipelines with § 284.123(b)(1) rates, the latter of which already must file within 30 days after a change in state rates.

283. AGA states that the NOPR does not provide clear guidance to parties who have had rates approved in 2017 or 2018, who have currently pending rate proceedings, or who are due to make five-year rate review filings in the near future before the Final Rule takes effect. Consistent with our policy that an intrastate pipeline whose existing interstate rates are based on § 284.123(b)(1) must file a new rate election whenever the state-approved rate used for the election is changed, those interstate pipelines will have to file a new rate election if their state regulatory agency reduces the state-approved rate used for their rate election, regardless of the pendency of, or Commission approval of, any prior rate filing by that intrastate pipeline. However, the Commission is revising proposed § 284.123(i) to provide that the requirement to file a new rate election in that section does not apply to intrastate pipelines using Commission-established cost-based rates under § 284.123(b)(2), if the Commission has approved revised rates for that pipeline after December 22, 2017 or that pipeline already has a rate case pending before the Commission as of the date reduced intrastate rates become effective. Since the enactment of the Tax Cuts and Jobs Act on December 22, 2017, the Commission has not approved revised interstate rates for any intrastate pipeline under § 284.123(b)(2) without ensuring that the revised rates reflect the reduced income taxes adopted in the Tax Cuts and Jobs Act, and the Commission will continue to do so in all pending and future rate filings by such pipelines. Accordingly, there is no need for intrastate pipelines whose interstate rates are based on § 284.123(b)(2) to file a new rate election in these circumstances.

284. AGA also notes that the NOPR does not address whether filings to address the Tax Cuts and Jobs Act will re-set the five-year review period. The Commission intends for new § 284.123(i) and the traditional five-year review policy to work in tandem. Accordingly, an accepted filing under § 284.123(i) will reset the clock on the pipeline's next five-year filing. Finally, AGA requests clarification regarding the filing fees, and content, of any filings addressing the Tax Cuts and Jobs Act. We clarify that the Commission has not changed its rules regarding filing fees, nor has the Commission changed its rules regarding the content of five-year review filings. Finally, we reject AGA's proposal to permit anyone filing under § 284.123(i) to submit a single-issue filing on the limited issue of the Tax Cuts and Jobs Act impact. Although we are permitting interstate natural gas pipelines regulated under the NGA to make such limited section 4 filings, as described above the interstate pipeline limited section 4 filings are based on financial information in the FERC Form No. 501–G, which is largely derived from FERC Form Nos. 2 and 2–A. Intrastate pipelines do not file such reports. Moreover, intrastate pipelines with cost-based interstate rates established by the Commission pursuant to § 284.123(b)(2) generally resolve their rate proceedings through black box settlements. As a result, it would be difficult, if not impossible, to determine how to adjust those rates solely to reflect reduced income taxes under the Tax Cuts and Jobs Act. State-derived rates adopted pursuant to § 284.123(b)(1) would be changed consistent with whatever changes the state regulatory agency requires to reflect the income tax reductions in the Tax Cuts and Jobs Act. Accordingly, if the state regulatory agency approves a change in the relevant intrastate rate that is limited to reflecting the income tax reduction in the Tax Cuts and Jobs Act, the intrastate pipeline may make a similar rate reduction in its § 284.123(b)(1) interstate rate. However, if the state regulatory agency revises the relevant intrastate rates based on a full review of all the intrastate pipelines costs and revenues, the interstate pipeline would have to make a similar change in its § 284.123(b)(1) interstate rate.

H. Request for Commission Action

285. We dismiss the Petitioners' request for Commission action in Docket No. RP18–415–000 in light of the Commission's actions in this rulemaking proceeding.

V. Regulatory Requirements

A. Information Collection Statement

286. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (information collection) imposed by an agency.[309] 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 a rule will not be

[308] AGA Comments at 13.

[309] 5 CFR 1320.11.

penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

287. The Commission is submitting these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act (PRA). Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

288. *Public Reporting Burden:* The Commission initially identified 133 interstate natural gas pipelines with cost-based rates that will be required to file the adopted FERC Form No. 501–G. That figure was based upon a review of the pipeline tariffs on file with the Commission. However, the number has been reduced to 129 interstate natural gas pipelines, as the Commission removed Hampshire Gas Company as discussed above, Questar Southern Trails Pipeline Company, whom the Commission permitted to abandon its certificate to operate as a pipeline,[310] MoGas, who filed a general NGA section 4 rate case, and Granite State, who filed a prepackage uncontested settlement.[311] Interstate natural gas pipelines have four options as to how to address the results of the formula contained in FERC Form No. 501–G. Each option has a different burden profile and a different cost per response. Companies will make their own business decisions as to which option they will select, thus the estimate for the number of respondents for each option as shown in the table below is just an estimate.

289. The number of NGPA section 311 and Hinshaw pipelines that will be required to file a rate case pursuant to proposed § 284.123(i) is a function of state actions outside of the control of the Commission. Thus, the estimate for the number of respondents for NGPA section 311 and Hinshaw pipelines filing a rate case in compliance with adopted § 284.123(i) as shown in the table below is an estimate.

290. Based on these assumptions, we estimate the one-time burden and cost[312] for the information collection requirements as follows.

FERC–501G

	Respondents (1)	Responses per respondent (2)	Total responses (1) * (2) = (3)	Average burden hour per response (4)	Average cost per response (5)	Total burden hours (3) * (4) = (6)	Total cost ($) (3) * (5) = (7)
Interstate Natural Gas Pipelines With Cost-Based Rates							
FERC Form No. 501–G, One-time Report[313]	129	1	129	9	$756	1,161	$97,524
Optional Response							
No Response	51	0	0	0	0	0	0
Case for no change	62	1	62	5	420	310	26,040
Limited Sec 4 filing[314]	15	1	15	6	504	90	7,560
General Sec. 4 filing[315]	1	1	1	[316] 512	42,968	512	42,968
NGPA section 311 and Hinshaw Pipelines With Cost-Based Rates							
NGPA rate filing[317]	[318] 15	1	15	24	2,015	360	30,225
TOTAL	[319] 144		222			2,433	204,317

291. The Report andany tariff filing option that an NGA natural gas company may choose or an NGPA pipeline company may be required to file must be filed using the Commission's eTariff filing format. This format requires the use of software that all respondents currently have or purchase on a per-use basis. For companies that do not have their own software and must contract for the service, the Commission estimates a cost of $300 per filing. We estimate approximately 40 of the NGA and NGPA pipeline company respondents will contract for eTariff filing services at an estimated total cost of $12,000. Therefore the total cost of the Final Rule is $216,317.

292. The Commission does not expect any mandatory or voluntary reporting requirements other than those listed above.

Action: Proposed information collection, FERC–501G (Rate Changes Relating to Federal Corporate Income Tax Rate for Interstate Natural Gas Pipelines).

OMB Control No.: 1902–0302.

Respondents: Interstate natural gas pipelines with cost-based rates, and

[310] *Questar Southern Trails Pipeline Co.,* 163 FERC ¶ 62,086 (2018).

[311] Additional pipelines have chosen to file NGA section 4 rate filings before this Final Rule is effective; those pipelines will not be required to file the FERC Form No. 501–G. Because the number of pipelines choosing to make NGA section 4 filings may continue to change (correspondingly reducing the number of filers of the FERC Form No. 501–G), we are retaining a conservative estimate of 129 pipelines who may be required to file the FERC Form No. 501–G.

[312] The estimated average hourly cost of $83.97 (rounded) assumes equal time is spent by an accountant, management, lawyer, and office and administrative support. The average hourly cost (salary plus benefits) is: $56.59 For accountants (occupation code 13–2011), $94.28 for management (occupation code 11–0000), $143.68 for lawyers (occupation code 23–0000), and $41.34 for office and administrative support (occupation code 43–0000). (The wage figures are taken from the Bureau of Labor Statistics [BLS], for May 2017, figures at *https://www.bls.gov/oes/current/naics3_221000.htm.* BLS information on benefits for December 2017 was issued on March 20, 2018, at *https://www.bls.gov/news.release/ecec.nr0.htm.*)

[313] 18 CFR 260.402 (as revised).

[314] 18 CFR 154.404 (as revised).

[315] 18 CFR 154.312.

[316] The estimate for hours is based on the estimated average hours per response for the FERC–545 (OMB Control No. 1902–0154), with general NGA section 4, 18 CFR 154.312 filings weighted at a ratio of 20 to one.

[317] 18 CFR 284.123(i) (as revised).

[318] Estimate of number of respondents assumes that states will act within one year to reduce NGPA section 311 and Hinshaw pipeline rates to reflect the Tax Cuts and Jobs Act.

[319] Number of unique respondents = (One-time Report) + (NGPA rate filing).

certain NGPA section 311 and Hinshaw pipelines.

Frequency of Information: One-time, for each indicated reporting requirement.

Necessity of Information: The Commission requires information in order to determine the effect of the Tax Cuts and Jobs Act on the rates of natural gas pipelines to ensure those rates continue to be just and reasonable.

Internal Review: The Commission has reviewed the adopted information collection requirements and has determined that they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has specific, objective support for the burden estimates associated with the information collection requirements.

Interested persons may obtain information on the reporting requirements or submit comments by contacting the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 (Attention: Ellen Brown, Office of the Executive Director, (202) 502–8663, or email *DataClearance@ferc.gov*). Comments may also be sent to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission), by email at *oira_submission@omb.eop.gov.*

B. Environmental Analysis

293. 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.[320] The actions taken here fall within categorical exclusions in the Commission's regulations for rules regarding information gathering, analysis, and dissemination, and for rules regarding sales, exchange, and transportation of natural gas that require no construction of facilities.[321] Therefore, an environmental review is unnecessary and has not been prepared in this rulemaking.

C. Regulatory Flexibility Act

294. The Regulatory Flexibility Act of 1980 (RFA)[322] generally requires a description and analysis of Final Rules that will have significant economic impact on a substantial number of small entities.

295. As noted in the above Information Collection Statement, approximately 129 interstate natural gas pipelines, both large and small, are respondents subject to the requirements adopted by this rule. In addition, the Commission estimates that another 59 NGPA natural gas pipelines may be required to file restated rates pursuant to proposed § 284.123(i). However, the actual number of NGPA section 311 and Hinshaw pipelines that will be required to file is a function of actions taken at the state level. The Commission estimates that only 15 of the 59 NGPA natural gas pipelines will file a rate case pursuant to proposed § 284.123(i).

296. Most of the natural gas pipelines regulated by the Commission do not fall within the RFA's definition of a small entity,[323] which is currently defined for natural gas pipelines as a company that, in combination with its affiliates, has total annual receipts of $27.5 million or less.[324] For the year 2016 (the most recent year for which information is available), only five of the 129 interstate natural gas pipeline respondents had annual revenues in combination with their affiliates of $27.5 million or less and therefore could be considered a small entity under the RFA. This represents 3.9 percent of the total universe of potential NGA respondents that may have a significant burden imposed on them. For NGPA section 311 and Hinshaw pipelines, three of the 59 potential respondents could be considered a small entity, or 5.1 percent. However, it is not possible to predict whether any of these small companies may be required to make a rate filing. The estimated cost for respondents is expected to vary from $756 to $42,968.[325] In view of these considerations, the Commission certifies that this final rule's amendments to the regulations will not have a significant impact on a substantial number of small entities.

D. Document Availability

297. 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 *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.

298. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits in the docket number field.

299. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

E. Effective Date and Congressional Notification

300. These regulations are effective September 13, 2018. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements.

Part 260

Natural gas, Reporting and recordkeeping requirements,

Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission. Commissioners LaFleur and Glick are concurring with a separate statement attached.

[320] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284.

[321] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5) and 380.4(a)(27).

[322] 5 U.S.C. 601–612.

[323] *See* 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 623). Section 3 of the SBA defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[324] 13 CFR 121.201 (Subsector 486—Pipeline Transportation; North American Industry Classification System code 486210; Pipeline Transportation of Natural Gas) (2017). ''Annual Receipts'' are total income plus cost of goods sold.

[325] The estimated $756 is for respondents who file the One-time Report and choose to take no optional response. Only one respondent who files the One-time Report and then chooses to make a general NGA section 4 filing is estimated to have a one-time cost of $42,968. These figures do not include the estimated cost of $300 per filing for approximately 40 filers for the use of software to make these filing in the eTariff format.

Issued: July 18, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends parts 154, 260, and 284, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 154—RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

■ 2. Add § 154.404 to subpart E to read as follows:

§ 154.404 Tax Cuts and Jobs Act rate reduction.

(a) *Purpose.* The limited rate filing permitted by this section is intended to permit:

(1) A natural gas company subject to the Federal corporate income tax to reduce its maximum rates to reflect the decrease in the federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act of 2017; and

(2) A natural gas company organized as a pass-through entity either:

(i) To eliminate any income tax allowance and accumulated deferred income taxes reflected in its current rates; or

(ii) To reduce its maximum rates to reflect the decrease in the Federal income tax rates applicable to partners pursuant to the Tax Cuts and Jobs Act of 2017.

(b) *Applicability.* (1) For purposes of paragraph (a)(1) of this section, a natural gas company organized as a pass-through entity all of whose income or losses are consolidated on the Federal income tax return of its corporate parent is considered to be subject to the Federal corporate income tax.

(2) Except as provided in paragraph (b)(3) of this section, any natural gas company with cost-based, stated rates may submit the limited rate filing permitted by this section.

(3) If a natural gas company has a rate case currently pending before the Commission in which the change in the Federal corporate income tax rate can be reflected, the public utility may not use this section to adjust its rates.

(c) *Determination of rate reduction.* A natural gas company submitting a filing pursuant to this section shall reduce:

(1) Its maximum reservation rates for firm service, and

(2) Its usage charge that includes fixed costs, and

(3) Its one-part rates that include fixed costs, by

(4) The percentage calculated consistent with the instructions to FERC Form No. 501–G prescribed by § 260.402 of this chapter.

(d) *Timing.* Any natural gas company filing to reduce its rates pursuant to this section must do so no later than the date that it files its FERC Form No. 501–G pursuant to § 260.402 of this chapter.

(e) *Hearing issues.* (1) The only issues that may be raised by Commission staff or any intervenor under the procedures established in this section are:

(i) Whether or not the natural gas company may file under this section,

(ii) Whether or not the percentage reduction permitted in paragraph (c)(4) has been properly applied, and

(iii) Whether or not the correct information was used in that calculation.

(2) Any other issue raised will be severed from the proceeding and dismissed without prejudice.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 3. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 4. Add § 260.402 to read as follows:

§ 60.402 FERC Form No. 501–G. One-time Report on Rate Effect of the Tax Cuts and Jobs Act.

(a) *Prescription.* The form for the One-time Report on Rate Effect of the Tax Cuts and Jobs Act of 2017, designated herein as FERC Form No. 501–G is prescribed.

(b) *Filing requirement*—(1) *Who must file.* (i) Except as provided in paragraph (b)(1)(ii) of this section, every natural gas company that is required under this part to file a Form No. 2 or 2–A for 2017 and has cost-based, stated rates for service under any rate schedule that was filed electronically pursuant to part 154 of this chapter, must prepare and file with the Commission a FERC Form No. 501–G pursuant to the definitions and instructions set forth in that form and the Implementation Guide.

(ii) A natural gas company whose rates are being examined in a general rate case under section 4 of the Natural Gas Act or in an investigation under section 5 of the Natural Gas Act as of the deadline for it to file the FERC Form No. 501–G need not file FERC Form No. 501–G. In addition, a natural gas company that files an uncontested settlement of its rates pursuant to § 385.207(a)(5) of this chapter after March 26, 2018, and before the deadline for it file the FERC Form No. 501–G need not file FERC Form No. 501–G.

(2) FERC Form No. 501–G must be filed as prescribed in § 385.2011 of this chapter as indicated in the instructions set out in the form and Implementation Guide, and must be properly completed and verified. Each natural gas company must file FERC Form No. 501–G according to the schedule set forth in the Implementation Guide set out in that form. Each report must be prepared in conformance with the Commission's form and guidance posted and available for downloading from the FERC website (*http://www.ferc.gov*). One copy of the report must be retained by the respondent in its files.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 5. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 6. In § 284.123, add paragraph (i) to read as follows:

§ 284.123 Rates and charges.

* * * * *

(i) If an intrastate pipeline's rates on file with the appropriate state regulatory agency are reduced to reflect the reduced income tax rates adopted in the Tax Cuts and Jobs Act of 2017, the intrastate pipeline must file a new rate election pursuant to paragraph (b) of this section in the following circumstances:

(1) If the intrastate pipeline's existing rates for interstate service are based on paragraph (b)(1) of this section, the intrastate pipeline must file a new rate election, if the state-approved rate used for its current rate election is changed to reflect the reduced income tax rates adopted in the Tax Cuts and Jobs Act.

(2) If the intrastate pipeline's existing rates for interstate service are based on paragraph (b)(2) of this section, the intrastate pipeline must file a new rate election, if any of its rates on file with the appropriate state regulatory agency are reduced to reflect the reduced income tax rates adopted in the Tax Cuts and Jobs Act, unless the Commission has approved revised interstate rates for that pipeline after December 22, 2017, or it has filed revised interstate rates that are pending before the Commission on the effective date of the reduced intrastate rates.

(3) Any rate election required by this paragraph must be filed on or before the later of October 15, 2018 or 30 days after

the reduced intrastate rate becomes effective.

Note: The following attachments and appendix will not be published in the Code of Federal Regulations:

Attachments

The Attachments (FERC Form No. 501–G and the *Implementation Guide*) will not be published in the **Federal Register** or the Code of Federal Regulations. The Attachments will be available in the Commission's eLibrary and website.

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

Appendix A

Commenter	Short name
American Gas Association	AGA.
American Public Gas Association	APGA.
Berkshire Hathaway Energy Pipeline Group; Northern Natural Gas Company and Kern River Gas Transmission Company.	Berkshire Hathaway.
Boardwalk Pipeline Partners, LP	Boardwalk.
Canadian Association of Petroleum Producers	CAPP.
Dominion Energy Cove Point LNG, LP	Cove Point.
Direct Energy Business Marketing, LLC and Interstate Gas Supply, Inc	Direct Energy.
Dominion Energy Transmission, Inc.; Dominion Energy Carolina Gas Transmission, LLC; Dominion Energy Questar Pipeline, LLC; Dominion Energy Overthrust Pipeline, LLC; and Questar Southern Trails Pipeline Company.	Dominion Energy.
Eastern Shore Natural Gas Company	Eastern Shore.
Enable Mississippi River Transmission, LLC and Enable Gas Transmission, LLC.	Enable Interstate Pipelines
EQT Midstream Partners, LP	EQT Midstream.
Hampshire Gas Company	Hampshire.
Hess Corporation	Hess.
Industrial Energy Consumers of America	IECA.
Aera Energy, LLC, Anadarko Energy Services Company; Apache Corporation; BP Energy Company; ConocoPhillips Company; Occidental Energy Marketing, Inc.; Petrohawk Energy Corporation; and XTO Energy, Inc.	Indicated Shippers.
Interstate Natural Gas Association of America	INGAA.
Independent Oil & Gas Association of West Virginia, Inc.	IOGA.
Natural Gas Pipeline Company of America LLC; Tennessee Gas Pipeline Company, L.L.C.; Southern Natural Gas Company, L.L.C.; Colorado Interstate Gas Company, L.L.C.; Wyoming Interstate Company, L.L.C.; El Paso Natural Gas Company, L.L.C.; Mojave Pipeline Company, L.L.C.; Bear Creek Storage Company, L.L.C.; Cheyenne Plains Gas Pipeline Company, L.L.C.; Elba Express Company, L.L.C.; Kinder Morgan Louisiana Pipeline LLC; Southern LNG Company, L.L.C.; and TransColorado Gas Transmission Company LLC.	Kinder Morgan.
New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation	NYSEG.
Millennium Pipeline Company, L.L.C	Millennium.
National Fuel Gas Supply Corporation and Empire Pipeline, Inc	National Fuel.
Natural Gas Supply Association	NGSA.
Bay State Gas Company d/b/a Columbia Gas of Massachusetts; Columbia Gas of Kentucky, Inc.; Columbia Gas of Maryland, Inc.; Columbia Gas of Ohio, Inc.; Columbia Gas of Pennsylvania, Inc.; Columbia Gas of Virginia, Inc.; and Northern Indiana Public Service Company LLC.	NiSource LDCs.
Mike Hunter, Oklahoma Attorney General	Oklahoma AG.
Process Gas Consumers Group and American Forest and Paper Association	Process Gas.
Railroad Commission of Texas	Texas Railroad Commission.
Range Resources-Appalachia, LLC	Range.
Southern Company Services, Inc.; Alabama Power Company; Georgia Power Company; Gulf Power Company; Mississippi Power Company and Southern Power Company.	Southern Companies.
Southern Star Central Gas Pipeline, Inc	Southern Star.
Spectra Energy Partners, LP (SEP), Algonquin Gas Transmission, LLC; Big Sandy Pipeline, LLC; East Tennessee Natural Gas, LLC; Market Hub Partners Holding, LLC; Ozark Gas Transmission, L.L.C.; Saltville Gas Storage Company L.L.C.; and Texas Eastern Transmission, LP. SEP also has ownership interests in Gulfstream Natural Gas System, L.L.C.; Maritimes & Northeast Pipeline, L.L.C.; Sabal Trail Transmission, LLC; and Southeast Supply Header, LLC.	Spectra.
Trailblazer Pipeline Company, LLC; Tallgrass Interstate Gas Transmission, LLC; and Rockies Express Pipeline LLC.	Tallgrass Pipelines.
TransCanada Corporation	TransCanada.
The Williams Companies, Inc.	Williams.
Xcel Energy Services Inc.; Northern States Power Company, a Minnesota corporation; Northern States Power Company, a Wisconsin corporation; Public Service Company of Colorado; and Southwestern Public Service Company. Also Alliant Energy Corporate Services; Wisconsin Power and Light Company and Interstate Power and Light Company.	LDC Coalition.

Concurring Statement

LaFLEUR, Commissioner, and GLICK, Commissioner, *concurring:*

In companion orders issued today, the Commission (1) affirms the Revised Policy Statement on Treatment of Income Taxes (Revised Policy Statement) issued in response to the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United Airlines;*[1] (2) provides guidance regarding the treatment of Accumulated Deferred Income Taxes (ADIT) where the income tax allowance is eliminated from cost-of-service rates under the Commission's post-*United Airlines* policy; and (3) issues a Final Rule that establishes procedures for the Commission to determine which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of the income tax reductions provided by the Tax Cuts and Jobs Act and the Commission's revised policy and precedent concerning tax allowances to

[1] *United Airlines, Inc.* v. *FERC,* 827 F.3d 122 (D.C. Cir. 2016).

address the double recovery issue identified by *United Airlines.* These are significant orders, and we write separately to provide some additional thoughts regarding these decisions.

First, with respect to the ADIT guidance issued today, we confess to some frustration that the rate benefits that customers and shippers would otherwise receive from the Revised Policy Statement may be significantly reduced by the treatment of ADIT announced in today's orders. As a matter of equity, we believe that the arguments for applying previously-accrued ADIT balances to reduce future rate base where a tax allowance is eliminated are compelling. However, based on the arguments presented in this docket regarding the Commission's *authority* to mandate those reductions on a generic basis, it appears that such a directive would run afoul of the rule against retroactive ratemaking, as interpreted by the D.C. Circuit in *Public Utilities Commission of State of California* v. *FERC.*[2] Nonetheless, we note that today's order is simply guidance, and to the extent that customers or shippers in individual proceedings argue that such a reduction is legal in specific cases, we will consider those arguments on the appropriate record.

Second, we believe that today's Final Rule sharply highlights the need for a legislative fix to the lack of refund authority in Section 5 of the Natural Gas Act (NGA).[3] Under current law, the Commission's ability to protect natural gas customers against unjust and unreasonable rates is compromised by its inability to set a refund date. We believe that current law provides a perverse incentive for protracted litigation and creates an asymmetry of leverage between pipelines seeking a rate increase under Section 4 of the NGA and complainants or the Commission under Section 5.

With respect to the Final Rule, we believe that our lack of refund authority affected the balance the Commission was able to strike in today's order. It is a clear tenet of cost-of-service ratemaking that tax savings should flow through to ratepayers, and the Commission is rightly pursuing that goal in the Final Rule. However, because our Section 5 ''stick'' under the NGA cannot effectively deliver timely relief to customers, the Final Rule proffers a series of ''carrots'' in the hope that pipelines will exercise their Section 4 filing rights to quickly flow those tax benefits back to their customers. While we think the balance struck in the Final Rule is reasonable in light of our limited refund authority, we believe that the Commission would be better equipped to protect customers if the law were amended.

Accordingly, we respectfully concur.

Cheryl A. LaFleur,
Commissioner.

Richard Glick,
Commissioner.

[FR Doc. 2018–15786 Filed 7–27–18; 8:45 am]

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[2] 894 F.2d 1372 (DC Cir. 1990).

[3] Commissioner LaFleur has been on record in support of Section 5 reform for several years. *Northern Natural Gas Co.,* 133 FERC ¶ 61,111 (2010) (LaFleur, Comm'r, dissenting).

FEDERAL REGISTER

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Part III

The President

Proclamation 9769—Anniversary of the Americans with Disabilities Act, 2018

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 9769 of July 25, 2018

Anniversary of the Americans with Disabilities Act, 2018

By the President of the United States of America

A Proclamation

On the 28th anniversary of the Americans with Disabilities Act (ADA), we celebrate this historic legislation, which echoed our Nation's founding promise to recognize and secure the equal rights of all men and women. Today, we reaffirm our commitment to cultivate further opportunities for all Americans to live full and independent lives, and recognize the many contributions enabled by expanded participation of Americans with disabilities in our society.

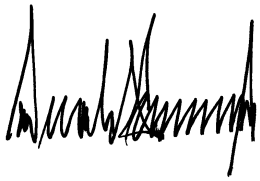
President George H.W. Bush signed the ADA into law on July 26, 1990. It has transformed the lives of millions of Americans living with disabilities by promoting their equal access to employment, government services, public accommodations, commercial facilities, and public transportation. Today, people of all ages with disabilities are better able to thrive in the community, pursue careers, contribute to our economy, and fully participate in American society.

Our Nation must continue to build upon this foundation and continue to further the participation of the more than 56 million Americans living with disabilities. My Administration continues to encourage research that will lead to advancements in technology, medicine, and other fields and better enable independent living. We are also expanding and promoting equal education and employment opportunities for Americans with disabilities to live and work. In this regard, in June of last year, I signed an Executive Order to develop more apprenticeship programs for all people, including those with disabilities. Additional training will encourage better involvement from businesses and allow people with disabilities to contribute meaningfully to a wide variety of industries.

As we commemorate the anniversary of the ADA, we recommit ourselves to fostering an environment in which all Americans have the opportunity to pursue the American Dream.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim July 26, 2018, as a day in celebration of the 28th Anniversary of the Americans with Disabilities Act. I call upon all Americans to observe this day with appropriate ceremonies and activities that celebrate the contributions of Americans with disabilities and to renew our commitment to achieving the promise of our freedom for all Americans.

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



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