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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[CIS No. 2620–18; DHS Docket No. USCIS–2018–0003]

RIN 1615–ZB73

Adjustment to Premium Processing Fee

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is increasing the premium processing fee charged by U.S. Citizenship and Immigration Services (USCIS). DHS is increasing the fee by 14.92 percent, the percentage change in inflation since the fee was last adjusted in 2010 according to the Consumer Price Index for All Urban Consumers (CPI–U). The adjustment increases the fee from $1,225 to $1,410.

DATES: This rule is effective on October 1, 2018. Applications postmarked on or after that date must include the new fee.

FOR FURTHER INFORMATION CONTACT: Joseph D. Moore, Chief Financial Officer, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529–2130; or by phone at (202) 272–1969 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR—Code of Federal Regulations
CPI—Consumer Price Index
CPI–U—Consumer Price Index for All Urban Customers
DHS—Department of Homeland Security
Form I–129—Form I–129, Petition for a Nonimmigrant Worker
Form I–140—Form I–140, Immigrant Petition for Alien Worker
INA—Immigration and Nationality Act
USCIS—U.S. Citizenship and Immigration Services

I. Background and Authority

The Immigration and Nationality Act (INA) permits certain employment-based immigration benefit applicants and petitioners to request, for a fee, premium processing. The applicable statute authorizes the Secretary of Homeland Security (Secretary) to charge and collect a premium processing fee for employment-based petitions and applications. The fee must be used to provide certain premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer service processes. By statute, the fee, initially set at $1,000, must be paid in addition to any normal petition/application fee that may be applicable. The statute provides that the Secretary may adjust this fee according to the Consumer Price Index. INA section 286(u), 8 U.S.C. 1356(u); Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000).

Premium processing allows filers to request 15-day processing of certain employment-based immigration benefit requests if they pay an extra amount. *See* 8 CFR 103.7(b)(1)(i)(SS) and (e). The premium processing fee is paid in addition to the base filing fee and any other applicable fees. *See* 8 CFR 103.7(b)(1)(i)(SS)(*1*). It cannot be waived. *See* 8 CFR 103.7(b)(1)(i)(SS)(*3*). USCIS uses premium processing fee revenue to improve its adjudications and customer service processes, fund the costs of providing the premium services, and modernize its information technology systems.

Premium processing is currently authorized for certain petitioners filing a Petition for a Nonimmigrant Worker (Form I–129), or an Immigrant Petition for Alien Worker (Form I–140) seeking certain employment-based classifications. *See* 8 CFR 103.7(b)(1)(i)(SS) and (e).[1] DHS last adjusted the premium processing fee to $1,225 in its 2010 USCIS fee rule. *See USCIS Fee Schedule; Final Rule,* 75 FR 58961, 58978, 58988 (Sept. 24, 2010); 8 CFR 103.7(b)(1)(i)(RR) (effective Nov. 23, 2010, codified as amended at 8 CFR 103.7(b)(1)(i)(SS), 81 FR 73292, 73331 (Oct. 24, 2016)).

[1] *See also* USCIS, How Do I Use the Premium Processing Service, *https://www.uscis.gov/forms/how-do-i-use-premium-processing-service* (last reviewed/updated Oct. 3, 2017, last visited June 7, 2018).

II. Basis for Adjustment

Consistent with INA section 286(u), 8 U.S.C. 1356(u), DHS has calculated the percent change in the CPI–U to measure inflation. For the end point for the period of inflation to establish the current premium processing fee, DHS used the Consumer Price Index-Urban Consumers (CPI–U) as of June 2010. *See* 75 FR 58961. Accordingly, we have used July 2010 as the starting point for this change. In July 2010 the CPI–U was 218.01, and in April 2018 it was 250.55.[2] Therefore, between July 2010 and April 2018, the CPI–U increased by 14.92 percent.[3] When the percentage increase is applied to the current premium processing fee of $1,225, the adjusted premium processing fee is $1,408 ($1,410 when rounded to the nearest $5 increment). Thus, under INA section 286(u), 8 U.S.C. 1356(u), the USCIS premium processing fee will be $1,410. *See* final 8 CFR 103.7(b)(1)(i)(SS).

USCIS intends to use the premium funds that are generated by the fee increase to provide certain premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer-service processes. In recent years, premium processing has been suspended on employment-based petitions to permit officers working on premium processing cases to process long-pending non-premium filed petitions as well as to prevent a lapse in employment authorization for beneficiaries of extension petitions resulting from the high volume of incoming petitions and a significant surge in premium processing requests.[4]

[2] The latest CPI–U data is available at *http://data.bls.gov/cgi-bin/surveymost?bls.* Select CPI for All Urban Consumers (CPI–U) 1982–84=100 (Unadjusted)—CUUR0000SA0 and click the Retrieve data button.

[3] We calculated this by subtracting the July 2010 CPI–U (218.01) from the April 2018 CPI–U (250.55). We divided the result (32.54) by the July 2010 CPI–U (218.01). Calculation: (250.55 – 218.01)/218.01 = 14.92 percent.

[4] *See,* USCIS Will Temporarily Suspend Premium Processing for All H–1B Petitions, *https://www.uscis.gov/archive/uscis-will-temporarily-suspend-premium-processing-all-h-1b-petitions* (Last Reviewed/Updated: 03/03/2017); USCIS Will Temporarily Suspend Premium Processing for Fiscal Year 2019 H–1B Cap Petitions, *https://www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-fiscal-year-2019-h-1b-cap-petitions* (Last Reviewed/Updated: 03/20/2018).

The additional staff hired through the premium funds will allow USCIS to provide premium processing service with less disruption and improve the adjudications and customer service process. USCIS also plans to make adequate investment in information technology systems that will improve the adjudications process and the services provided to applicants and petitioners.

A request for premium processing postmarked on or after October 1, 2018 must include the new fee. Petitioners must pay the $1,410 fee in addition to and separate from other filing fees. 8 CFR 103.7(b)(1)(i)(SS)(*1*). The premium processing fee may not be waived. 8 CFR 103.7(b)(1)(i)(SS)(*3*).[5]

III. Regulatory Requirements

A. Administrative Procedure Act

DHS is making this fee increase final without notice and comment because it is unnecessary. 5 U.S.C. 553(b)(B). By law, DHS may adjust the premium processing fee for inflation according to the Consumer Price Index. *See* INA section 286(u), 8 U.S.C. 1356(m). DHS has previously established by regulation that DHS may adjust the fee annually by notice. 8 CFR 103.7(b)(1)(i)(SS)(*2*). No comments were received on the USCIS Fee Schedule; Final Rule regarding USCIS's authority to adjust the premium processing fee for inflation in the future. *See* 75 FR 58961–58991. The amount of the increase would not be changed by public comment. The sole exercise of discretion here relates to the determination whether, as a matter of internal agency management, DHS and USCIS needs additional premium processing fee revenue to provide premium processing services and to make infrastructure improvements in the adjudications and customer-service processes as authorized by INA 286(u), 8 U.S.C. 1356(u), and whether, as a procedural matter, payment of such increased fee will be a precondition for receiving the premium processing service. Therefore, further delay of this regulation change to solicit public comments is unnecessary.

B. Other Regulatory Requirements

Because this action is not subject to the notice-and-comment requirements under the APA, a final regulatory flexibility analysis is not required. *See* 5 U.S.C. 604(a). In addition, this rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2), and thus is not subject to a 60-day delay in the rule becoming effective. This action is not subject to the written statement requirements of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Orders 13132 or 13175. This rule also does not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii) and 1508.4. This action does not affect the quality of the human environment and fits within Categorical Exclusion number A3(d) in Dir. 023–01 Rev. 01, Appendix A, Table 1, for rules that interpret or amend an existing regulation without changing its environmental effect.

Finally, this action does not require review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563. As previously discussed, DHS has the authority to adjust the premium processing fees according to the CPI–U. DHS is adjusting the premium processing fee by 14.92 percent resulting in an increase of $185 per Form I–907 (from a fee of $1,225 per premium processing Form I–907 to $1,410 per Form I–907). Table 1 shows the total number of premium processing Forms I–907 received by USCIS from fiscal year 2013 to 2017. On average, USCIS received 238,784 Forms I–907 annually during this timeframe.

TABLE 1—TOTAL NUMBER OF PREMIUM PROCESSING (FORM I–907) REQUESTS RECEIVED, FISCAL YEARS 2013–2017

Fiscal year	Total Form I–907 receipts received
2013	189,588
2014	218,400
2015	234,576
2016	319,517
2017	231,839
Average	238,784

Source: USCIS, Office of the Chief Financial Officer.

DHS estimates an additional annual $44 million in revenue to be collected from the increase in premium processing fees due to adjustment of inflation.[6] As discussed earlier, the premium processing fee revenue will be used to make infrastructure improvements in the adjudications and customer service processes as well as to fund the cost of providing premium services.

This rule imposes transfer payments between the public and the government. Thus, this action is exempt from Executive Order 13771.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

For the reasons stated in the preamble, DHS amends part 103 of chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 48 U.S.C. 1806; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54, 125 Stat 550.

§ 103.7 [Amended]

■ 2. Section 103.7 is amended in paragraph (b)(1)(i)(SS) introductory text by removing ''$1,225'' and adding in its place ''$1,410''.

Claire M. Grady,

Acting Deputy Secretary.

[FR Doc. 2018–19108 Filed 8–30–18; 8:45 am]

BILLING CODE 9111–97–P

[5] This rule also makes a technical correction to the authority citation for 8 CFR part 103. In a previous DHS rule, a citation to 48 U.S.C. 1806 was inadvertently removed. *See* 76 FR 53764, 53780. This rule reinserts that citation.

[6] Additional revenue collected = 238,784 average number of premium processing Forms I–907 received * $185 increase in premium processing fees = $44,175,040.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 50

[Docket ID OCC–2018–0013]

RIN 1557–AE36

FEDERAL RESERVE SYSTEM

12 CFR Part 249

[Docket No. R–1616]

RIN 7100–AF10

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064–AE77

Liquidity Coverage Ratio Rule: Treatment of Certain Municipal Obligations as High-Quality Liquid Assets

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule with request for comment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the agencies) are jointly issuing and inviting comment on an interim final rule that amends the agencies' liquidity coverage ratio (LCR) rule to treat liquid and readily-marketable, investment grade municipal obligations as high-quality liquid assets (HQLA). Section 403 of the Economic Growth, Regulatory Relief, and Consumer Protection Act amends section 18 of the Federal Deposit Insurance Act and requires the agencies, for purposes of their LCR rule and any other regulation that incorporates a definition of the term ''high-quality liquid asset'' or another substantially similar term, to treat a municipal obligation as HQLA (that is a level 2B liquid asset) if that obligation is, as of the LCR calculation date, ''liquid and readily-marketable'' and ''investment grade.''

DATES: The interim final rule is effective on August 31, 2018. Comments on the interim final rule must be received by October 1, 2018.

ADDRESSES: Comments should be directed to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Liquidity Coverage Ratio Rule: Treatment of Certain Municipal Obligations as High-Quality Liquid Assets'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov''*: Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0013'' in the Search box and click ''Search.'' Click on ''Comment Now'' to submit public comments. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2018–0013'' in your comment. In general, OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0013'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing-impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: When submitting comments, please consider submitting your comments by email or fax because paper mail in the Washington, DC area and at the Board may be subject to delay. You may submit comments, identified by Docket No. R–1616 and RIN 7100–AF10, 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 docket and RIN numbers 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.

Instructions: All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FDIC: You may submit comments, identified by FDIC RIN 3064–AE77, by any of the following methods:

- *Agency website: http://www.FDIC.gov/regulations/laws/federal/.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, 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 550 17th Street NW building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

• *Email: comments@FDIC.gov.*

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AE77.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Christopher McBride, Director, James Weinberger, Technical Expert, or Ang Middleton, Bank Examiner (Risk Specialist), (202) 649–6360, Treasury & Market Risk Policy; David Stankiewicz, Special Counsel, Securities and Corporate Practices Division, (202) 649–5510; Henry Barkhausen, Counsel, or Daniel Perez, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490; for persons who are deaf or hearing-impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance Horsley, Deputy Associate Director, (202) 452–5239, Peter Clifford, Manager, (202) 785–6057, J. Kevin Littler, Senior Supervisory Financial Analyst, (202) 475–6677, or Christopher Powell, Supervisory Financial Analyst, (202) 452–3442, Division of Banking Supervision and Regulation; Laurie Schaffer, Associate General Counsel, (202) 452–2272, Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036, Steve Bowne, Senior Attorney, (202) 452–3900, or Laura Bain, Senior Attorney, (202) 736–5546, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

FDIC: Bobby R. Bean, Associate Director, (202) 898–6705, Michael E. Spencer, Chief, (202) 898–7041, Eric W. Schatten, Senior Policy Analyst, (202) 898–7063, Andrew D. Carayiannis, Senior Policy Analyst, (202) 898–6692, or Nana Ofori-Ansah, Capital Markets Policy Analyst, (202) 898–3572, Capital Markets Branch, Division of Risk Management Supervision; Suzanne J. Dawley, Counsel, (202) 898–6509 (*sudawley@fdic.gov*), Andrew B. Williams, II, Counsel, (202) 898–3591, or Alexander S. Bonander, Attorney (202) 898–3621, Supervision and Corporate Operations Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) adopted the liquidity coverage ratio (LCR) rule [1] in 2014. The LCR rule established a quantitative liquidity requirement that is designed to promote the short-term resilience of the liquidity risk profile of large and internationally active banking organizations. The intent of the agencies in issuing the LCR rule was to improve the banking sector's ability to absorb shocks arising from financial and economic stress and the measurement and management of liquidity risk.[2] The LCR rule generally applies to a bank holding company, savings and loan holding company, or depository institution if: (1) It has total consolidated assets equal to $250 billion or more; (2) it has total consolidated on-balance sheet foreign exposure equal to $10 billion or more; or (3) it is a depository institution with total consolidated assets equal to $10 billion or more and is a consolidated subsidiary of a firm that is subject to the LCR rule (each, a covered company).[3] Covered companies generally must maintain an amount of high-quality liquid assets (HQLA) equal to or greater than their projected total net cash outflows over a prospective 30 calendar-day period.[4] The LCR rule defines three categories of HQLA—level 1, level 2A, and level 2B liquid assets—and sets forth qualifying criteria for HQLA and limitations for an asset's inclusion in the HQLA amount.

In 2016, the Board amended its LCR rule to include certain U.S. municipal securities as HQLA, subject to certain limitations (2016 Amendments).[5] To qualify as level 2B liquid assets under the 2016 Amendments, the U.S. municipal securities must be general obligation securities of public sector entities (*i.e.,* a state, local authority, or other governmental subdivision below the U.S. sovereign entity level).[6] Under the 2016 Amendments, a general obligation is defined as a bond or similar obligation that is backed by the full faith and credit of a public sector entity.[7] To be treated as HQLA, the general obligation securities also must: (1) Be investment grade under 12 CFR part 1 as of the calculation date; (2) be issued or guaranteed by a public sector entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions; [8] and (3) not be an obligation of a financial sector entity or a financial sector entity's consolidated subsidiary, unless it is only guaranteed by a financial sector entity or its consolidated subsidiary and otherwise eligible.[9] The 2016 Amendments limited the inclusion of general obligation securities in the HQLA amount to 5 percent of the covered company's total HQLA amount.[10] The 2016 Amendments also limited the inclusion of general obligation securities of any single public sector entity to two times the average daily trading volume during the previous four quarters of all general obligation securities issued by that public sector entity.[11]

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) was enacted on May 24, 2018.[12] Section 403 of the EGRRCPA amends section 18 of the Federal Deposit Insurance Act [13] and requires the agencies, for purposes of the LCR

[1] 79 FR 61440 (October 10, 2014), codified at 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

[2] *Id.*

[3] *See* section 1 of the LCR rule.

[4] The Board separately adopted a modified LCR requirement for bank holding companies and certain savings and loan holding companies that, in each case, (A) have $50 billion or more in total consolidated assets and (B) are not internationally active (each, a modified LCR holding company). Under the Board's LCR rule, modified LCR holding companies must maintain an amount of HQLA equal to or greater than 70 percent of their projected total net cash outflows on the last business day of the applicable calendar month. 12 CFR 249 subpart G. This interim final rule's changes to the Board's LCR rule also apply to modified LCR holding companies.

[5] 81 FR 21223 (April 11, 2016), codified at 12 CFR part 249 (Board).

[6] 12 CFR 249.20(c)(2).

[7] 12 CFR 249.3.

[8] This is demonstrated by (A) the market price of the security or equivalent securities of the issuer declining by no more than 20 percent during a 30 calendar-day period of significant stress or (B) the market haircut demanded by counterparties to secured lending and secured funding transactions that are collateralized by the security or equivalent securities of the issuer increasing by no more than 20 percentage points during a 30 calendar-day period of significant stress. 12 CFR 249.20(c)(2).

[9] *Id.*

[10] 12 CFR 249.21.

[11] 12 CFR 249.22(c).

[12] Public Law 115–174, 132 Stat. 1296–1368 (2018).

[13] 12 U.S.C. 1828(aa).

rule and any other regulation that incorporates a definition of the term ''high-quality liquid asset'' or another substantially similar term, to treat a municipal obligation as HQLA that is a level 2B liquid asset if that obligation is, as of the calculation date, (A) liquid and readily-marketable and (B) investment grade. Section 403 defines ''investment grade'' as having the meaning given the term in § 1.2 of title 12, Code of Federal Regulations, or any successor thereto. Section 403 defines ''liquid and readily-marketable'' as having the meaning given the term in § 249.3 of title 12, Code of Federal Regulations, or any successor thereto. Section 403 defines ''municipal obligation'' as ''an obligation of—(i) a State or any political subdivision thereof; or (ii) any agency or instrumentality of a State or any political subdivision thereof.''

II. Description of the Interim Final Rule

This interim final rule amends the agencies' LCR rule to implement section 403 of the EGRRCPA. Section 403 requires the agencies to treat a municipal obligation as a level 2B liquid asset if the obligation, as of the calculation date, is liquid and readily-marketable and investment grade.[14] To effect this change, the interim final rule makes certain amendments to each agency's LCR rule that incorporate the provisions of section 403 of the EGRRCPA.

The interim final rule adds a definition to the agencies' rule for the term ''municipal obligations,'' which, consistent with the EGRRCPA, means an obligation of (1) a state or any political subdivision thereof or (2) any agency or instrumentality of a state or any political subdivision thereof.

The interim final rule amends the HQLA criteria with respect to level 2B liquid assets by adding municipal obligations that, as of the calculation date, are both (1) liquid and readily-marketable and (2) investment grade (under 12 CFR part 1) to the list of assets that are eligible for treatment as level 2B liquid assets.[15] The OCC's definition of ''investment grade'' under 12 CFR 1.2 provides that ''[i]nvestment grade means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.''[16] A municipal obligation is required to meet this definition of ''investment grade'' as of the calculation date to be treated as a level 2B liquid asset under the interim final rule.

Consistent with section 403, the interim final rule also amends the definition of ''liquid and readily-marketable'' in the FDIC's and OCC's rules so that the term has the same meaning given to it under the Board's rules. Under this provision of the Board's rules, a ''liquid and readily-marketable'' security is a security that is traded in an active secondary market with: (1) More than two committed market makers; (2) a large number of non-market maker participants on both the buying and selling sides of transactions; (3) timely and observable market prices; and (4) a high trading volume.[17] As described above, a municipal obligation is required to be liquid and readily-marketable as of the date of calculation to be treated as a level 2B liquid asset under the interim final rule.

As part of the interim final rule, the Board is rescinding the 2016 Amendments so that municipal obligations under the Board's LCR rule will be treated consistently with section 403 of the EGRRCPA. As a result of the above changes, covered companies will be able to count municipal obligations as HQLA that qualify as level 2B liquid assets, provided the municipal obligations meet the HQLA criteria under the LCR rule.[18] Accordingly, covered companies will have greater flexibility in meeting the minimum requirements under the LCR rule as more types of assets will be eligible as HQLA. For FDIC- and OCC-regulated institutions, these changes will mark the first time that such institutions may treat any municipal obligations as HQLA. For Board-regulated institutions, these changes are expected to broaden the number of municipal obligations that can be counted as HQLA. In particular, for purposes of the types of assets eligible for treatment as HQLA, municipal obligations will no longer be required to be general obligation securities.[19] As a result, many issuances of revenue bonds will now qualify as municipal obligations.

Only municipal obligations that meet the LCR rule's definition for liquid and readily-marketable and that are investment grade under 12 CFR part 1 will qualify for treatment as HQLA under this interim final rule.[20] The interim final rule does not otherwise affect covered companies' obligations under the LCR rule.

III. Request for Comment

The definition of ''municipal obligation'' and the criteria for treating municipal obligations as level 2B liquid assets were established by section 403 of the EGRRCPA. Consistent with section 403, in what ways, if any, could the agencies clarify aspects of these provisions (*e.g.,* by clarifying the terms ''state'' or ''political subdivision'')? The agencies invite comment on this question and all other aspects of this interim final rule.

IV. Regulatory Analysis

A. Administrative Procedure Act and Effective Date

The agencies are issuing the interim final rule without prior notice and the opportunity for public comment and the 30 day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[21] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required prior to the issuance of a final rule if an agency, for good cause, finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[22]

[14] 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

[15] 12 CFR 50.20 (OCC), 12 CFR 249.20 (FRB), and 12 CFR 329.20 (FDIC).

[16] 12 CFR 1.2.

[17] 12 CFR 249.3.

[18] Corresponding changes will be made to the Complex Institution Liquidity Monitoring Report (FR 2052a). These changes will be described in a separate **Federal Register** notice.

[19] Additionally, to count as HQLA, municipal obligations will not (1) be required to be issued or guaranteed by a public sector entity whose obligations have a proven record as a reliable source of liquidity in repurchase or sales markets during stressed market conditions, as demonstrated by the quantitative metrics included in the 2016 Amendments; or (2) be prohibited from being an obligation of a financial sector entity or a financial sector entity's consolidated subsidiary. In addition, the amount of municipal obligations that can be included in Board-regulated institutions' HQLA amount will no longer be limited to 5 percent of the total HQLA amount. The limit on the amount of municipal obligations of a single issuer that may be included as eligible HQLA will also no longer apply to Board-regulated institutions.

[20] This interim final rule does not affect other requirements under the LCR rule that serve to restrict HQLA, such as the 50 percent haircut for level 2B liquid assets under section 21(b) and the restriction that level 2B assets cannot exceed more than 15 percent of the total HQLA amount. In addition, this interim final rule does not affect the section 22 requirements, which address the operational and generally applicable criteria for eligible HQLA. With regard to net cash outflows, the interim final rule does not affect the requirements under sections 32 and 33, which address the calculation of outflow and inflow amounts, respectively.

[21] 5 U.S.C. 553.

[22] 5 U.S.C. 553(b)(B).

As discussed above, this interim final rule implements the provisions of section 403 of the EGRRCPA, which became effective on May 24, 2018, and directs the agencies to make certain changes to the criteria for HQLA. The interim final rule adopts without change the statutory definition for ''municipal obligations'' and the requirement that municipal obligations be treated as level 2B liquid assets if the obligations are liquid and readily-marketable and investment grade. Because these changes to the LCR rule are mandated by the EGRRCPA, the agencies have determined that publishing a notice of proposed rulemaking is unnecessary. In addition, the agencies believe that the public interest is best served by implementing Congress's legislative directive as soon as possible because immediate implementation would provide clarity to the public regarding the liquidity rules and would be consistent with Congress's directive to the agencies under section 403(b) of the EGRRCPA to amend the LCR rule within 90 days after enactment of the EGRRCPA.

The effective date of this interim final rule is August 31, 2018. Pursuant to section 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.[23] For the reasons described above in connection with APA section 553(b)(B), the agencies find good cause to publish the rule with an immediate effective date.

B. Riegle Community Development and Regulatory Improvement Act

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[24] in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions, each federal banking agency must consider any administrative burdens that such regulation would place on depository institutions and the benefits of such regulation. In addition, section 302(b) of the RCDRIA [25] requires such new regulation to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause. For the reasons described above in connection with the APA section 553(b)(B) requirement, the agencies find good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date.

While the agencies believe there is good cause to issue the rules without advance notice and comment and with an immediate effective date, the agencies are interested in the views of the public and request comment on all aspects of the interim final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this interim final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply. Nonetheless, the agencies observe that in light of the way the interim final rule operates, they believe that, with respect to the entities subject to the interim final rule and within each agency's respective jurisdiction, the interim final rule would not have a significant economic impact on a substantial number of small entities.[26]

D. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget control number. The agencies have determined that this interim final rule does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires the OCC to prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this interim final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 50

Administrative practice and procedure, Banks, Banking, Liquidity, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 249

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Liquidity, Reporting and recordkeeping requirements.

12 CFR Part 329

Administrative practice and procedure, Banks, Banking, Federal Deposit Insurance Corporation, FDIC, Liquidity, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the preamble, the OCC amends 12 CFR part 50, the Board amends 12 CFR part 249, and the FDIC amends 12 CFR part 329 as follows:

Department of the Treasury

Office of the Comptroller of the Currency

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 481, 1818, 1828, and 1462 *et seq.*

■ 2. Section 50.3 is amended by revising the definition for ''Liquid and readily-marketable'' and adding the definition for ''Municipal obligation'' in alphabetical order to read as follows:

§ 50.3 Definitions.

* * * * *

Liquid and readily-marketable has the meaning given the term in 12 CFR 249.3.

* * * * *

Municipal obligation means an obligation of:

(1) A state or any political subdivision thereof; or

(2) Any agency or instrumentality of a state or any political subdivision thereof.

* * * * *

■ 3. Section 50.20 is amended by:

■ a. Republishing paragraph (c) introductory text;

■ b. Removing the ''or'' at the end of paragraph (c)(1)(iii);

[23] 5 U.S.C. 553(d).

[24] 12 U.S.C. 4802(a).

[25] 12 U.S.C. 4802(b).

[26] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less.

■ c. Removing the period at the end of paragraph (c)(2)(vi) and adding ''; or'' in its place; and
■ d. Adding paragraph (c)(3).

The republication and addition read as follows:

§ 50.20 High-quality liquid asset criteria.

* * * * *

(c) *Level 2B liquid assets.* An asset is a level 2B liquid asset if the asset is liquid and readily-marketable and is one of the following types of assets:

* * * * *

(3) A municipal obligation that is investment grade under 12 CFR part 1 as of the calculation date.

Federal Reserve System

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 4. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 5. Amend § 249.3 by removing the definition for ''General obligation'' and adding the definition for ''Municipal obligation'' in alphabetical order to read as follows:

§ 249.3 Definitions.

* * * * *

Municipal obligation means an obligation of:

(1) A state or any political subdivision thereof; or

(2) Any agency or instrumentality of a state or any political subdivision thereof.

* * * * *

■ 6. Amend § 249.20 by republishing paragraph (c) introductory text, removing the ''or'' at the end of paragraph (c)(1)(iii), removing paragraph (c)(2), redesignating paragraph (c)(3) as (c)(2), removing the period at the end of newly redesignated paragraph (c)(2)(vi) and adding ''; or'' in its place, and adding a new paragraph (c)(3) to read as follows:

§ 249.20 High-quality liquid asset criteria.

* * * * *

(c) *Level 2B liquid assets.* An asset is a level 2B liquid asset if the asset is liquid and readily-marketable and is one of the following types of assets:

* * * * *

(3) A municipal obligation that is investment grade under 12 CFR part 1 as of the calculation date.

§ 249.21 [Amended]

■ 7. Amend § 249.21 by:
■ a. Removing paragraph (b)(4);
■ b. Removing ''; plus'' at the end of paragraph (c)(2) and adding in its place a period;
■ c. Removing paragraphs (c)(3), (f), and (g)(4);
■ d. Removing ''; plus'' at the end of paragraph (h)(2) and adding in its place a period;
■ e. Removing paragraphs (h)(3) and (k); and
■ f. Redesignating paragraphs (g) through (j) as paragraphs (f) through (i), respectively.

§ 249.22 [Amended]

■ 8. Amend § 249.22 by removing paragraph (c) and redesignating paragraph (d) as paragraph (c).

Federal Deposit Insurance Corporation

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 9. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 10. Section 329.3 is amended by revising the definition for ''Liquid and readily-marketable'' and adding the definition for ''Municipal obligation'' in alphabetical order to read as follows:

§ 329.3 Definitions.

* * * * *

Liquid and readily-marketable has the meaning given the term in 12 CFR 249.3.

* * * * *

Municipal obligation means an obligation of:

(1) A state or any political subdivision thereof; or

(2) Any agency or instrumentality of a state or any political subdivision thereof.

* * * * *

■ 11. Section 329.20 is amended by:
■ a. Republishing paragraph (c) introductory text;
■ b. Removing the ''or'' at the end of paragraph (c)(1)(iii);
■ c. Removing the period at the end of paragraph (c)(2)(vi) and adding ''; or'' in its place; and
■ d. Adding paragraph (c)(3).

The republication and addition read as follows:

§ 329.20 High-quality liquid asset criteria.

* * * * *

(c) *Level 2B liquid assets.* An asset is a level 2B liquid asset if the asset is liquid and readily-marketable and is one of the following types of assets:

* * * * *

(3) A municipal obligation that is investment grade under 12 CFR part 1 as of the calculation date.

Dated: August 20, 2018.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, August 21, 2018.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on August 22, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie Jean Best,

Assistant Executive Secretary.

[FR Doc. 2018–18610 Filed 8–30–18; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 31

[Docket No. FAA–2018–0566; Notice No. 31–002–SC]

Special Conditions: Ultramagic S.A., Model M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, and V–105 Balloons; Balloon Passenger Basket, Model CV–08, Seat Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Ultramagic S.A. Models M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, and V–105 balloons. These balloons will have novel or unusual design features associated with a standard construction basket with a singular distribution that includes four occupant seats and a lower sidewall. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: These special conditions are effective August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Robert Stegeman, FAA, AIR–691, Policy & Innovation Division, Small Airplane Standards Branch, Aircraft Certification Service, 901 Locust, Kansas City, Missouri 64106; telephone (816) 329–4140; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2016, Ultramagic S.A. (Ultramagic) applied for a change to Type Certificate (TC) No. B02CE [1] to include new basket Model no. CV–08 for balloon Models M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, and V–105. The CV–08 basket consists of a traditionally constructed basket, but incorporates seats with restraints and trays for all passengers, as well as a lower basket sidewall to offer a panoramic view for passengers. The CV–08 basket will be matched with one of the balloon envelopes associated with the balloon models listed in these special conditions. The volume of hot air, gores, maximum diameter, and total height defines the balloon envelope.

Most balloon baskets accommodate standing passengers. The CV–08 differs by incorporating passenger seats, restraints, and a lower basket sidewall. Due to the lower sidewall and seat configuration, passengers would need to remain seated and restrained with safety belts during flight. This configuration should consider the static strength of the installations, the possible loads in an accident, and the effect on passenger safety. Accident impact should consider safety comparison between a restrained, sitting occupant; and a normal, standing occupant. Safety requirements for balloon-seated occupants are not included in the existing airworthiness regulations. These special conditions evaluate the seat installations and restraints using methods consistent with special conditions issued by the European Aviation Safety Agency (EASA). The EASA special conditions are based upon a German standard for seats in hot air airships.

Type Certification Basis

Under the provisions of § 21.101, Ultramagic must show that the M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, and V–105 balloon models—coupled with the CV–08 basket—continues to meet the applicable provisions of the regulations incorporated by reference in TC No. B02CE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in TC No. B02CE are as follows:

14 CFR 21.29 and part 31, effective on January, 1990, as amended by 31–1 through 31–5 inclusive.

Equivalent level of Safety findings per provision of 14 CFR 21.21(b)(1):

ACE–08–15 of August 1, 2008, Burners, 14 CFR 31.47(d)

ACE–08–15A of November 05, 2013, Burners, 14 CFR 31.47(d), for Model S–70

Special Conditions 31–001–SC applicable to MK–32 model burners.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 31) do not contain adequate or appropriate safety standards for the balloon models listed in these special conditions because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model(s) for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the FAA would apply these special conditions to the other model under § 21.101.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, and V–105 balloon models coupled with a CV–08 basket will incorporate the following novel or unusual design features:

Occupant seats with restraints and a lowered basket side rail.

Discussion

Neither the FAA's airworthiness standards (14 CFR part 31, amendment 31–5), nor EASA's current Certification Specification (CS) for Hot Air Balloons (CS 31HB, amendment 1), incorporate specific requirements for seat and seat belts.

EASA previously published a proposed special condition [2] (now expired) for seats and seat belts for hot air balloon baskets. EASA based the requirements of its proposed special condition on the German airworthiness requirements for Hot Air Airships LFHLLS,[3] incorporating hot air balloon basket requirements for seats, seat belts, and the loads in an emergency landing condition, similar to hot air airship requirements. Ultramagic's change application applied the language in the EASA proposed special condition for CS 31HA.14(c), ''Occupant mass,'' CS 31HA.43(d), ''Fitting factor,'' CS 31HA.561(a) and (b)(1), ''Emergency landing conditions—General,'' and CS 31HA.785(a), (c), and (d), ''Seats and seat belts'' to the CV–08 basket. The FAA finds that these standards are appropriate for a seated, restrained occupant.

Discussion of Comments

Notice of proposed special conditions No. 31–18–01–SC for the Ultramagic Balloon Models M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, and V–105 was published in the **Federal Register** on June 25, 2018 (83 FR 29472). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, and V–105 balloons. Should Ultramagic apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the FAA would apply these special conditions to that model as well.

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

[2] *Ref* EASA Proposed Special Condition, ''Seats and seat belts for hot air balloons,'' Issue 1, dated October 3, 2014.

[3] LFHLLS (Lufttüchtigkeitsforderungen für Heissluft-Luftschiffe)—Airworthiness Requirements for Hot Air Ships, issued November 13, 1997, amended March 10, 1998, Germany.

Conclusion

This action affects only certain novel or unusual design features on the balloon models specified in these special conditions. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane. These special conditions are identical in intent to the EASA special conditions, although the formatting has been altered to meet these special condition requirements.

List of Subjects in 14 CFR Part 31

Aircraft, Aviation safety.

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Ultramagic S.A. Model M–56, M–56C, M–65, M–65C, M–77, M–77C, M–90, M–105, M–120, M–130, M–145, M–160, N–180, N–210, N–250, N–300, N–355, N–425, S–70, S–90, S–105, S–130, S–160, T–150, T–180, T–210, V–56, V–65, V–77, V–90, and V–105 balloons with a basket Model no. CV–08.

1. Hot Air Balloon Crashworthiness Requirements for Seat Installations and Restraints for Seated and Restrained Occupants

a. Occupant Mass

For calculation purposes, it should be assumed the mass of an occupant is at least 86 kilograms (190 pounds).

b. Seats, Safety Belts, and Harnesses Factor of Safety

For each seat, safety belt, and harness, its attachment to the structure must be shown, by analysis, tests, or both, to be able to withstand the inertia forces prescribed in paragraph (c) of these special conditions multiplied by a fitting factor of 1.33.

c. Emergency Landing Conditions—General

The balloon—although it may be damaged under emergency landing conditions—must be designed to give each occupant every reasonable chance of avoiding serious injury in a crash landing—when seat belts provided for in the design are properly used—and the occupant is subject to the following ultimate inertia forces acting relative to the surrounding structure as well as independently of each other.

(1) Forward 6g

(2) Sideways 6g

(3) Downward 6g

d. Seats and Seatbelts

(1) Each seat and its supporting structure must be designed for an occupant mass in accordance paragraph (a) of these special conditions and for the maximum load factors corresponding to the specified flight and ground load conditions, including the emergency landing conditions prescribed in paragraph (c) of these special conditions.

(2) Each seat or berth shall be fitted with an individual approved seat belt or harness.

(3) Seat belts installed on the balloon must not fail under flight or ground load conditions or emergency landing conditions in accordance with paragraph (c) of these special conditions, taking into account the geometrical arrangement of the belt attachment and the seat.

Issued in Kansas City, Missouri, on August 23, 2018.

Pat Mullen,

Manager, Small Airplane Standards Branch, Aircraft Certification Service.

[FR Doc. 2018–18885 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0169; Product Identifier 2017–NM–095–AD; Amendment 39–19372; AD 2018–17–18]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2015–02–17, which applied to all Airbus Model A330–200, A330–200 Freighter, and A330–300 series airplanes. AD 2015–02–17 required revising the electrical emergency configuration procedure in the Emergency Procedures section of the airplane flight manual (AFM) to include procedures for deploying the ram air turbine manually to provide sufficient hydraulic power and avoid constant speed motor/generator (CSM/G) shedding. Since we issued AD 2015–02–17, we have determined that replacement or modification of the two flight warning computers (FWCs) is necessary to address the identified unsafe condition. This AD requires the replacement or modifications of the two FWCs. This AD also removes airplanes from the applicability. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 5, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 5, 2018.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of February 13, 2015 (80 FR 4762, January 29, 2015).

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0169.

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–2018–0169; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, 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 FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2015–02–17,

Amendment 39–18084 (80 FR 4762, January 29, 2015) (''AD 2015–02–17''). AD 2015–02–17 applied to all Airbus Model A330–200, A330–200 Freighter, and A330–300 series airplanes. The NPRM published in the **Federal Register** on April 16, 2018 (83 FR 16248). The NPRM was prompted by a determination that replacement or modification of the two FWCs is necessary to address the identified unsafe condition. The NPRM proposed to require the replacement or modification of the two FWCs. The NPRM also proposed to remove airplanes from the applicability. We are issuing this AD to address the identified unsafe condition.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0105R1, dated July 17, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200, A330–200 Freighter, and A330–300 series airplanes. The MCAI states:

The Constant Speed Motor/Generator (CSM/G), as installed on Airbus A330 aeroplanes, is qualified for an overload condition of 9.5 kVA [kilovolt-ampere] for 30 minutes. This duration is sufficient to perform safe landing and go-around. However, electrical load analysis revealed that the hydraulic power might not be sufficient to supply the CSM/G during slat/flap extension, when only one engine is running.

This condition, if not corrected, and in conjunction with the loss of main system, could lead to a scenario where the crew is not clearly warned that the electrical system has switched on the battery and thus has a limited duration to support a safe landing.

To initially address this potential unsafe condition, Airbus issued an Aircraft Flight Manual (AFM) Temporary Revision (TR) to amend the electrical emergency configuration ''ELEC EMER CONFIG'' procedure to require the pilot to deploy the ram air turbine manually before setting the Landing Recovery to ''ON'' position, which provides sufficient hydraulic power and avoids CSM/G shedding under worst-case operational conditions. Consequently, EASA issued AD 2014–0273 to require amendment of the AFM by incorporating the applicable Airbus TR.

After finding that [EASA] AD 2014–0273 contained some incorrect and incomplete information, EASA issued AD 2014–0281 [which corresponds to FAA AD 2015–02–17], retaining the requirements of EASA AD 2014–0273, which was superseded, but correcting the information related to premod/pre Service Bulletin (SB) or post-mod/post SB aeroplane configurations.

Since EASA AD 2014–0281 was issued, in order to improve the ''ELEC EMER CONFIG'' procedure, Airbus developed modifications to install improved FWCs, which is embodied in production through Airbus modification (mod) 205228, and to be embodied in service with Airbus SB A330–31–3232 * * *.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0281, which is superseded, and requires installation of a software standard upgrade [or replacement] of the two FWCs and removal of the applicable AFM TR once the aeroplane is modified.

Since EASA AD 2017–0105 was issued, it was identified that there was no need to require removal of applicable AFM TR, nor incorporation of a later AFM revision, as the contents are identical. This revised [EASA] AD deletes the requirement of paragraph (3) [of EASA AD 2017–0105].

* * * * *

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0169.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment. The Air Line Pilots Association, International (ALPA), indicated its support for the NPRM.

Request for Additional Credit

Delta Air Lines requested that paragraph (l) of the proposed AD, ''Credit for Previous Actions,'' include Airbus Service Bulletin A330–31–3232, Revision 01, dated February 14, 2017, as well as Airbus Service Bulletin A330–31–3232, dated May 4, 2016.

We disagree this change is necessary. Paragraph (f) of this AD requires compliance with this AD unless already done. Paragraph (j) of this AD mandates actions in accordance with Airbus Service Bulletin A330–31–3232, Revision 01, dated February 14, 2017. Therefore, as specified in paragraph (f) of this AD, having previously accomplished the actions specified in Airbus Service Bulletin A330–31–3232, Revision 01, dated February 14, 2017, means compliance with paragraph (j) of this AD has already been established. In paragraph (l) of this AD, we give credit to operators that have previously accomplished an earlier revision of the required service information identified in paragraph (j) of this AD; therefore, as specified in paragraph (l) of this AD, having accomplished Airbus Service Bulletin A330–31–3232, dated May 4, 2016, prior to the effective date of this AD means compliance with paragraph (j) of this AD has already been established. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued A330/A340 Airplane Flight Manual (AFM) Temporary Revision (TR) TR427, UPDATE OF ELEC—EMER CONFIG PROCEDURE, Issue 1.0, dated November 7, 2014; and A330/A340 AFM TR TR428, UPDATE OF ELEC—EMER CONFIG PROCEDURE, Issue 1.0, dated November 7, 2014. This service information describes updated electrical emergency configuration procedures in the AFM. This service information is distinct because it applies to airplanes in different configurations.

Airbus SAS has issued Service Bulletin A330–31–3232, Revision 01, including Appendix 01, dated February 14, 2017. This service information describes procedures for replacement or modification of the FWCs.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 105 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hour × $85 per hour = $340	$0	$340	$35,700

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

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight 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 that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–02–2017, Amendment 39–18084 (80 FR 4762, January 29, 2015), and adding the following new AD:

2018–17–18 Airbus SAS: Amendment 39–19372; Docket No. FAA–2018–0169; Product Identifier 2017–NM–095–AD.

(a) Effective Date

This AD is effective October 5, 2018.

(b) Affected ADs

This AD replaces AD 2015–02–17, Amendment 39–18084 (80 FR 4762, January 29, 2015) (''AD 2015–02–17'').

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all manufacturer serial numbers, except those airplanes with Airbus modification 205228 embodied in production.

(1) Airbus SAS Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Airbus SAS Model A330–223F and –243F airplanes.

(3) Airbus SAS Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by an electrical load analysis that revealed that hydraulic power might not be sufficient to supply the constant speed motor/generator (CSM/G) during slat/flap extension when only one engine is running and a determination that replacement or modification of the two flight warning computers (FWCs) is necessary to address the identified unsafe condition. We are issuing this AD to prevent such a condition which, in conjunction with the loss of the main electrical system, could lead to the scenario where the flight crew is not clearly warned that the electrical system has switched on the battery and thus has a limited duration that would allow a safe landing.

(f) Compliance

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

(g) Retained Airplane Flight Manual (AFM) Revision, With a New Exception

This paragraph restates the requirements of paragraph (g) of AD 2015–02–17, with a new exception. Except for airplanes identified in paragraph (h) of this AD: Within 15 days after February 13, 2015 (the effective date of AD 2015–02–17), revise the Emergency Procedures section of the Airbus A330/A340 AFM to include the information in the applicable Airbus temporary revision (TR) specified in paragraph (g)(1) or (g)(2) of this AD. This may be done by inserting a copy of the applicable TR specified in paragraph (g)(1) or (g)(2) of this AD into the AFM. Operate the airplane according to the procedures in the applicable TR. When the information in the applicable TR has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, provided the relevant information in the general revision is identical to that in the TR, and the TR may be removed.

(1) For airplanes in Airbus pre-modification 47930 configuration and pre-Airbus Service Bulletin A330–28–3067 configuration: Airbus A330/A340 AFM TR TR427, UPDATE OF ELEC—EMER CONFIG PROCEDURE, Issue 1.0, dated November 7, 2014.

(2) For airplanes in Airbus post-modification 47930 configuration or post-Airbus Service Bulletin A330–28–3067 configuration: Airbus A330/A340 AFM TR TR428, UPDATE OF ELEC—EMER CONFIG PROCEDURE, Issue 1.0, dated November 7, 2014.

(h) New Airplanes Not Affected by the Retained AFM Revision

Airplanes operated with an AFM that incorporates the information in Airbus EMERGENCY PROCEDURES/24–ELECTRICAL POWER/ELEC—EMER CONFIG Documentary Unit (DU) 00005218.0001001 (for airplanes in Airbus pre-modification 47930 configuration and pre-Airbus Service Bulletin A330–28–3067 configuration), or DU 00005218.0002001 (for airplanes in an Airbus post-modification 47930 configuration or post-Airbus Service Bulletin A330–28–3067 configuration), as applicable, are compliant with the requirements of paragraph (g) of this AD, provided that the applicable DU is not removed from the AFM.

(i) New Definitions

(1) For the purposes of this AD, an affected FWC is an FWC standard lower than T7–0. An FWC that is not affected is an FWC standard T7–0 having part number (P/N) LA2E20202T70000, or higher standard.

(2) For the purposes of this AD: Group 1 airplanes are those equipped with an affected FWC (as defined in paragraph (i)(1) of this AD) as of the effective date of this AD. Group 2 airplanes are those equipped with FWCs that are not affected (as defined in paragraph (i)(1) of this AD) as of the effective date of this AD.

(j) New Requirement of This AD: FWC Replacement or Modification

For Group 1 airplanes: Within 24 months after the effective date of this AD: Replace or modify an affected FWC with an FWC that is not affected, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–31–3232, Revision 01, including Appendix 01, dated February 14, 2017.

(k) Parts Installation Prohibition

(1) For Group 1 airplanes: After accomplishing the actions required by paragraph (j) of this AD, no person may install an affected FWC on the modified airplane.

(2) For Group 2 airplanes: As of the effective date of this AD, no person may install an affected FWC on any airplane.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A330–31–3232, dated May 4, 2016.

(m) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (n)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

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

(ii) AMOCs approved previously for AD 2015–02–17 are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, 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, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0105R1, dated July 17, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0169.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(5) and (o)(6) of this AD.

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on October 5, 2018.

(i) Airbus Service Bulletin A330–31–3232, Revision 01, including Appendix 01, dated February 14, 2017.

(ii) Reserved.

(4) The following service information was approved for IBR on of February 13, 2015 (80 FR 4762, January 29, 2015).

(i) Airbus A330/A340 Airplane Flight Manual (AFM) Temporary Revision TR427, UPDATE OF ELEC—EMER CONFIG PROCEDURE, Issue 1.0, dated November 7, 2014.

(ii) Airbus A330/A340 AFM Temporary Revision TR428, UPDATE OF ELEC—EMER CONFIG PROCEDURE, Issue 1.0, dated November 7, 2014.

(5) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

(6) You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued in Des Moines, Washington, on August 17, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18736 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0361; Product Identifier 2017–NM–160–AD; Amendment 39–19373; AD 2018–17–19]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318, A319, and A320 series airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. This AD requires revising the maintenance or inspection program, as applicable, to incorporate the specified maintenance requirements and airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 5, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 5, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0361.

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–2018–0361; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, 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 FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

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 certain Airbus SAS Model A318, A319, and A320 series airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. The NPRM published in the **Federal Register** on May 3, 2018 (83 FR 19466). The NPRM was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate the specified maintenance requirements and airworthiness limitations.

We are issuing this AD to address the failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017–0215, dated October 24, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318, A319, and A320 series airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. The MCAI states:

> The airworthiness limitations for Airbus A320 family aeroplanes, which are approved by EASA, are currently defined and published in the A318, A319, A320 and A321 Airworthiness Limitations Section (ALS) document(s). The Safe Life Airworthiness Limitation Items are specified in ALS Part 1. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Previously, EASA issued AD 2012–0008 [which corresponds to FAA AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015) (''AD 2015–05–02'')] to require the implementation of the airworthiness limitations as specified in Airbus A318/A319/A320/A321 ALS Part 1 Revision 02, and EASA AD 2014–0141 [which corresponds to FAA AD 2015–22–08, Amendment 39–18313 (80 FR 68434, November 5, 2015) (''AD 2015–22–08'')] to require the implementation of specific life limits for the main landing gear (MLG) upper cardan pin Part Number (P/N) 201163620.
>
> Since those ADs were issued, studies were conducted in the frame of in-service events or during life extension campaigns, the results of which prompted revision of the life limits of several components installed on A320 family aeroplanes. Consequently, Airbus successively issued Revision 03, Revision 04 and Revision 05 of the A318/A319/A320/A321 ALS Part 1. ALS Part 1 Revision 05 also includes the life limits required by EASA AD 2014–0141. A318/A319/A321 ALS Part 1 Revision 05 issue 02 was issued to provide clarifications.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2012–0008 and EASA AD 2014–0141, which are superseded, and requires accomplishment of the actions specified in A318/A319/A320/A321 ALS Part 1 Revision 05.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0361.

Comments

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

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 05, Issue 02, dated April 19, 2017. This service information describes new maintenance requirements and airworthiness limitations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 1,250 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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 transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–17–19 Airbus SAS: Amendment 39–19373; Docket No. FAA–2018–0361; Product Identifier 2017–NM–160–AD.

(a) Effective Date

This AD is effective October 5, 2018.

(b) Affected ADs

This AD affects AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015) (''AD 2015–05–02'') and AD 2015–22–08, Amendment 39–18313 (80 FR 68434, November 5, 2015) (''AD 2015–22–08'').

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before April 19, 2017.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to address the failure of certain life-limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 05, Issue 02, dated April 19, 2017. The initial compliance times for new or revised tasks are at the applicable times specified in Airbus A318/A319/A320/A321 ALS Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 05, Issue 02, dated April 19, 2017, or within 90 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Action for AD 2015–05–02 and AD 2015–22–08

Accomplishing the actions required by this AD terminates all requirements of AD 2015–05–02 and AD 2015–22–08.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0215, dated October 24, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0361.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this

paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(i) Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 1 Safe Life Airworthiness Limitations (SL–ALI), Revision 05, Issue 02, dated April 19, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

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

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

Issued in Des Moines, Washington, on August 17, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18738 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0391; Product Identifier 2017–NM–165–AD; Amendment 39–19384; AD 2018–18–05]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain ATR–GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. This AD was prompted by a determination that more restrictive maintenance instructions and airworthiness limitations are necessary. This AD requires updating the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 5, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 5, 2018.

ADDRESSES: For service information identified in this final rule, contact ATR–GIE Avions de Transport Régional, 1 Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr-aircraft.com; http://www.atr-aircraft.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0391.

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–2018–0391; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, 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 FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

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 certain ATR–GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. The NPRM published in the **Federal Register** on May 9, 2018 (83 FR 21191). The NPRM was prompted by a determination that more restrictive maintenance instructions and airworthiness limitations are necessary. The NPRM proposed to require updating the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0221R1, dated December 15, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all ATR–GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. The MCAI states:

> The airworthiness limitations and certification maintenance requirements (CMR) for ATR aeroplanes, which are approved by EASA, are currently defined and published in the ATR42–200/–300/–320 Time Limits (TL) document. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Consequently, ATR published Revision 8 of the ATR42–200/–300/–320 TL document, which contains new and/or more restrictive CMRs and airworthiness limitation tasks.
>
> For the reasons described above, this [EASA] AD requires accomplishment of the actions specified in the ATR42–200/–300/–320 TL document Revision 8, hereafter referred to as 'the TLD' in this [EASA] AD.
>
> This [EASA] AD, in conjunction with two other [EASA] ADs related to ATR 42–400/–500 (EASA AD 2017–0222) and ATR 72–101/–102/–201/–202/–211/–212/–212A (EASA AD 2017–0223) aeroplanes, retains the requirements of EASA AD 2009–0242 [which corresponds to FAA AD 2008–04–19 R1, Amendment 39–16069 (74 FR 56713, November 3, 2009) (''AD 2008–04–19 R1'')] and EASA AD 2012–1093 [which corresponds to FAA AD 2015–26–09, Amendment 39–18357 (81 FR 1483, January 13, 2016) (''AD 2015–26–09'')]. EASA plans, when all these three ADs are effective, to cancel EASA AD 2009–0242 and EASA AD 2012–0193.
>
> This [EASA] AD is revised to provide the correct issue date (17 October 2016) of the TLD. The original [EASA] AD inadvertently referenced the EASA approval date for that document.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0391.

Comments

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

Conclusion

We reviewed the relevant data and determined that air safety and the

public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

ATR–GIE Avions de Transport Régional has issued ATR42–200/–300/–320, Time Limits Document (TL), Revision 8, dated October 17, 2016. This service information describes life limits and maintenance requirements for the affected airplanes. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 33 airplanes of U.S. registry.

We estimate the following costs to comply with this AD.

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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 transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–18–05 ATR–GIE Avions de Transport Régional: Amendment 39–19384; Docket No. FAA–2018–0391; Product Identifier 2017–NM–165–AD.

(a) Effective Date

This AD is effective October 5, 2018.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD.

(1) AD 2000–17–09, Amendment 39–11883 (65 FR 53897, September 6, 2000) (''AD 2000–17–09'').

(2) AD 2008–04–19 R1, Amendment 39–16069 (74 FR 56713, November 3, 2009) (''AD 2008–04–19 R1'').

(3) AD 2015–26–09, Amendment 39–18357 (81 FR 1483, January 13, 2016) (''AD 2015–26–09'').

(c) Applicability

This AD applies to ATR–GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness dated on or before October 17, 2016.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance instructions and airworthiness limitations are necessary. We are issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in the Airworthiness Limitations (ALS) and Certification Maintenance Requirements (CMR) sections of ATR ATR42–200/–300/–320, Time Limits Document (TL), Revision 8, dated October 17, 2016. The initial compliance time for accomplishing the tasks is at the applicable times specified in the ALS and CMR sections of ATR ATR42–200/–300/–320, Time Limits Document (TL), Revision 8, dated October 17, 2016, or within 90 days after the effective date of this AD, whichever occurs later, except as specified in paragraph (h) of this AD.

(h) Initial Compliance Times for Certain CMR Tasks

For the CMR tasks listed in figure 1 to paragraph (h) of this AD, the initial compliance time for accomplishing the tasks is at the applicable time specified in the ALS and CMR sections of ATR ATR42–200/–300/–320, Time Limits Document (TL), Revision 8, dated October 17, 2016, or within the compliance time specified in figure 1 to paragraph (h) of this AD, whichever occurs later.

Figure 1 to paragraph (h) of this AD – *Grace period for CMR tasks*

CMR task	Compliance Time
213100-1	Within 550 flight hours or 3 months, whichever occurs first after the effective date of this AD
213100-2	
213100-3	

(i) No Alternative Actions and Intervals

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(j) Terminating Action for Certain ADs

Accomplishing the actions required by this AD terminates all requirements of AD 2000–17–09, AD 2008–04–19 R1, and AD 2015–26–09 for ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes only.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0221R1, dated December 15, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0391.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 980198; telephone and fax 206–231–3220.

(m) Material Incorporated by Reference

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

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

(i) ATR ATR42–200/–300/–320, Time Limits Document (TL), Revision 8, dated October 17, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact ATR–GIE Avions de Transport Régional, 1 Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr-aircraft.com; http://www.atr-aircraft.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

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

Issued in Des Moines, Washington, on August 21, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18737 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release Nos. 33–10537; 34–83911; IA–4994; IC–33212]

Delegation of Authority to General Counsel of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is revising regulations with respect to the delegations of authority to the Commission's General Counsel. The revisions are a result of the Commission's experience with its existing rules and increase the efficiency of the adjudicatory process.

DATES: This rule is effective August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Brian J. Wong, Senior Counsel, and Benjamin L. Schiffrin, Associate General Counsel, Office of the General Counsel, (202) 551–5150, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is revising the delegations of authority to its General Counsel as a result of the Commission's experience with its existing rules and to increase the efficiency of the adjudicatory process. The changes make available to that process the resources of the Office of the General Counsel in timely disposing of procedural and other prehearing matters that are typically of a routine or non-controversial nature. Congress has authorized such delegation by Public Law 87–592, 76 Stat. 394, 15 U.S.C. 78d–1(a), which provides that the Commission ''shall have the authority to delegate, by published rule or order, any of its functions to . . . an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting, or

otherwise acting as to any work, business or matter.''

Accordingly, the Commission is amending its rules to delegate authority to the General Counsel to determine procedural requests and other non-dispositive, prehearing matters with respect to administrative proceedings conducted pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.,* the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.;* the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.;* the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.;* and the provisions of Rule 102(e) of the Commission's Rules of Practice, 17 CFR 201.102(e), that have been set for hearing before the Commission. Under this delegation, the General Counsel (or, under his or her direction, such persons as might be designated from time to time by the Chairman of the Commission) would perform functions such as fixing times and places for hearings after a proceeding has been authorized; adjusting or cancelling hearing dates; setting or modifying briefing schedules; staying the proceeding pending a related criminal proceeding or the Commission's consideration of an offer of settlement; reducing or extending the time within which to file papers; modifying length limitations; denying or granting leave to file motions and other papers; resolving applications for confidential treatment or to maintain materials under seal; making rulings regarding the manner or timing of service or of the Division of Enforcement's production of its investigative file; directing that the parties meet for a prehearing conference and scheduling or cancelling such a conference; issuing an order to show cause if a party fails to answer, respond to a dispositive motion, or otherwise defend the proceeding within the time provided; striking procedurally deficient filings; and other similarly routine matters that arise in administrative proceedings.

The Commission does not delegate to the General Counsel functions with respect to issuing subpoenas, authorizing depositions, ruling upon the admissibility of evidence or upon motions to quash or to compel, presiding over a hearing or the taking of testimony, sanctioning a party, acting upon a dispositive motion, declaring a default, disposing of a claim or defense, or otherwise resolving or terminating the proceeding on the merits. This rule also does not affect the delegation of functions with respect to administrative proceedings conducted before an administrative law judge or other hearing officer, proceedings in which an initial or recommended decision has been issued, or proceedings in which a final order of the Commission has been issued.

With respect to any proceeding in which the Chairman or the General Counsel has determined that separation of functions requirements or other circumstances would make inappropriate the General Counsel's exercise of such functions, those functions are delegated to the Secretary of the Commission. Notwithstanding this delegation, the General Counsel may submit any matter he or she believes appropriate to the Commission. Furthermore, any action made by the General Counsel pursuant to delegated authority would be subject to Commission review as provided by Rules 430 and 431 of the Commission's Rules of Practice, 17 CFR 201.430–201.431 and 15 U.S.C. 78d–1(b). Additionally, being of an inherently preliminary and interlocutory nature, any such action may be revisited by the Commission, on its own initiative or on request of a party, at any time before the Commission's issuance of a final order resolving the proceeding.

II. Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(3)(A), that these revisions relate solely to agency organization, procedures, or practice and do not constitute a substantive rule. Accordingly, the APA's provisions regarding notice of rulemaking, opportunity for public comment, and advance publication of the amendments prior to their effective date are not applicable. These changes are therefore effective on August 31, 2018. For the same reason, and because these amendments do not affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(3)(C), are not applicable. Additionally, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* which apply only when notice and comment are required by the APA or other law, are not applicable. These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, and in any event, agency information collections during the conduct of administrative proceedings are exempt from that Act. *See* 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4. Further, because the amendments impose no new burdens on private parties, the Commission does not believe that the amendments will have any impact on competition for purposes of Section 23(a)(2) of the Exchange Act.

III. Statutory Authority

This rule is adopted pursuant to statutory authority granted to the Commission, including Section 19 of the Securities Act, 15 U.S.C. 77s; Sections 4A, 4B, and 23 of the Exchange Act, 15 U.S.C. 78d–1, 78d–2, and 78w; Section 38 of the Investment Company Act, 15 U.S.C. 80a–37; Section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11; and Section 3 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7202.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (government agencies).

Text of Amendments

For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart A—Organization and Program Management

■ 1. The authority citation for Part 200, Subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77o, 77s, 77z–3, 77sss, 78d, 78d–1, 78d–2, 78o–4, 78w, 78*ll*(d), 78mm, 80a–37, 80b–11, 7202, and 7211 *et seq.,* unless otherwise noted.

* * * * *

■ 2. Section 200.30–7 is amended by:

■ a. Redesignating paragraph (d) as paragraph (e); and

■ b. Adding new paragraph (d) to read as follows:

§ 200.30–7 Delegation of authority to Secretary of the Commission.

* * * * *

(d) The functions otherwise delegated to the General Counsel under § 200.30–14(i), with respect to any proceeding in which the Chairman or the General Counsel has determined, pursuant to § 200.30–14(j), that separation of functions requirements or other circumstances would make inappropriate the General Counsel's exercise of such delegated functions.

* * * * *

■ 3. Section 200.30–14 is amended by:

■ a. Redesignating paragraphs (i) through (m) as paragraphs (k) through (o);

■ b. Adding new paragraphs (i) and (j); and

■ c. Revising newly redesignated paragraph (k).

The addition and revisions read as follows.

§ 200.30–14 Delegation of authority to the General Counsel.

* * * * *

(i)(1) With respect to a proceeding conducted pursuant to the Securities Act of 1933, 15 U.S.C. 77a *et seq.,* the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.;* the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.;* the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.;* and the provisions of Rule 102(e) of the Commission's Rules of Practice, 17 CFR 201.102(e), that has been set for hearing before the Commission pursuant to Rule 110 of the Commission's Rules of Practice, 17 CFR 201.110:

(i) To determine procedural requests or similar prehearing matters; and

(ii) To rule upon non-dispositive, prehearing motions.

(2) Provided, however, that the General Counsel may not issue subpoenas, authorize depositions, rule upon the admissibility of evidence or upon motions to quash or to compel, preside over a hearing or the taking of testimony, sanction a party, act upon a dispositive motion, declare a default, dispose of a claim or defense, or otherwise resolve or terminate the proceeding on the merits.

(j) Notwithstanding anything in paragraph (i) of this section, the functions described in paragraph (i) of this section are not delegated to the General Counsel with respect to proceedings in which the Chairman or the General Counsel determines that separation of functions requirements or other circumstances would make inappropriate the General Counsel's exercise of such delegated functions. With respect to such proceedings, such functions are delegated to the Secretary of the Commission pursuant to § 200.30–7.

(k) Notwithstanding anything in paragraphs (g) or (i) of this section, in any case described in paragraphs (g) or (i) of this section in which the General Counsel believes it appropriate, he or she may submit the matter to the Commission.

* * * * *

By the Commission.

Dated: August 22, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–18585 Filed 8–30–18; 8:45 am]

BILLING CODE 8011–01–P

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1304

RIN 3316–AA23

Floating Cabin Regulation

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority (TVA) is publishing a final rule to amend its regulations that govern floating cabins located on the Tennessee River and its tributaries. The mooring of floating cabins on the TVA reservoir system has increased, and TVA has determined that this poses an unacceptable risk to navigation, safety, and the environment. Left unaddressed, floating cabins convert the public waters under TVA's management to private use. The amendments re-define nonnavigable houseboats and floating cabins using one term—''floating cabins''—and prohibit new floating cabins on TVA-managed reservoirs after December 16, 2016. The amendments also include limited mooring standards, limitations on expansions of floating cabins, and requirements for owners to register their floating cabins. Additional health, safety, and environmental standards for floating cabins will be addressed in a later rulemaking once TVA has had the opportunity to discuss such standards with various stakeholders.

In addition, and separate from the updated rule amendments for floating cabins, these amendments contain minor changes to clarify when TVA will allow some water-use facilities (*e.g.,* docks) to be as large as 1800 square feet.

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

FOR FURTHER INFORMATION CONTACT: David B. Harrell, 865–632–1327; Email: *dbharrell@tva.gov* or *fc@tva.gov,* Mail address: Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A–K, Knoxville, TN 37902.

SUPPLEMENTARY INFORMATION:

Legal Authority

This final rule is promulgated under the authority of the TVA Act, as amended, 16 U.S.C. 831–831ee, Title V of the Independent Offices Appropriations Act of 1955, 31 U.S.C. 9701, and OMB Circular No. A–25. Under Section 26a of the TVA Act, no obstructions affecting navigation, flood control, or public lands or reservations shall be constructed, operated, or maintained across, along, or in the Tennessee River System without TVA's approval. TVA has long considered nonnavigable structures such as floating cabins to be obstructions that require its approval. In addition, Section 9b of the TVA Act provides that TVA ''may establish regulations to prevent the construction of new floating cabins.'' 16 U.S.C. 831h–3(e).

Background and Proposed Amendments

TVA is a multi-purpose federal agency that has been charged by Congress with promoting the wise use and conservation of the resources of the Tennessee Valley region, including the Tennessee River System. In carrying out this mission, TVA operates a system of dams and reservoirs on the Tennessee River and its tributaries for the purpose of navigation, flood control, and power production. Consistent with those purposes, TVA uses the system to improve water quality and water supply and to provide a wide range of public benefits including recreation.

To promote the unified development and regulation of the Tennessee River System, Congress directed TVA to approve obstructions across, along, or in the river system under Section 26a of the TVA Act, as amended. ''Obstruction'' is a broad term that includes, by way of example, boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluents, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and nonnavigable houseboats. TVA also owns, as agent for the United States, much of the shoreline and inundated land along and under its reservoir system.

Since 1971, TVA has used its authority under Section 26a to prohibit the mooring on the Tennessee River System of new nonnavigable houseboats that are used primarily for habitation or occupation and not for navigation or water transportation. In particular, TVA amended its regulations in 1971 to prohibit the mooring or anchoring of new nonnavigable houseboats except for those in existence before November 21, 1971. Criteria were established then to identify when a houseboat was considered ''navigable'' and the conditions under which existing nonnavigable houseboats would be allowed to remain. These criteria were characteristics that TVA determined were indicative of real watercraft; *i.e.,* boats or vessels that are designed and used primarily to traverse water. Since 1971, TVA has made minor changes to its regulations affecting nonnavigable houseboats, most notably in 1978 when TVA updated the prohibited mooring of

nonnavigable houseboats on its reservoir system except for those in existence on or before February 15, 1978. The navigability criteria, however, largely have remained unchanged.

A ''nonnavigable houseboat'' under TVA's current regulations is identified as any houseboat not in compliance with the following criteria:

Built on a boat hull or on two or more pontoons;

Equipped with a motor and rudder controls located at a point on the houseboat from which there is forward visibility over a 180-degree range;

Compliant with all applicable state and federal requirements relating to vessels;

Registered as a vessel in the state of principal use; and

State registration numbers clearly displayed on the vessel.

Despite the nonnavigable houseboat prohibition, new nonnavigable houseboats in the form of floating cabins have been moored on TVA reservoirs. TVA estimates that approximately 2,000 floating cabins and older nonnavigable houseboats are now moored on TVA reservoirs. Some developers and owners of these floating cabins have asserted that they are not nonnavigable houseboats because they have been designed to meet the criteria for navigability in TVA's regulations. Whether or not this is true, these floating cabins are designed and used primarily for human habitation at a fixed location rather than for transportation or navigation. These floating cabins are a modern version of the pre-1978 nonnavigable houseboats that TVA addressed in its 1971 and 1978 regulatory actions. They are not in any real sense watercraft, and absent action by TVA, the mooring of floating cabins on TVA reservoirs will continue to increase. Until now, TVA has discouraged the increased mooring of floating cabins without using the full scope of its regulatory authority under the TVA Act.

In determining what action to take, TVA prepared an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act. This EIS assesses the environmental and socioeconomic impacts of different policies to address the proliferation of floating cabins and nonnavigable houseboats on TVA's reservoirs. TVA released a draft of this EIS for public comment in June 2015 and held four public meetings and a webinar to provide information about its analyses and to facilitate public involvement. Public reaction to this situation widely varied.

Many members of the general public urged TVA to require the removal of all floating cabins because TVA's reservoirs are public resources and owners of floating cabins are occupying public areas. Floating cabin owners generally supported additional reasonable regulation of their structures but argued against policies requiring their removal because of the investments they have made in the structures. Other commenters had concerns about discharges of black (sewage) and gray (showers, sinks, etc.) water from floating cabins and shock and electrocution risks associated with the electrical connections to floating cabins. Commenting agencies consistently supported better regulation of floating cabins. The final EIS and associated documents can be found at *https://www.tva.com/Environment/Shoreline-Construction/Floating-Cabins.*

After considering the comments it received during the EIS process and its analyses of impacts, TVA identified as its preferred policy one that establishes standards for floating cabins to enhance compliance with applicable water quality discharge requirements set by other agencies, adherence to electrical safety codes, and location of floating cabins within identified harbor limits of commercial marinas. Under the preferred policy, the mooring of additional floating cabins would be prohibited on the Tennessee River System of which TVA reservoirs are a part. All existing floating cabins, including nonnavigable houseboats, would have to be removed from the Tennessee River System by January 1, 2036, and be subject to a regulatory program in the interim. On May 5, 2016, the TVA Board of Directors adopted the preferred policy with one exception—the Board changed the removal date to May 5, 2046.

On December 16, 2016, the Water Infrastructure Improvements for the Nation Act (WIIN Act) was enacted by the United States Congress. Title IV Section 5003 related to floating cabins and amended the TVA Act to include Section 9b. This new section of the TVA Act specifically addresses floating cabins and provides that TVA may allow the use of floating cabins where the structure was located on waters under TVA's jurisdiction as of December 16, 2016; and where the owner maintains the structure in accordance with reasonable health, safety, and environmental standards set by the TVA Board of Directors. Section 9b also states that TVA may establish regulations to prevent the construction of new floating cabins and may levy fees to ensure compliance.

Section 9b provides the circumstances under which TVA may require the removal of existing floating cabins; *i.e.,* those located on waters under TVA's jurisdiction as of December 16, 2016. For existing floating cabins that have a TVA permit as of December 16, 2016, TVA may not require their removal for 15 years; *i.e.,* until December 16, 2031. For existing floating cabins without permits on December 16, 2016, TVA may not require their removal for five years; *i.e.,* until December 16, 2021. During these 15- and 5-year periods, however, TVA may levy necessary and reasonable fees to ensure compliance with TVA's regulations. The new legislation also provides that, with respect to existing floating cabins, TVA ''shall approve and allow the use of the floating cabin on waters under the jurisdiction of [TVA] at such time and for such duration as (i) the floating cabin meets the requirements of [16 U.S.C. 831h–3(b)]; and (ii) the owner of the floating cabin has paid any fee assessed pursuant to [16 U.S.C. 831h–3(c)].'' 16 U.S.C. 831h–3(d)(1)(B).

Section 9b of the TVA Act defines ''floating cabin'' as a watercraft or other floating structure (1) primarily designed and used for human habitation or occupation; and (2) not primarily designed or used for navigation or transportation on the water. This final rule clarifies the type of structure that TVA will regulate as a floating cabin and updates TVA's regulations to clarify that floating cabins placed on TVA waters after December 16, 2016, are prohibited. The final rule also establishes limited mooring requirements; clarifies limitations on expansions; and requires all owners of floating cabins to register their structures with TVA by January 1, 2020, regardless of whether they already have a Section 26a permit. Although this deadline allows plenty of time for owners to register their floating cabins, TVA encourages owners to begin the registration process without delay. A subsequent rulemaking will address: (1) The permitting process for existing floating cabins; (2) health, safety, and environmental standards; and (3) fees.

Floating Cabins

To more clearly describe the type of floating structure that TVA regulates, the term ''nonnavigable houseboat'' will be replaced in TVA's Section 26a regulations with the term ''floating cabin,'' the term adopted by Congress in the WIIN Act. Floating cabins are structures determined by TVA, in its sole judgment, to be designed and used primarily for human habitation or occupation and not designed or used

primarily for navigation or transportation on the water. TVA's judgment will be guided by, but not limited to, the following factors:

1. Whether the structure is usually kept at a fixed mooring point;

2. Whether the structure is actually used on a regular basis for transportation or navigation;

3. Whether the structure has a permanent or continuous connection to the shore for electrical, plumbing, water, or other utility service;

4. Whether the structure has the performance characteristics of a vessel typically used for navigation or transportation on the water;

5. Whether the structure can be readily removed from the water;

6. Whether the structure is used for intermittent or extended human-habitation or occupancy;

7. Whether the structure clearly has a means of propulsion and appropriate power/size ratio;

8. Whether the structure is safe to navigate or use for transportation purposes.

Mooring

Existing floating cabins, *i.e.,* those located on the Tennessee River System on or before December 16, 2016, may continue to be moored in the following locations: Within harbor limits of a commercial marina; if the floating cabin is not associated with a marina, along shoreline approved in writing by TVA on or before December 16, 2016; where moored prior to December 16, 2016, along shoreline where land rights exist for a Section 26a permit; or, where moored prior to December 16, 2016, along shoreline where the owner of the floating cabin is the owner or lessee of the proposed mooring location. To prevent sprawl and to better contain the impacts of floating cabins, TVA will not allow an existing floating cabin to relocate except to the harbor limits of a commercial marina that complies with 18 CFR 1304.404, the TVA regulation governing commercial marina harbor limits. In some cases, existing floating cabins moored at a commercial marina are located outside of the designated harbor limits or the marina's land ownership has changed since the harbor limits were originally designated. In these and other situations, TVA may require a floating cabin to relocate to another location within the marina's harbor limits. Relocations to alternate marinas would require advance approval from TVA in the form of a new permit.

Dock Size

Separate from the amendments to regulations concerning floating cabins, the final rule would result in a minor change to clarify TVA's intent concerning the size of some water-use facilities (*e.g.,* docks). The current regulation requires water-use facilities to be sited within a 1000-square-foot rectangular or square area. The proposed change would allow some water-use facilities to be as large as 1800 square feet, but only in one of two circumstances (1) where the water-use facility will be located in a subdivision recorded before November 1, 1999, and TVA permitted at least one water-use facility in the subdivision prior to November 1, 1999; or (2) if there is no subdivision, where the water-use facility will be located within a quarter-mile radius of another water-use facility that TVA permitted prior to November 1, 1999. TVA's current waiver or variance provisions, set forth in §§ 1304.212 and 1304.408 respectively, may allow even larger facilities where an applicant requests and justifies a waiver or variance, but such allowances shall be made in TVA's discretion and on a case-by-case basis.

Comments on the Proposed Rule and TVA's Responses

TVA received 32 comments during the public review period consisting of three letters and 29 emails. This includes one comment that TVA received after the comment-close date, which TVA will include. Comments were received from 28 individuals and four representatives of nongovernmental organizations. The following discussion describes the comments received, provides TVA's response to the comments, and describes changes, if any, made by TVA to the rule based on the comments. Although several of the submitted comments do not pertain to the proposed rule published on January 17, 2018, TVA appreciates the perspectives, interests, and concerns expressed by all commenters.

Some of the comments were outside the scope of this rule and were more germane to the next phase of rulemaking where TVA will address: (1) The permitting process for existing floating cabins; (2) health, safety, and environmental standards; and (3) fees. Since August 2017, TVA has worked with a representative stakeholder group to develop more detailed rules and standards to guide future regulation of floating cabins. TVA expects to publish this second proposed rule and take public comments at a later date in 2018.

1. Comments Related to Other 26a-Permitted Structures and the Need for 26a Regulations

Comment: Some commenters stated that TVA's regulations, standards, inspections, and fees should not discriminate against floating cabin owners and should apply consistently to all structures on TVA reservoirs such as private residential docks. Commenters asserted it is unfair and unreasonable to treat floating cabins differently from other 26a permitted structures. Some commenters stated that TVA is focusing on something that has never been a problem and docks are far more dangerous to navigation.

TVA Response: Section 26a of the TVA Act requires the advance written approval of TVA for all floating cabins, private residential docks, and other obstructions. Since 1971 TVA has recognized the necessity to prohibit construction of new nonnavigable houseboats (the early version of floating cabins) and establish regulations exclusively for their authorization and management on TVA reservoirs. This was due to their unique nature as a habitable enclosed structure, amenities, and their impacts on navigation, public land, and water quality. The 2016 WIIN Act allows existing floating cabins to remain on the water only if the owner maintains the structure in accordance with reasonable health, safety, and environmental standards set by the TVA Board of Directors.

TVA has previously established corresponding standards for private residential water use facilities. Subparts C and D of the TVA Section 26a regulations set forth the standards for private water use facilities such as boat docks in substantial detail and restrict these facilities in ways that floating cabins are not restricted. For example, living space or sleeping areas are prohibited; enclosed space is limited to 32 square feet for storage; and toilets, sinks, and electrical appliances are not allowed. Electrical lines and service to private docks must be installed in compliance with all State and local electrical codes (satisfactory evidence of compliance to be provided to TVA upon request); and electrical service must be installed with an electrical disconnect that is located above the 500-year floodplain or flood risk profile whichever is higher, and is accessible during flood events.

Floating cabins raise unique safety concerns because many have electrical service supplied by submerged electrical lines, and many are equipped with household appliances.

Concerning the impact of floating cabins, in its Environmental Impact Statement, TVA used an extensive amount of existing information and additional data collection and analysis to support its finding of potential impacts to human health and the environment from floating cabins. The finding of potential impacts are based on existing information, literature on the known effects on resources, comments by agencies and the public about impacts that they experience, internal TVA resource specialists, and professional judgment. The potential adverse impacts from sewage discharges into public waterways and the risk and potential harm to the public safety from poorly maintained electrical wiring are well established and understood. TVA acknowledged that the severity of current impacts is not well-sourced in available information. For example, TVA states that adverse water quality impacts cannot currently be associated with floating cabins, but available information, including the literature, supports TVA's conclusion that the severity of impacts will increase if the proliferation of floating cabins is not controlled and operating standards are not established. It is appropriate that TVA acts to address such potential impacts before they become severe.

2. Comments Related to Vessels

Comment: I fail to see the distinction between my in-harbor water access for which I pay a monthly marina fee and TVA gets money from the marinas and the distinction between houseboats who move twice a year, and certainly between docks that literally jut out into the water in public (non-harbor-limits) that are not subject to annual fees as is proposed.

TVA Response: TVA is authorized by the WIIN Act to charge compliance fees for floating cabins. Additionally, permit requests for private water use facilities such as docks are usually considered only where the applicant owns the shoreline, or as an adjacent landowner possesses the necessary deeded land rights over TVA land to the reservoir.

TVA does not promulgate rules for vessels, only for obstructions. Vessels such as factory houseboats and wake board boats are regulated by the States and the U.S. Coast Guard. The States mandate and charge for vessel registration. EPA and the Coast Guard issue rules for the proper handling of sewage and waste from vessels. The Coast Guard regulates the building and manufacturing of recreational boats including houseboats under 33 CFR part 183. This includes regulation of electrical and fuel systems, ventilation, loading capacity, and flotation requirements.

Habitable structures such as floating cabins are subject to the same local, state, and federal laws and ordinances for management of sewage and waste water that apply to residences on land.

Comment: Why do factory houseboats get to dump their grey water in the lake and no one goes after them or wake board boats get to intake water and then release out as grey water. Consider these differences in your evaluation as it seems to be so one-sided.

TVA Response: The regulation of black water and gray water discharges is outside the scope of this rulemaking, but TVA notes that such discharges are regulated by the Coast Guard for vessels and by state agencies that are responsible for issuing National Pollutant Discharge Elimination System (NPDES) permits for facilities that discharge sewage or other wastewaters.

3. TVA's Interest in Safety Associated With Other Structures

Comment: TVA has no interest in safety issues on shoreline docks and factory houseboats and there are far more of these in bad condition that should be subject to inspections.

TVA Response: TVA disagrees. Current TVA Section 26a regulations and all permits require the owner to complete the approved facility in accordance with approved plans, and maintain it in a good state of repair and in good, safe, and substantial condition. If a facility is found to be in violation of the permit or in abandoned or derelict condition, the permit can be revoked and the owner required to remove the facility. TVA performs periodic compliance inspections along the shoreline to review existing facilities and detect violations. Also, see response to Comment Group 1.

The States are responsible for enforcing boating laws, and the Coast Guard regulates the building and manufacturing of recreational boats including houseboats under 33 CFR part 183. This involves areas such as electrical and fuel systems, ventilation, loading capacity, and flotation requirements.

4. Comments Related to a Sunset Provision

Comment: I request that you not overreach on Section 9b of the act thus creating a sunset, even though the sunset provision was overturned in the Water Rights Act.

TVA Response: TVA will comply with Section 9b of the TVA Act as directed by the 2016 WIIN Act. There is no sunset provision in any existing or proposed regulations for floating cabins.

Comment: I believe that our sizable investment should remain for us, our kids and our grandkids. Our ''floating cabin'' is within the harbor boundaries of a very nice marina, out of the main traffic flow, has holding tanks for both black and gray water and a signed contract for weekly pump outs. In addition, insurance is mandatory, as are slip fees for both our ''floating cabin'' as well as our pontoon boat. With concern for my kids and grandkids who are just learning to boat, ski, swim and fish; we all insist on a clean and safe environment. In addition, these recreational activities provide countless jobs for the restaurants, marinas, shops and service providers in the area.

TVA Response: TVA will comply with Section 9b of the TVA Act as directed by the 2016 WIIN Act. There is no sunset provision in any existing or proposed regulations for floating cabins.

5. Comments That Pertain to the Next Phase of Rulemaking

Comment: Numerous commenters identified issues and made recommendations that do not pertain to the proposed amendments but will pertain to the next rulemaking phase. These included comments about the need for the following requirements: For sewage to be pumped or incinerated on board; for floating cabin owners to document the pump-out of sewage; for owners to maintain their floating cabins in a good state of repair; for TVA to offer a buy-back program to reduce the number of floating cabins; for TVA later to offer a limited number of permits back to the public; for floating cabins to be safe, clean, and well-maintained; for fees and regulations that incorporate the public's input and that take into account the impact on owners of floating cabins on Boone Reservoir; for a prohibition on the use of unencased Styrofoam; for mooring lines to have reflective markers or buoys at locations that show boaters the angle of the cables under the water; and for buoys, lights, and signs to warn of navigation and electrocution risks.

TVA Response: TVA acknowledges and appreciates these comments and anticipates the stated issues and recommendations will be addressed in the next rulemaking phase.

6. Comments Related to the Private Use of Public Waters and Water Quality

Comment: A number of commenters stated that they believed that floating cabins are an inappropriate private use of public resources. Floating cabins were referred to as ''squatting'' on public waters by one commenter who

also urged a no expansion policy and complete compliance of these structures with all environmental and safety regulations. One commenter stated that any plan that allows floating cabins to remain is unacceptable. Another commenter stated that allowing people to live in floating cabins is unfair to the original landowners who had to leave their property when the dams were built. One commenter stated that TVA's mission requires the agency to preserve the environment by removing floating cabins from the river.

TVA Response: TVA will comply with the direction provided by the U.S. Congress in the WIIN Act of 2016, which established Section 9b of the TVA Act. That legislation underscored TVA's authority to regulate floating cabins, and expressly stated that TVA could prohibit floating cabins that were not located on waters under TVA's jurisdiction as of December 16, 2016. Thus, this final rule clarifies that new structures are prohibited, which will prevent the proliferation of new structures and allow TVA to remove such new structures.

With respect to existing floating cabins that were located on waters under TVA jurisdiction prior to or on December 16, 2016, the WIIN Act prohibits removal for a period of 5 or 15 years from December 16, 2016, depending on whether the existing floating cabin received a TVA permit prior to December 16, 2016. After that, existing floating cabins may remain if: Maintained in compliance with reasonable standards as required by the TVA Board; fees are paid that are necessary and reasonable for ensuring compliance; a Section 26a permit is obtained by the deadline provided in the next phase of rulemaking; and the floating cabin remains in compliance with the terms and conditions of the permit.

Comment: TVA has attempted unsuccessfully to reduce the mooring of floating cabins on the waters that it governs without using the full extent of its legal powers. This suggests that it is time for a more forceful solution. Furthermore, a 30-year grace period for removal of all existing houseboats is more than fair, given that the statute only requires 15 years to require removal. 16 U.S.C.A. 831h–3(d)(1)(A). While negative economic impacts on regulated parties are never desirable, preserving the nation's water quality is of paramount importance. Prioritizing the needs of floating cabin owners over those people who make their living off the pristine environment of the Tennessee River Basin is unfair, and short sighted. In order to fulfill the purpose of Tennessee Valley Authority to preserve the environment of this area while promoting unified economic development, these floating cabins must be removed from the river.

TVA Response: TVA recognizes the public's concern with this issue. In its Environmental Impact Statement, TVA's Preferred Policy would have required the removal of existing floating cabins after 30 years; however, Congress's passage of the WIIN Act prevents TVA from mandating removal after 30 years. The WIIN Act does underscore TVA's authority to prohibit new structures, however, which this final rule amendment clarifies. Only structures located on waters under TVA's jurisdiction by December 16, 2016 may remain, and those structures must comply with TVA's standards and fees. Structures installed after that date are prohibited, and TVA has the authority to remove them. Thus, the WIIN Act and this final rule help stop the proliferation of floating cabins.

7. Comments Related to TVA's Environmental Impact Statement and the 30-Year Sunset Policy That the TVA Board Adopted Prior to Passage of the WIIN Act of 2016

Comment: A few commenters objected to TVA's preferred alternative in TVA's Environmental Impact Statement to remove floating cabins by 2036, and the TVA Board's May 2016 Policy in which TVA determined that existing floating cabins should be removed by 2046. One commenter stated that TVA should change the removal date to 2036.

TVA Response: These comments pertain to the management alternatives considered in the Floating Houses Policy Review EIS (February 2016). Although the TVA Board approved a policy on May 5, 2016, incorporating Alternative B2 from TVA's EIS with a 30-year ''sunset'' provision, that policy has been modified by subsequent legislation. In particular, the WIIN Act of 2016 amended the TVA Act to prevent the removal of floating cabins where (1) the floating cabins remain in compliance with TVA standards and fees and (2) the floating cabins existed on waters under TVA's jurisdiction on or prior to December 16, 2016. Thus, there is no longer a sunset provision mandating removal of floating cabins in the future. As a result, Alternative B1 from TVA's EIS is being implemented for the future management of floating cabins.

8. Comments in Support of the Final Rule

Comment: Numerous commenters expressed general support for the final rule amendments. Many commented that TVA's documentation, inventory, registration and inspection of floating cabins is an appropriate way to ensure owners are accountable for properly maintaining their structures. Others emphasized that TVA should regularly and fairly enforce the regulations. One commented that the rule should apply to houseboats as well.

TVA Response: TVA acknowledges these comments and agrees with the need to have reasonable standards and rules, have consistent enforcement of regulations, and avoid any burdensome requirements. Fees will be set only to the extent needed to offset TVA's costs for ensuring compliance as contained in Section 9b of the TVA Act and as directed by the WIIN Act of 2016.

TVA does not regulate vessels or enforce boating laws. The States and the U.S. Coast Guard have this responsibility and authority. The Coast Guard regulates the building and manufacturing of recreational boats including houseboats under 33 CFR part 183. This involves areas such as electrical and fuel systems, ventilation, loading capacity, and flotation requirements.

Administrative Requirements

A. Unfunded Mandates Reform Act and Various Executive Orders Including E.O. 12866, Regulatory Planning and Review; E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13045, Protection of Children From Environmental Health Risks; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination With Indian Tribal Governments; E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and Use; E.O. 12988, Civil Justice Reform Act; and the Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs Dated January 30, 2017

This final rule contains no federal mandates for state, local, or tribal government or for the private sector. TVA has determined it will not have a significant annual effect of $100 million or more or result in expenditures of $100 million in any one year by state, local, or tribal governments or by the private sector. The rule will not have a substantial direct effect on the States or Indian tribes, on the relationship between the Federal Government and the States or Indian tribes, or on the

distribution of power and responsibilities between the federal Government and States or Indian tribes. Nor will the rule have concerns for environmental health or safety risks that may disproportionately affect children, have significant effect on the supply, distribution, or use of energy, or disproportionally impact low-income or minority populations. Unified development and regulation of the Tennessee River System through an approval process for obstructions across, along, or in the river system, and management of United States-owned land entrusted to TVA are federal functions for which TVA is responsible under the TVA Act. In general, the final rule updates or clarifies TVA's regulations to align them with the status quo. First, the final rule clarifies that no new structures are allowed and codifies (1) an updated definition for floating, habitable structures that are allowable on TVA reservoirs; (2) where such structures may be located; and (3) the types of modifications that are allowed. The final rule also amends TVA's regulations to align better with its policy for allowing some obstructions, usually docks, to be larger than 1000 square feet. Accordingly, the rule has no implications for any of the referenced authorities, including the Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs dated January 30, 2017, which affects only ''significant regulatory actions'' as defined by Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605, TVA is required to prepare a regulatory flexibility analysis unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The statute defines ''small entity'' as a ''small business,'' ''small organization'' (further defined as a ''not-for-profit enterprise''), or a ''small governmental jurisdiction.'' Most applications for water-use facilities are submitted by residential landowners for personal use. Since residential landowners are not businesses, not-for-profit enterprises, or small governmental jurisdictions, there are relatively few ''small entities'' affected by TVA's final rule. Moreover, nothing in this rule significantly adds to the cost of applying for and constructing any regulated facility. Accordingly, this rule will not have a significant impact on a substantial number of small entities; no regulatory flexibility analysis is required; and TVA's Chief Executive Officer has made the requisite certification.

C. Paperwork Reduction Act

Title of Information Collection: Section 26a Permit Application.

Current OMB Approval Number: 3316–0060.

This rule contains information collection requirements for registration of floating cabins which have been submitted to the Office of Management and Budget (OMB) for approval. The information collection requirements under this rule will be included by amendment within the Section 26a Permit Application information collection. TVA provided burden information and requested comments on these requirements in the preamble to the proposed rule. No comments directed toward the information collection requirements were received.

The only information collection activity contained in the rule is a requirement that owners of floating cabins register them with TVA. The registration includes: Photographs of the structure, drawings showing the size and shape of the floating cabin and attached structures, such as decks or slips, in reasonable detail; and a completed and signed TVA registration form. The registration form includes the owner's mailing and contact information; the TVA permit or TVA-issued numbers; the mooring location; how the floating cabin is moored; how electrical service is provided; how waste water and sewage is managed; and an owner's signature.

The information is necessary and will be used pursuant to TVA Land Management activities and Section 26a of the Tennessee Valley Authority Act of 1933, as amended, which require TVA to collect information relevant to projects that will impact TVA land and land rights and review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries.

Respondents will be the owners of floating cabins. The estimated time to complete a registration is 2 hours. TVA estimates that, in the first year of the floating cabin registration process, the number of responses will increase from 1,500 to 3,700. Accordingly, the estimated burden will increase from 3,000 hours to 7,400 hours in the first year, and then return to about 3,000 hours in following years.

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. TVA will publish a document in the **Federal Register** announcing OMB's approval.

List of Subjects in 18 CFR Part 1304

Administrative practice and procedure, Natural resources, Navigation (water), Rivers, Water pollution control.

For the reasons set out in the preamble, the Tennessee Valley Authority amends 18 CFR part 1304 of the Code of Federal Regulations as follows:

PART 1304—APPROVAL OF CONSTRUCTION IN THE TENNESSEE RIVER SYSTEM AND REGULATION OF STRUCTURES AND OTHER ALTERATIONS

■ 1. The authority citation for part 1304 continues to read as follows:

Authority: 16 U.S.C 831–831ee.

■ 2. Amend § 1304.1 by revising the third sentence to read as follows:

§ 1304.1 Scope and intent.

* * * By way of example only, such obstructions may include boat docks, piers, boathouses, buoys, floats, boat launching ramps, fills, water intakes, devices for discharging effluent, bridges, aerial cables, culverts, pipelines, fish attractors, shoreline stabilization projects, channel excavations, and floating cabins as described in § 1304.101. * * *

Subpart B—Regulation of Floating Cabins

■ 3. Revise the subpart B heading to read as set forth above.

■ 4. Revise § 1304.100 to read as follows:

§ 1304.100 Scope and intent.

This subpart prescribes requirements for floating cabins on the Tennessee River System. Floating cabins as applied to this subpart include existing nonnavigable houseboats approved by TVA and other existing structures, whose design and use is primarily for human habitation or occupation and not for navigation or transportation on the water. Floating cabins that were not located or moored on the Tennessee River System on or before December 16, 2016, shall be deemed new floating cabins. New floating cabins are prohibited and subject to the removal provisions of this part and Section 9b of the TVA Act. No new floating cabins shall be moored, anchored, or installed on the Tennessee River System. Floating

cabins that were located or moored in the Tennessee River System on or before December 16, 2016 shall be deemed existing floating cabins. Existing floating cabins may remain moored on the Tennessee River System provided they remain in compliance with the rules in this part.

■ 5. Amend § 1304.101:

■ a. By revising the section heading and paragraphs (a) and (b);

■ b. In paragraphs (c) introductory text and (c)(1) and (2) by removing the words ''nonnavigable houseboat'', ''Nonnavigable houseboats'' and ''nonnavigable houseboats'' and adding in their place the words ''floating cabin'', ''Floating cabins'' and ''floating cabins'', respectively, wherever they appear;

■ c. By revising paragraph (d);

■ d. In paragraph (e) by removing the words ''nonnavigable houseboats'' and adding in their place the words ''floating cabins'';

■ e. In paragraph (f) by removing the words ''nonnavigable houseboat'' and adding in their place the words ''floating cabin''; and

■ f. By adding paragraph (g).

The revisions and additions read as follows:

§ 1304.101 Floating cabins.

(a)(1) Floating cabins include nonnavigable houseboats approved by TVA on or before December 16, 2016, and other floating structures moored on the Tennessee River System as of this date, and determined by TVA in its sole discretion to be designed and used primarily for human habitation or occupation and not designed and used primarily for navigation or transportation on the water. TVA's judgment will be guided by, but not limited to, the following factors:

(i) Whether the structure is usually kept at a fixed mooring point;

(ii) Whether the structure is actually used on a regular basis for transportation or navigation;

(iii) Whether the structure has a permanent or continuous connection to the shore for electrical, plumbing, water, or other utility service;

(iv) Whether the structure has the performance characteristics of a vessel typically used for navigation or transportation on water;

(v) Whether the structure can be readily removed from the water;

(vi) Whether the structure is used for intermittent or extended human-habitation or occupancy;

(vii) Whether the structure clearly has a means of propulsion, and appropriate power/size ratio;

(viii) Whether the structure is safe to navigate or use for transportation purposes.

(2) That a structure could occasionally move from place to place, or that it qualifies under another federal or state regulatory program as a vessel or boat, are factors that TVA also will consider but would not be determinative. Floating cabins are not recreational vessels to which § 1304.409 applies.

(b)(1) Owners of floating cabins are required to register the floating cabin with TVA before January 1, 2020. Floating cabin owners must submit certain required information with their registration. Registration shall include the following information: Clear and current photographs of the structure; a drawing or drawings showing in reasonable detail the size and shape of the floating cabin (length, width, and height) and attached structures, such as decks or slips (length, width, and height); and a completed and signed TVA registration form. The completed TVA registration form shall include the mailing and contact information of the owner(s); the TVA permit or TVA-issued numbers (when applicable); the mooring location of the floating cabin; how the floating cabin is moored; how electrical service is provided; how waste water and sewage is managed; and an owner's signature.

(2) Existing floating cabins may remain on TVA reservoirs provided they stay in compliance with the rules contained in this part and pay any necessary and reasonable fees levied by TVA to ensure compliance with TVA's regulations. Existing floating cabins must be moored at one of the following locations:

(i) To the bank of the reservoir at locations where the owner of the floating cabin is the owner or lessee (or the licensee of such owner or lessee) of the proposed mooring location provided the floating cabin was moored at such location prior to December 16, 2016;

(ii) At locations described by § 1304.201(a)(1), (2), and (3) provided the floating cabin was moored at such location prior to December 16, 2016;

(iii) To the bank of the reservoir at locations where the owner of the floating cabin obtained written approval from TVA pursuant to subpart A of this part authorizing mooring at such location on or before December 16, 2016; or

(iv) Within the designated and approved harbor limits of a commercial marina that complies with § 1304.404. As provided in § 1304.404, TVA may adjust harbor limits and require relocation of an existing floating cabin within the harbor limits. Accordingly, in the case of relocations that occur after December 16, 2016, an existing floating cabin can relocate only to the harbor limits of a commercial marina that complies with § 1304.404.

(3) All floating cabins must be moored in such a manner as to:

(i) Avoid obstruction of or interference with navigation, flood control, public lands or reservations;

(ii) Avoid adverse effects on public lands or reservations;

(iii) Prevent the preemption of public waters when moored in permanent locations outside of the approved harbor limits of commercial marinas;

(iv) Protect land and landrights owned by the United States alongside and subjacent to TVA reservoirs from trespass and other unlawful and unreasonable uses; and

(v) Maintain, protect, and enhance the quality of the human environment.

* * * * *

(d) Existing floating cabins shall be maintained in a good state of repair and may be maintained without additional approval from TVA. Existing floating cabins may be rebuilt to the same configuration, total footprint, and dimensions (length, width, and height) as permitted without additional TVA approval. Owners are required to notify TVA thirty days in advance and submit their proposed plans for rebuilding the floating cabin. Within thirty days of completion, owners must submit a photo of the rebuilt floating cabin for TVA's records. Any expansion in length, width, or height is prohibited, except as approved in writing by TVA and necessary to comply with health, safety, and environmental requirements.

* * * * *

(g) All floating cabins not in compliance with this part are subject to the applicable removal provisions of § 1304.406 and Section 9b of the TVA Act.

■ 6. Amend § 1304.102 by:

■ a. Revising the section heading;

■ b. In paragraphs (a) and (b), removing the words ''nonnavigable houseboat'' and ''nonnavigable houseboats'' and adding in their place the words ''floating cabin'' and ''floating cabins'', respectively, wherever they appear;

■ c. Adding a sentence to the end of paragraph (a)' and

■ d. Revising paragraph (c).

The addition and revisions read as follows:

§ 1304.102 Numbering of floating cabins and transfer of ownership.

(a) * * * If TVA provided a placard or tag, the tag must be displayed on a

readily visible part of the outside of the floating cabin.

* * * * *

(c) A floating cabin moored at a location approved pursuant to the regulations in this subpart shall not be relocated and moored at a different location without prior approval by TVA, except for movement to a new location within the designated harbor limits of the same commercial dock or marina.

§ 1304.103 [Removed and Reserved]

■ 7. Remove and reserve § 1304.103.

■ 8. Amend § 1304.204 by revising paragraphs (a), (b), and (n) to read as follows:

§ 1304.204 Docks, piers, and boathouses.

* * * * *

(a) Docks, piers, boathouses, and all other residential water-use facilities shall not exceed a total footprint area of greater than 1,000 square feet, unless the proposed water-use facility will be located in an area of preexisting development. For the purpose of this regulation, ''preexisting development'' means either: The water-use facility will be located in a subdivision recorded before November 1, 1999, and TVA permitted at least one water-use facility in the subdivision prior to November 1, 1999; or if there is no subdivision, where the water-use facility will be located within a quarter-mile radius of another water-use facility that TVA permitted prior to November 1, 1999. TVA may allow even larger facilities where an applicant requests and justifies a waiver or variance, set forth in §§ 1304.212 and 1304.408 respectively, but such waivers or variances shall be made in TVA's discretion and on a case-by-case basis.

(b) Docks, boatslips, piers, and fixed or floating boathouses are allowable. These and other water-use facilities associated with a lot must be sited within a 1,000- or 1,800-square-foot rectangular or square area as required by § 1304.204(a) at the lakeward end of the access walkway that extends from the shore to the structure. Access walkways to the water-use structure are not included in calculating the 1,000- or 1,800-square foot area.

* * * * *

(n) Except for floating cabins approved in accordance with subpart B of this part, toilets and sinks are not permitted on water-use facilities.

* * * * *

§ 1304.406 [Amended]

■ 9. Amend § 1304.406 in the first sentence by removing the words ''nonnavigable houseboat'' and adding in their place the words ''floating cabin''.

■ 10. Amend § 1304.412 by:

■ a. Adding in alphabetical order definitions for ''Existing floating cabin'' and ''New floating cabin'';

■ b. Removing the definition of ''Nonnavigable houseboat''; and

■ c. Adding in alphabetical order definitions for ''Rebuilding'' and ''Tennessee River System''.

The additions read as follows:

§ 1304.412 Definitions.

* * * * *

Existing floating cabin means a floating cabin that was located or moored on the Tennessee River System on or before December 16, 2016.

* * * * *

New floating cabin means a floating cabin that was not located or moored on the Tennessee River System on or before December 16, 2016.

* * * * *

Rebuilding means replacement of all or a significant portion of an approved obstruction to the same configuration, total footprint, and dimensions (length, width, and height) as the approved plans, standards, and conditions of the Section 26a permit.

* * * * *

Tennessee River System means TVA reservoirs, the Tennessee River or any of the Tennessee River's tributaries.

* * * * *

David L. Bowling,

Vice President, Land & River Management.

[FR Doc. 2018–18887 Filed 8–30–18; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–482]

Schedules of Controlled Substances: Temporary Placement of *N*-Ethylpentylone in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary amendment; temporary scheduling order.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to schedule the synthetic cathinone, 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one (*N*-ethylpentylone, ephylone) and its optical, positional, and geometric isomers, salts, and salts of isomers in schedule I. This action is based on a finding by the Acting Administrator that the placement of *N*-ethylpentylone in schedule I of the Controlled Substances Act (CSA) is necessary to avoid an imminent hazard to the public safety. As a result of this order, the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances will be imposed on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle *N*-ethylpentylone.

DATES: This temporary scheduling order is effective August 31, 2018, until August 31, 2020. If this order is extended or made permanent, the DEA will publish a document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Thomas D. Sonnen, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–2896.

SUPPLEMENTARY INFORMATION:

Legal Authority

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

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

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

Background

Section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of his intention to temporarily place a substance in schedule I of the CSA.[2] The Acting Administrator transmitted notice of his intent to place *N*-ethylpentylone in schedule I on a temporary basis to the Acting Assistant Secretary for Health of HHS by letter dated November 22, 2017. The Acting Assistant Secretary responded to this notice of intent by letter dated December 13, 2017, and advised that based on a review by the Food and Drug Administration (FDA), there are currently no active investigational new drug applications or approved new drug applications for *N*-ethylpentylone. The Acting Assistant Secretary also stated that HHS has no objection to the temporary placement of *N*-ethylpentylone in schedule I of the CSA. The DEA has taken into consideration the Assistant Secretary's comments as required by 21 U.S.C. 811(h)(4). *N*-Ethylpentylone is not currently listed in any schedule under the CSA, and no exemptions or approvals are in effect for this substance under section 505 of the FDCA, 21 U.S.C. 355. The DEA has found that the control of *N*-ethylpentylone in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety, and as required by 21 U.S.C. 811(h)(1)(A), a notice of intent to temporarily schedule *N*-ethylpentylone was published in the **Federal Register** on June 13, 2018. 83 FR 27520.

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

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

Available data and information for *N*-ethylpentylone, summarized below, indicate that this synthetic cathinone has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. The DEA's three-factor analysis and the Assistant Secretary's December 13, 2017 letter are available in their entirety under the tab ''Supporting Documents'' of the public docket of this action at *www.regulations.gov* under FDMS Docket ID: DEA–2018–0011 (Docket Number DEA–482).

N-Ethylpentylone

Around 2014, the synthetic cathinone, *N*-ethylpentylone, emerged in the United States' illicit drug market after the scheduling of other popular synthetic cathinones (*e.g.,* ethylone, 4-methyl-*N*-ethylcathinone (4–MEC), mephedrone, methylone, pentylone, and 3,4-methylenedioxypyrovalerone (MDPV)). The identification of *N*-ethylpentylone in forensic evidence and overdose deaths indicates that this substance is being misused and abused. Law enforcement encounters include those reported to the National Forensic Laboratory Information System (NFLIS), a DEA sponsored program that systematically collects drug identification results and associated information from drug cases analyzed by Federal, State, and local forensic laboratories, the System to Retrieve Information from Drug Evidence (STRIDE), a federal database for the drug samples analyzed by DEA forensic laboratories, and STARLiMS (a web-based, commercial laboratory information management system that replaced STRIDE in 2014). Forensic laboratories have analyzed drug exhibits received from Federal, State, or local, law enforcement agencies that were found to contain *N*-ethylpentylone.[3] NFLIS registered over 6,000 reports from state and local forensic laboratories identifying this substance in drug-related exhibits for a period from January 2013 to December 2017 from 41 states. There were no occurrences of *N*-ethylpentylone reported in NFLIS for 2013. *N*-Ethylpentylone was first identified in NFLIS in May 2014. STRIDE/STARLiMS registered over 300 reports from DEA forensic laboratories from January 2013 to December 2017. There were no occurrences of *N*-ethylpentylone reported in STRIDE/STARLiMS for 2013. *N*-Ethylpentylone was first reported to STRIDE/STARLiMS in December 2015. Additionally, U.S. Customs and Border Protection (CBP) encounters of *N*-ethylpentylone have occurred.

N-Ethylpentylone, like other synthetic cathinones, is a designer drug of the phenethylamine class and it is pharmacologically similar to schedule I synthetic cathinones (*e.g.,* cathinone, methcathinone, mephedrone, methylone, pentylone, and MDPV) and well-known schedule I and II sympathomimetic agents (*e.g.,* methamphetamine, 3,4-methylenedioxymethamphetamine (MDMA), and cocaine). *N*-ethylpentylone, similar to these substances, causes stimulant related psychological and somatic effects. Consequently, there have been documented reports of emergency room admissions and numerous deaths associated with the abuse of *N*-ethylpentylone. No approved medical use has been identified for this substance, nor has it been approved by the FDA for human consumption.

Factor 4. History and Current Pattern of Abuse

N-Ethylpentylone is a synthetic cathinone of the phenethylamine class and it is structurally and pharmacologically similar to cathinone, methcathinone, mephedrone, methylone, pentylone, MDPV, methamphetamine, MDMA, and other schedule I and II substances. Thus, it is highly likely that *N*-ethylpentylone is abused in the same manner and by the same users as these substances. That is, *N*-ethylpentylone, like these substances, is most likely ingested by swallowing capsules or tablets or snorted by nasal insufflation of the powder tablets. Products containing *N*-ethylpentylone, similar to schedule I synthetic cathinones, are likely to be falsely marketed as ''research chemicals,'' ''jewelry cleaner,'' ''stain remover,'' ''plant food or fertilizer,'' ''insect repellants'' or ''bath salts,'' sold at smoke shops, head shops, convenience stores, adult book stores, and gas stations, and purchased on the internet. Like those seen with commercial products that contain synthetic cathinones, the packages of products that contain *N*-ethylpentylone also

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

[3] NFLIS and STRIDE/STARLiMS databases were queried on February 8, 2018.

probably contain the warning ''not for human consumption,'' most likely in an effort to circumvent statutory restrictions for these substances. Demographic data collected from published reports and mortality records suggest that the main users of *N*-ethylpentylone, similar to schedule I synthetic cathinones and MDMA, are young adults.

Available evidence suggests that the history and pattern of abuse of *N*-ethylpentylone parallels that of MDMA, methamphetamine, or cocaine and that *N*-ethylpentylone has been marketed as a replacement for these substances. *N*-Ethylpentylone has been identified in law enforcement seizures that were initially suspected to be MDMA. In addition, there are reports that abusers of *N*-ethylpentylone thought they were using

MDMA or another illicit substance but toxicological analysis revealed that the psychoactive substance was *N*-ethylpentylone. Toxicology reports also revealed that *N*-ethylpentylone is being ingested with other substances including other synthetic cathinones, common cutting agents, or other recreational substances. Consequently, products containing synthetic cathinones, including *N*-ethylpentylone, are distributed to users, often with unpredictable outcomes. Thus, the recreational abuse of synthetic cathinones, including *N*-ethylpentylone, is a significant concern.

Factor 5. Scope, Duration and Significance of Abuse

N-Ethylpentylone is a popular recreational drug that emerged on the United States' illicit drug market after the scheduling of other popular synthetic cathinones (*e.g.,* ethylone, mephedrone, methylone, pentylone, and MDPV) (*see* DEA 3-Factor Analysis for a full discussion). Forensic laboratories have confirmed the presence of *N*-ethylpentylone in drug exhibits received from state, local, and federal law enforcement agencies. Law enforcement data show that *N*-ethylpentylone first appeared in the illicit drug market in 2014 with one encounter and began increasing thereafter.[4] In 2015, NFLIS registered five reports from three states regarding *N*-ethylpentylone. However, in 2016, there were 2,074 reports from 39 states and, in 2017, there were 3,955 reports from 39 states related to this substance registered in NFLIS. *N*-Ethylpentylone represented 60% of all synthetic cathinones encountered by local law enforcement agencies and reported to NFLIS in 2017. From January 2013 to December 2017, NFLIS registered 6,035 reports from state and local forensic laboratories identifying this substance in drug-related exhibits from 41 states. STRIDE/STARLiMS registered over 338 reports from DEA forensic laboratories during January 2013 to December 2017. There were no occurrences of *N*-ethylpentylone reported in NFLIS or STRIDE/STARLiMS for 2013. Additionally, seizures of *N*-ethylpentylone have occurred by the U.S. Customs and Border Protection (CBP) beginning in 2016. Concerns over the continuing abuse of synthetic cathinones have led to the control of many synthetic cathinones.

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

The identification of *N*-ethylpentylone in toxicological samples associated with fatal and non-fatal overdoses have been reported in medical and scientific literature, forensic laboratory reports, and public health documents. Like schedule I synthetic cathinones, *N*-ethylpentylone has caused acute health problems leading to emergency department (ED) admissions, violent behaviors causing harm to self or others, and/or death. Adverse health effects associated with the abuse of *N*-ethylpentylone include a number of stimulant-like adverse health effects such as diaphoresis, insomnia, mydriasis, hyperthermia, vomiting, agitation, disorientation, paranoia, abdominal pain, cardiac arrest, respiratory failure, and coma. In addition, *N*-ethylpentylone has been involved in deaths of many individuals. The DEA is aware of approximately 151 overdose deaths involving *N*-ethylpentylone abuse reported in the United States between 2014 and 2018. Thus, the abuse of *N*-ethylpentylone, like that of the abuse of schedule I synthetic cathinones and stimulant drugs, poses significant adverse health risks. Furthermore, because abusers of synthetic cathinones obtain these substances through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent. These unknown factors pose an additional risk for significant adverse health effects to the end user.

Based on information received by the DEA, the misuse and abuse of *N*-ethylpentylone has led to, at least, the same qualitative public health risks as schedule I synthetic cathinones, MDMA, and methamphetamine. The public health risks attendant to the abuse of synthetic cathinones, including *N*-ethylpentylone, are well established and have resulted in large numbers of ED visits and fatal overdoses.

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

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information, summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis, possession, and/or abuse of *N*-ethylpentylone poses an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for this substance in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for *N*-ethylpentylone indicate that this synthetic cathinone has a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Acting Administrator, through a letter dated November 22, 2017, notified the Acting Assistant Secretary of the DEA's intention to temporarily place this substance in schedule I. A notice of intent was subsequently published in the **Federal Register** on June 13, 2018. 83 FR 27520.

Conclusion

In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Acting Administrator considered available data and information, herein set forth the grounds for his determination that it is necessary to temporarily schedule *N*-ethylpentylone in schedule I of the CSA, and finds that placement of *N*-ethylpentylone in schedule I of the CSA is necessary in order to avoid an imminent hazard to the public safety.

Because the Acting Administrator hereby finds that it is necessary to temporarily place *N*-ethylpentylone in schedule I to avoid an imminent hazard to the public safety, this temporary order scheduling this substance is effective on the date of publication in the **Federal Register**, and is in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular

[4] NFLIS and STRIDE/STARLiMS databases were queried on February 8, 2018.

(permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2).

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

Requirements for Handling

Upon the effective date of this temporary order, *N*-ethylpentylone will be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses), or who desires to handle, *N*-ethylpentylone must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312, as of August 31, 2018. Any person who currently handles *N*-ethylpentylone, and is not registered with the DEA, must submit an application for registration and may not continue to handle *N*-ethylpentylone as of August 31, 2018, unless the DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of this substance in a manner not authorized by the CSA on or after August 31, 2018 is unlawful and those in possession of any quantity of this substance may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Any person who does not desire or is not able to obtain a schedule I registration to handle *N*-ethylpentylone must surrender all currently held quantities of *N*-ethylpentylone.

3. *Security. N*-ethylpentylone is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, 871(b), and in accordance with 21 CFR 1301.71–1301.93, as of August 31, 2018.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of *N*-ethylpentylone must be in compliance with 21 U.S.C. 825, 958(e), and be in accordance with 21 CFR part 1302. Current DEA registrants shall have 30 calendar days from August 31, 2018, to comply with all labeling and packaging requirements.

5. *Inventory.* Every DEA registrant who possesses any quantity of *N*-ethylpentylone on the effective date of this order must take an inventory of all stocks of this substance on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Current DEA registrants shall have 30 calendar days from the effective date of this order to be in compliance with all inventory requirements. After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including *N*-ethylpentylone) on hand on a biennial basis, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records.* All DEA registrants must maintain records with respect to *N*-ethylpentylone pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, 1317 and § 1307.11. Current DEA registrants authorized to handle *N*-ethylpentylone shall have 30 calendar days from the effective date of this order to be in compliance with all recordkeeping requirements.

7. *Reports.* All DEA registrants who manufacture or distribute *N*-ethylpentylone must submit reports pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312 as of August 31, 2018.

8. *Order Forms.* All DEA registrants who distribute *N*-ethylpentylone must comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305 as of August 31, 2018.

9. *Importation and Exportation.* All importation and exportation of *N*-ethylpentylone must be in compliance with 21 U.S.C. 952, 953, 957, 958, and in accordance with 21 CFR part 1312 as of August 31, 2018.

10. *Quota.* Only DEA registered manufacturers may manufacture *N*-ethylpentylone in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of August 31, 2018.

11. *Liability.* Any activity involving *N*-ethylpentylone not authorized by, or in violation of the CSA, occurring as of August 31, 2018, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Matters

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

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

Further, the DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been

reviewed by the Office of Management and Budget.

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

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

List of Subjects in 21 CFR Part 1308

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

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

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

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

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

■ 2. In § 1308.11, add paragraph (h)(36) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(36) *N*-Ethylpentylone, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: ephylone, 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one).....(7543)

Dated: August 24, 2018.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2018–18988 Filed 8–30–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0841]

Drawbridge Operation Regulation; Trent River, New Bern, NC

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 U.S. 70 (Alfred A. Cunningham) Bridge across the Trent River, mile 0.0, at New Bern, NC. The deviation is necessary to accommodate the 30th Annual Bike MS: Historic New Bern Ride. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 8:00 a.m. on September 8, 2018 to 9:30 a.m. on September 9, 2018.

ADDRESSES: The docket for this deviation, [USCG–2018–0841], 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 Ms. Kashanda Booker, Bridge Administration Branch Fifth District, Coast Guard, telephone (757) 398–6227, email *kashanda.l.booker@uscg.mil.*

SUPPLEMENTARY INFORMATION: The event director, Game On Inc., with approval from the North Carolina Department of Transportation, who owns and operates the U.S. 70 (Alfred A. Cunningham) Bridge across the Trent River, mile 0.0, at New Bern, NC, has requested a temporary deviation from the current operating regulations. This temporary deviation is necessary to accommodate participation by cyclists during the 30th Annual Bike MS: Historic New Bern Ride. The bridge is a double bascule bridge and has a vertical clearance in the closed position of 14 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.843(a). Under this temporary deviation, the bridge will be maintained in the closed-to-navigation position from 8:00 a.m. to 9:30 a.m. on September 8th and September 9th 2018. The Trent River is used by a variety of vessels including small commercial vessels and recreational vessels. The Coast Guard has carefully coordinated the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at anytime. There is no immediate alternate route for vessels unable to pass through the bridge in the closed position but the bridge will be able to open for emergencies. The Coast Guard will also inform users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impacts caused by this temporary deviation.

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

Dated: August 27, 2018.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2018–18929 Filed 8–30–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0840]

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the US40–322 (Albany Avenue) Bridge across the New Jersey Intracoastal Waterway (NJICW) (Inside Thorofare), mile 70.0, at Atlantic City, NJ. The deviation is necessary to accommodate the free movement of pedestrians and vehicles during the 3rd Annual Iron Man. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The deviation is effective from 6 a.m. to 4 p.m. on September 23, 2018.

ADDRESSES: The docket for this deviation [USCG–2018–0840], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Martin Bridges, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6422, email *Martin.A.Bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: The event director, DelMoSports, LLC, with approval from the New Jersey Department of Transportation, who owns and operates the US40–322 (Albany Avenue) Bridge across the NJICW (Inside Thorofare), mile 70.0, at Atlantic City, NJ, has requested a temporary deviation from the current operating regulations. This temporary deviation is necessary to accommodate the free movement of pedestrians and vehicles during the 3rd Annual Iron Man. The bridge is a double bascule bridge and has a vertical clearance in the closed position of 10 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.733(f). Under this temporary deviation, the bridge will be maintained in the closed-to-navigation position from 6 a.m. to 4 p.m. on September 23, 2018. The NJICW (Inside Thorofare) is used by recreational vessels. The Coast Guard has carefully coordinated the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterway through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

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

Dated: August 27, 2018.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2018–18930 Filed 8–30–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2018–0812]

Drawbridge Operation Regulation; Charenton Canal, Baldwin, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Company swing span bridge across Charenton Canal, mile 0.4, at Baldwin, LA. The deviation is necessary to complete repairs, install a bridge deck, and change out a generator. This deviation allows the bridge to remain in the closed-to-navigation position for 48 hours.

DATES: This deviation is effective from 10 p.m. on September 2, 2018 through 10 p.m. on September 4, 2018.

ADDRESSES: The docket for this deviation, USCG–2018–0812 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 Ms. Donna Gagliano, Bridge Branch Office, Eighth District, U.S. Coast Guard; telephone 504–671–2128, email *Donna.Gagliano@uscg.mil.*

SUPPLEMENTARY INFORMATION: Burlington Northern Santa Fe (BNSF), the owner and operator of the BNSF swing span bridge across Charenton Canal, mile 0.4, at Baldwin, LA, requested a temporary deviation from the swing span drawbridge operating schedule to complete repairs, install a bridge deck, and change out a generator. The bridge has a vertical clearance of 10 feet in the closed-to-navigation position. The current operating schedule is set out in 33 CFR 117.5. The bridge currently opens on signal for the passage of vessels.

This temporary deviation allows the bridge to remain closed-to-navigation position for a 48 hour period from 10 p.m. on September 2, 2018 through 10 p.m. on September 4, 2018. Navigation on the waterway consists mainly of tugs with tows, with some commercial fishing vessels and recreational craft. The bridge will be able to open for emergencies, however, an alternate route is available for mariners through the Berwick Locks. The alternate waterway route takes approximately 45 minutes to transit. The Coast Guard has carefully considered the restrictions with waterway users in publishing this temporary deviation. Due to prior experience, as well as coordination with waterway users, and the alternate route through Berwick Locks, this closure will not have a significant effect on these vessels. The Coast Guard will also inform the waterway users of the change in operating schedule for the bridge through our Local Notice and Broadcast Notices to Mariners so that vessel operators can arrange their transits to minimize any impact caused by this temporary deviation.

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

Dated: August 27, 2018.

Douglas A. Blakemore

Bridge Administrator, U.S. Coast Guard Eighth District.

[FR Doc. 2018–18872 Filed 8–30–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0737]

RIN 1625–AA00

Safety Zone; Fireworks Display, Indian River Bay, Long Neck, DE

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on waters of Indian River Bay off Long Neck, DE, from 7:30 p.m. through 8:30 p.m. on September 2, 2018, during the Labor Day Long Neck Style Fireworks Display. The safety zone is necessary to ensure the safety of participant vessels, spectators, and the boating public during the event. This regulation prohibits persons and non-participant vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Delaware Bay or a designated representative.

DATES: This rule is effective from 7:30 p.m. through 8:30 p.m. on September 2, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2018–0737 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST2 Thomas Welker, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone (215) 271–4814, email *secdelbaywwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background 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 it is impracticable and contrary to the public interest to do so. There is insufficient time to allow for a reasonable comment period prior to the date of the event. The rule must be in force by September 2, 2018, to serve its purpose of ensuring the safety of spectators and the general public from hazards associated with the fireworks display. Hazards include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris.

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 be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with a fireworks display in this location.

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 Delaware Bay (COTP) has determined that potential hazards associated with the fireworks display on September 2, 2018, will be a safety concern for anyone within a 100-yard radius of the fireworks barge, which will be anchored in approximate position 38°36′35.93″ N, 075°09′31.00″ NW. This rule is needed to protect persons, vessels and the public within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on the waters of Indian River Bay off Long Neck, NJ during a fireworks display from a barge. The event is scheduled to take place at 7:45 p.m. on September 2, 2018. The safety zone will extend 100 yards around the barge, which will be anchored at approximate position 38°36′35.93″ N, 075°09′31.00″ W. No person or vessel will be permitted to enter, transit through, anchor in, or remain within the safety zone without obtaining permission from the COTP Delaware Bay or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP Delaware Bay or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Delaware Bay or a designated representative. The Coast Guard will provide public notice of the safety zone by Broadcast Notice to Mariners, and by on-scene actual notice.

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.

The impact of this rule is not significant for the following reasons: (1) Although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the COTP Delaware Bay or a designated representative, they may operate in the surrounding area during the enforcement period; (2) persons and vessels will still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the COTP Delaware Bay or a designated representative; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Broadcast Notice to Mariners and by on-scene actual notice.

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 (Public Law 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 safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area on the navigable water in the Indian River Bay, during a fireworks display lasting approximately one hour. 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 (REC) 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.T05–0737 to read as follows:

§ 165.T05–0614 Safety Zone; Fireworks, Indian River Bay, Long Neck, DE.

(a) *Location.* The following area is a safety zone: All navigable waters of the Indian River Bay near Long Neck, NJ, within 100 yards of the barge anchored at approximate position 38°36′35.93″ N, 075°09′31.00″ W. All coordinates are based on 1984 World Geodetic System.

(b) *Definitions* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port (COTP), Delaware Bay in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's representative via VHF–FM channel 16 or 215–271–4807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by federal, state, and local agencies.

(e) *Enforcement period.* This zone will be enforced from 7:30 p.m. through 8:30 p.m. on September 2, 2018.

Dated: August 28, 2018.

S.E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2018–18936 Filed 8–30–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2018–0764]

Safety Zone; Annual Swim for Alligator Reef Lighthouse, Islamorada, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the temporary safety zone for the 6th Annual Swim for Alligator Reef Lighthouse, Islamorada, Florida from 6:30 a.m. until 4:30 p.m. on September 15, 2018. Our regulation for Recurring Safety Zones in Captain of the Port Key West Zone identifies the regulated area for this event. This action is necessary to ensure the safety of event participants and spectators. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area without approval from the Captain of the Port Key West or a designated representative.

DATES: The regulations in 33 CFR 165.786, Table to § 165.786, Line No. 9.1 will be enforced from 6:30 a.m. until 4:30 p.m. on September 15, 2018.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Gregory Bergstrom, Sector Key West Waterways Management Department, Coast Guard; telephone (305) 292–8772; email *Greg.C.Bergstrom@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones in 33 CFR 165.786, Table to § 165.786, Line No. 9.1, from 6:30 a.m. until 4:30 p.m. on September 15, 2018, for the annual Swim for Alligator Reef Lighthouse in Islamorada, Florida. Our regulation for Recurring Safety Zones in Captain of the Port Key West Zone, § 165.786, Line No. 9.1, specifies the location of the regulated area as all within 50 yards in front of the lead safety vessel preceding the first event participants, 50 yards behind the safety vessel trailing the last event participants, and at all times extend 100 yards on either side of the safety vessels.

This action prevents vessels from transiting areas specifically designated as safety zones during the periods of enforcement. During the enforcement period, no person or vessel may enter, transit through, anchor within, or remain within the established regulated areas without approval from the Captain of the Port Key West or designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

The Coast Guard will provide notice of the regulated area by Local Notice to Mariners and Broadcast Notice to Mariners. If the Captain of the Port Key West determines that the regulated area need not be enforced for the full duration stated in this publication, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: August 27, 2018.

F.S. Rego,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2018–18931 Filed 8–30–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AB43 and 1810–AB44

Outdated or Superseded Regulations: Title I, Parts A Through C; Christa McAuliffe Fellowship Program; and Empowerment Zone or Enterprise Community—Priority; Correction

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Correcting amendment.

SUMMARY: On August 22, 2018, the Secretary published a final rule amending the Code of Federal Regulations (CFR) by removing outdated or superseded regulations, which are no longer needed for the reasons discussed in the rule. There was a clerical error in one of the amendments that prevented two CFR sections from being removed. This document corrects that error.

DATES: This correction is effective August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Anna Lieth, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W337, Washington, DC 20202. Telephone: (202) 453–5682. Email: *Anna.Lieth@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: The Department is correcting a clerical error in an amendment in FR Rule Doc. No. 2018–17480, which published on August 22, 2018, at 83 FR 42440. The rule removed outdated or superseded regulations in 34 CFR parts 200, 237, and 299. One of the amendments to part 200 intended to remove §§ 200.55 through 200.57. The heading to the amendment reflected that section span but its corresponding instruction (instruction 8) directed the removal of § 200.57 only. This document correctly removes §§ 200.55 and 200.56 as originally intended in the August 22, 2018, rule.

List of Subjects in 34 CFR Part 200

Education of disadvantaged, Elementary and secondary education, Grant programs-education, Indians-education, Infants and children, Juvenile delinquency, Migrant labor, Private schools, Reporting and recordkeeping requirements.

Dated: August 28, 2018.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

For reasons discussed in the preamble, the Secretary correctly amends 34 CFR part 200 as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

■ 1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 6301 through 6576, unless otherwise noted.

§§ 200.55 and 200.56 [Removed and Reserved]

■ 2. Remove and reserve §§ 200.55 and 200.56.

[FR Doc. 2018–18960 Filed 8–30–18; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0441; FRL–9983–07—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Infrastructure Requirements for the 2012 Fine Particulate Matter National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submission from Maryland addressing the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. EPA is approving Maryland's submittal addressing the infrastructure requirements for the 2012 $PM_{2.5}$ NAAQS in accordance with the requirements of section 110 of the CAA.

DATES: This final rule is effective on October 1, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0441. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, (215) 814 2043, or by email at *calcinore.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Particle pollution, also referred to as particulate matter (PM), is a complex mixture of small particles and liquid droplets suspended in the air, which causes adverse health effects and is the leading cause of visibility impairment in the United States. Particles with a diameter equal to or less than 2.5 microns, referred to as fine particulate matter or $PM_{2.5}$, are either emitted directly into the atmosphere or are formed from the chemical reactions of precursor gases, such as sulfur dioxide (SO_2), nitrogen oxides (NO_X), certain volatile organic compounds (VOCs), and ammonia, in the atmosphere. SO_2 and NO_X are the primary precursors for the formation of $PM_{2.5}$ and are emitted primarily from point sources as well as nonpoint, onroad, and nonroad sources.

On July 18, 1997, EPA promulgated a new 24-hour and a new annual NAAQS for $PM_{2.5}$ (62 FR 38652). On October 17, 2006, EPA revised the NAAQS for $PM_{2.5}$, tightening the 24-hour $PM_{2.5}$ standard from 65 micrograms per cubic meter (μg/m³) to 35 μg/m³, and retaining the annual $PM_{2.5}$ NAAQS at 15 μg/m³ (71 FR 61144). Subsequently, on December 14, 2012, EPA revised the level of the health based (primary) annual $PM_{2.5}$ NAAQS to 12 μg/m³. *See* 78 FR 3086 (January 15, 2013).[1]

Pursuant to section 110(a)(1), states must submit ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' a plan that provides for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions and the requirements to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address. EPA commonly refers to such state plans as ''infrastructure SIPs.''

II. Summary of SIP Revision and EPA Analysis

On August 18, 2016, the State of Maryland, through the Maryland Department of the Environment (MDE), formally submitted a SIP revision (SIP #16–12) in order to satisfy the requirements of section 110(a) of the CAA for the 2012 $PM_{2.5}$ NAAQS. The SIP submittal addressed the following infrastructure elements for the 2012 $PM_{2.5}$ NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Maryland's infrastructure SIP submittal did not address the following two elements of CAA section 110(a)(2): The portion of section 110(a)(2)(C) pertaining to permit programs, known as nonattainment new source review (NNSR), under part D of the CAA, and section 110(a)(2)(I), referred to as ''element (I),'' pertaining to the nonattainment requirements of part D, title I of the CAA. According to the EPA guidance issued on September 13, 2013 (2013 Infrastructure Guidance),[2] the NNSR permitting program requirement of section 110(a)(2)(C) is to be addressed in a different SIP, and therefore does not need to be addressed in this SIP revision. Section 110(a)(2)(I) is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1) and will be addressed in a separate process if necessary.

On July 5, 2018 (83 FR 31352), EPA published a notice of proposed rulemaking (NPR) for Maryland. In the NPR, EPA proposed approval of Maryland's August 18, 2016 infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS. A detailed summary of EPA's review and rationale for approving Maryland's submittal may be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2017–0441.

III. Public Comments and EPA Response

EPA received a total of three comments on the July 5, 2018 NPR. Two of the comments did not concern any of the specific issues raised in the NPR, nor did they address EPA's rationale for the proposed approval of MDE's submittal. Therefore, EPA is not responding to those comments. EPA also received a comment that was supportive of EPA's proposed approval of Maryland's August 18, 2016 infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS. All of the comments received are included in the docket for this action, available online at *www.regulations.gov,* Docket ID: EPA–R03–OAR–2017–0441.

IV. Final Action

EPA's review of Maryland's August 18, 2016 infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS indicates that MDE's August 18, 2016 submittal satisfies the infrastructure requirements of CAA section 110(a) for the 2012 $PM_{2.5}$ NAAQS.[3] EPA is approving Maryland's

[1] In EPA's 2012 $PM_{2.5}$ NAAQS revision, EPA left unchanged the existing welfare (secondary) standards for $PM_{2.5}$ to address particulate matter (PM) related effects such as visibility impairment, ecological effects, damage to materials, and climate impacts. This includes a secondary annual standard of 15 μg/m³ and a 24-hour standard of 35 μg/m³.

[2] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[3] As stated above, Maryland's infrastructure SIP submittal did not address the portion of CAA section 110(a)(2)(C) pertaining to the NNSR permitting program nor CAA section 110(a)(2)(I) pertaining to the nonattainment requirements of part D, title I of the CAA. According to the 2013 Infrastructure Guidance, the NNSR permitting program requirement of section 110(a)(2)(C) is to be addressed in a different SIP and therefore does not need to be addressed in this SIP revision. Section 110(a)(2)(I) is not required to be submitted by the 3-year submission deadline of CAA section

Continued

August 18, 2016 infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS as a revision to the Maryland SIP.

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because

SIP approvals are exempted under Executive Order 12866.

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Maryland's August 18, 2016 infrastructure SIP submittal for the 2012 $PM_{2.5}$ NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 21, 2018.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for ''Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2012 $PM_{2.5}$ NAAQS.	Statewide	8/18/2018	8/31/2018, [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action does not address the portion of CAA section 110(a)(2)(C) related to NNSR nor CAA section 110(a)(2)(I).

110(a)(1) and will be addressed in a separate process if necessary.

[FR Doc. 2018–18854 Filed 8–30–18; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1092; FRL–9982–97—Region 5]

Air Plan Approval; Michigan; Minor New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving certain changes to the Michigan State Implementation Plan (SIP). This action relates to changes to the Permit To Install (PTI) requirements of Part 2 of the Michigan Administrative Code (Part 2 Rules). Changes to the Part 2 Rules were submitted on November 12, 1993; May 16, 1996; April 3, 1998; September 2, 2003; March 24, 2009; and February 28, 2017.

DATES: This final rule is effective on October 1, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–1092. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Rachel Rineheart, Environmental Engineer, at (312) 886–7017 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7017, *rineheart.rachel@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background of these SIP submissions?
II. What is our response to comments received on the proposed rulemaking?
III. What action is EPA taking?
IV. Incorporation by Reference.
V. Statutory and Executive Order Reviews.

I. What is the background of these SIP submissions?

A. What state submissions does this rulemaking address?

The State of Michigan's minor source PTI rules are contained in Part 2 of the Michigan Administrative Code. EPA last approved changes to the Part 2 rules in 1982. The Michigan Department of Environmental Quality (MDEQ) has submitted several Part 2 revision packages since that time; however, EPA has not taken a final action on any of the submittals. The following table provides a summary of the various state submittals with the most recent version of each section of the Michigan Rule highlighted in bold.

Submittal	State effective date	Submittal date	Rules submitted 336.1xxx
1	04/20/1989	11/12/1993	240, 241.
	04/17/1992		201, 283.
	11/18/1993		278, 279, 280, 281, 282, 284, 285, 286, 287, 288, 289, 290.
2	07/26/1995	05/16/1996	201, 205, **208 (rescinded)**, **209**, 219, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290.
3	12/12/1996	04/03/1998	201a, 205.
4	06/13/1997	08/20/1998	278, 283, 284, 285, 286, 287, 290.
5	07/01/2003	09/02/2003	201, **201a**, 202, **203**, **204**, 205, **206**, 207, **212**, **216**, 219, 240, 241, 278, 278a, **279 (rescinded)**, 281, 282, 284, 285, 287, 289, 299.
6	06/20/2008	03/24/2009	**201**, **202**, **205**, **207**, **219**, **240**, **241**, **278**, 281, 284, 285, 288, **299**.
7	12/20/2016	2/21/2017	**278a**, **280**, **281**, **282**, **283**, **284**, **285**, **286**, **287**, **288**, **289**, **290**.

EPA published a proposed approval of all changes, except the public notice procedures in Michigan R. 336.1205, on August 15, 2017 (82 FR 38651), with a 30-day public comment period. EPA reopened the comment period twice due to missing files in the docket on *regulations.gov.* The comment period was reopened for an additional 30 days on November 2, 2017 (82 FR 50853), and an additional 15 days on January 9, 2018 (83 FR 1003). EPA is taking no action on Michigan R. 336.1205 at this time.

B. Why did the state make these SIP submissions?

Section 110(a)(2)(C) of Clean Air Act (the Act) requires that each SIP include a program to provide for the regulation of construction and modification of stationary sources as necessary to assure that the National Ambient Air Quality Standards (NAAQS) are achieved. Specific elements for an approvable construction permitting plan are found in the implementing regulations at 40 CFR part 51, subpart I—Review of New Sources and Modifications. Requirements relevant to minor construction programs are 40 CFR 51.160–51.164. EPA regulations have few specific criteria for state minor new source review (NSR) programs. Generally, state programs must set forth legally enforceable procedures that allow the state to prevent any planned construction activity that would result in a violation of the state's SIP or a national standard.

The revisions to Part 2 submitted by MDEQ are largely provisions that strengthen the already approved minor NSR program adding greater detail with respect to applicability, required application material, and processing of applications; however, the revisions do include changes to waiver provisions

and the addition of several categories of exemptions from the requirement to obtain a PTI.

II. What is our response to comments received on the proposed rulemaking?

EPA received several comments during the public comment process. EPA received four anonymous comments that were unrelated to the action, and we will not be addressing those comments. EPA received adverse comment on the proposed approval from the Sierra Club, the Great Lakes Environmental Law Center, the Center for Biological Diversity, and the Environmental Law & Policy Center. EPA received a letter from the Environmental Law & Policy Center dated September 14, 2017, and a letter from the Sierra Club, Great Lakes Environmental Law Center, and the Center for Biological Diversity dated September 14, 2017, during the original public comment period. Sierra Club and the Great Lakes Environmental Law Center provided additional comment during the first reopening in a letter dated December 4, 2017. Sierra Club, the Great Lakes Environmental Law Center, and the Center for Biological Diversity provided additional comments during the second reopening in a letter dated January 24, 2018. A summary of the comments received and EPA's response follow.

A. Michigan R. 336.1201a General PTIs

Michigan R. 336.1201a gives the MDEQ the ability to create general PTIs. A general permit is a permit document that contains standardized requirements that multiple stationary sources can use. It may cover categories of emission units or stationary sources that are similar in nature. The purpose of a general permit is to ensure the protection of air quality while simplifying the permit process for similar minor sources. General permits allow the permitting authority to notify the public through one notice that it intends to apply those requirements to any eligible source that seeks coverage under the permit in the future. This minimizes the burden on the reviewing authority's resources by eliminating the need to issue separate permits for each individual minor source within the source type or category covered by the general permit. Use of a general permit also decreases the time required for an individual minor source to obtain a preconstruction permit because the application process is standardized.

Michigan R. 336.1201a allows MDEQ to issue general PTIs for categories of similar emission units or stationary sources. The rule requires the general permits to contain limitations as necessary to assure compliance with applicable requirements, and that limitations on potential to emit be enforceable as a practical matter. The general permits must also identify the criteria by which a stationary source or emission unit may qualify for the permit. Finally, the rule requires MDEQ to provide for public notice of the general permit.

Comment 1: While EPA's Title V permitting rules provide for issuance of general operating permits, the concept of a general construction permit is not consistent with the requirements of Section 110(a)(2)(C) of the Act or 40 CFR 51.160–51.164.

EPA Response: EPA disagrees that the lack of a specific allowance for general permits under the permit program requirements of section 110(a)(2)(C) of the Act precludes the use of general permits for construction as there is no provision that specifically disallows them. In fact, the language in the Act concerning non-major activities simply requires ''regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved.'' The Act and the implementing regulations at 40 CFR 51.160 are structured to allow the implementing authority flexibility in designing a minor source program that meets the authority's individual needs while assuring protection of ambient air. EPA has a well-established, longstanding position that the use of general permits for construction of minor sources is appropriate under the Act. The January 25, 1995, memorandum ''Options for Limiting Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act,'' the January 25, 1995 memorandum, ''Guidance an Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules,'' and the April 14, 1998, memorandum, ''Potential to Emit (PTE) Guidance for Specific Source Categories,'' all endorse the use of a general permit program approved into the SIP pursuant to section 110(a)(2)(C) of the Act as a means of effectively establishing limitations on the potential to emit of stationary sources. EPA allows for the issuance of general permits to minor sources under its own Federal Minor NSR Program in Indian Country at 40 CFR 49.156.

Comment 2: The Michigan Rules do not define ''similar stationary sources or emissions units.'' There is no requirement in the rules that, to be similar, source or emission units must have similar emissions and stack parameters. Sources with different stack parameters and emission rates, even though similar sources, could have significantly different impact on air pollutant concentrations. Furthermore, no definition of ''similar source'' can adequately address neighboring sources of air pollution which may cause ambient pollution concentrations at or near the levels of a NAAQS.

EPA Response: We disagree that there is a need to define ''similar stationary sources or emissions units'' in this rule. The identified terms have their common meaning in the context of the rule. In the case of general permits, defining the scope of the stationary source and/or emissions units covered by a particular general permit should be done when establishing the terms of the general permit. All interested parties will have the opportunity to provide input on the appropriateness of the scope of a particular general permit during the public comment period for that permit. The appropriate time to comment is during the public comment period for a particular general permit.

Comment 3: A general permit would not ensure that a specific new or modified source would be prohibited from construction if it would interfere with attainment or maintenance of the NAAQS or interfere with the control strategy. The impact of a source's emissions on air pollutant concentrations is dependent on a myriad of factors including topography, other buildings in the vicinity, background pollutant concentrations, and neighboring sources of pollution as well as stack and plume characteristics.

EPA Response: We disagree. Michigan R. 336.1207, which requires MDEQ to deny an application that would interfere with the attainment or maintenance of a NAAQS, would apply to any general permit issued by MDEQ. There is still an application process for any source wanting coverage under a general permit, and MDEQ does have the authority to deny coverage under a general permit to any applicant. The potential air quality impacts of a general permit should be considered during the development of each general permit. Concerns regarding the adequacy of permit terms or application requirements concerning potential impacts on air quality are more appropriately raised during the public comment period for each general permit developed by MDEQ.

Comment 4: The concept of a general construction (or operating) permit is that one permit can be issued for a source type, and similar sources can request and be granted approval to construct and/or operate under that

permit without having to apply for a new construction permit, thereby avoiding all of the requirements that are part of the application process including public notice and opportunity for comment.

EPA Response: A source must apply for coverage under a general permit, and each general permit must be made available for public comment. EPA does not agree that the general permitting process would allow a source to avoid any requirements of the application process. As noted above, EPA has a well-established position in support of general permits for construction and has determined that the notice and comment required in the establishment of each general permit meets the public notice requirements of 40 CFR 51.161.

B. Michigan R. 336.1202 Waivers of Approval

Michigan R. 336.1202 provides the MDEQ with the authority to grant a waiver from the requirement to obtain a permit prior to commencing construction in certain limited circumstances. The PSD provisions of the Act prohibit commencement of construction without first obtaining the required permit authorizing construction; however, the requirement only applies to major sources, and no such restriction is specified under the minor NSR program requirements set forth in 40 CFR 51.160. In addition, EPA has made determinations which further support that limited construction may begin before a permit is issued for minor sources. For example, EPA's October 10, 1978, memorandum from Edward E. Reich to Thomas W. Devine in Region 1 discusses limited preconstruction activities allowed at a site with both PSD and non-PSD sources. This memo states that construction may begin on PSD-exempt projects before the permit is issued. EPA has established its position that limited waivers are acceptable for true minor sources in previous rulemaking. (See 68 FR 2217 and 73 FR 12893.) As stated previously, the minor NSR provisions at 40 CFR 51.160 require state programs to determine if activities would violate an applicable SIP or national standard and to prevent construction of an activity that would violate an applicable SIP provision or national standard. Michigan R 336.1202(1) requires an application for a waiver be submitted to MDEQ and requires MDEQ to act on the request within 30 days. Construction may not proceed unless the waiver is granted. The rule also indicates that the waiver does not guarantee approval of the required PTI and any construction activity would be at the owner/operator's risk. Michigan R. 336.1202(2) limits the waiver to minor construction activities (*i.e.,* activities not subject to prevention of significant deterioration or nonattainment new source review requirements), activities that are not considered construction or reconstruction under a National Emission Standard for Hazardous Air Pollutants of 40 CFR part 63, and activities that are not considered construction or modification under a New Source Performance Standard of 40 CFR part 61. It is also important to note that the approved Part 2 rules currently included in the Michigan SIP already have an approved waiver provision. The currently approved waiver provision is much broader in scope, and the changes that EPA is approving here narrow that scope bringing the MDEQ provisions in line with other state programs.

Comment 1: The commenters object to EPA's approval of waiver provisions in general and argue that all of EPA's arguments for approval of waiver provisions are flawed and do not in any way justify approval.

EPA Response: EPA has outlined its position on waivers for minor source construction in previous rulemakings, as noted above, and will not be revisiting this established policy in this rulemaking. EPA finds that Michigan R. 336.1202 meets the criteria for approval outlined in those rulemakings. Michigan's rule requires application for a waiver and requires MDEQ to act upon the application for a waiver within 30 days. The waiver provision is limited to non-major construction activities and the applicant must show a delay in construction would result in hardship. Finally, the rule makes it clear that the source may not operate until such time a final permit is issued and that granting a waiver does not obligate MDEQ to issue a final permit.

Comment 2: Michigan R. 336.1202 conflicts with EPA regulations governing minor source review because it would allow a source to circumvent the public participation requirements until after a source or modification is constructed.

EPA Response: EPA's position on limited waiver provisions in minor NSR programs has already been established. As discussed above nothing in 40 CFR 51.161 requires that the required public notice occur prior to the commencement of construction activities for minor sources. MDEQ must still adhere to the SIP approved public notice requirements when issuing a permit.

Comment 3: The Michigan waiver provision conflicts with EPA's regulations governing major source review because it could apply to modified major sources that would otherwise be subject to PSD or nonattainment NSR. Although the Michigan waiver provision states that it does not apply to ''any activity'' that is subject to major source permitting requirements, the definition of ''activity'' under this rule is not consistent with the EPA's aggregation policy. By defining ''activity'' as the ''concurrent and related installation, construction, relocation, or modification of any process or process equipment,'' MDEQ's definition is inconsistent with the much broader policy that EPA has laid out in several policy memos in deciding when projects should be aggregated. Importantly, EPA policy does not require that projects be concurrently constructed to justify two or more projects being related. There are also numerous other factors to take into account to determine if two or more projects are related.

EPA Response: Neither the Act nor current EPA rules specifically addresses the basis upon which to aggregate changes for applicability purposes. Instead, EPA has developed its aggregation policy through statutory and regulatory interpretation and applicability determinations. Current EPA policy is generally guided by our analysis in memos such as the June 17, 1993 ''Applicability of New Source Review Circumvention Guidance to 3M-Maplewood, Minnesota.'' In this memo, EPA outlines criteria that a permitting authority might consider in determining which activities should be aggregated. The guidance suggests that a permitting authority should consider the timing of projects, whether or not changes are technically related or dependent upon one another, and any economic relationship between activities. EPA policy directs permitting authorities to evaluate the timing and relatedness of activities for aggregation. Since MDEQ has not defined either ''concurrent'' or ''related'', we believe the language can be interpreted broadly enough to be consistent with EPA policy. Furthermore, the definition of activity here has no bearing on the definition of project under the state's PSD and major non-attainment NSR program. Applicability for PSD is defined in Michigan's Part 18 rules and applicability for major non-attainment NSR is defined in Michigan's Part 19 rules, and is independent of any applicability criteria established in Part 2. If an activity is subject to the Part 18 or Part 19 requirements either by itself or as part of a larger project, it would be excluded from use of the waiver provisions.

Comment 4: The waiver provision also conflicts with EPA regulations governing new major source review because it could apply to a source that ultimately requests limits on emissions to avoid major source or major modification permitting requirements.

EPA Response: EPA disagrees with the commenter's conclusions. The rule prohibits use of the waiver by sources subject to the state's major construction permitting programs. Any source that intends to take synthetic minor restrictions to avoid major source permitting requirements is major until a permit with enforceable restrictions is issued, and would be disqualified from the use of the waiver. MDEQ has made their position on this issue clear as well. In a public hearing report dated February 20, 2003, which is included in attachment F of the September 2003 submittal, MDEQ outlines how their rules would prevent the use of restrictions that are not part of an enforceable permit or order, thus limiting the waiver to true minors.

Comment 5: The Michigan waiver provision does not meet the requirements of the Act or 40 CFR 51.160(a) because it does not require the source to submit its plans and specifications for approval before MDEQ must act on a request for a waiver. Michigan R. 336.1202 indicates that a source's ''pertinent plans and specifications'' can be submitted after a waiver is granted and such plans are only required ''as soon as is reasonably practical.'' Furthermore, MDEQ's rule is not comparable to previously approved waiver provisions in Idaho and Wisconsin because both programs require a complete application for construction with an application for a waiver.

EPA Response: While the approvals in Idaho and Wisconsin note the submittal of a complete application for construction as additional safeguards, EPA disagrees that the submittal of a complete application for construction was established as a criterion for approval. Michigan R. 336.1202 does require application to MDEQ for a waiver. EPA does not agree that a complete application for construction is necessary, and the commenter has not provided evidence that MDEQ does not require adequate information with the waiver application. A check of MDEQ policy does in fact show that a complete application is required with an application for a waiver. Section 9–2 of MDEQ's ''Permit to Install Workbook'' states that a PTI application must be submitted ''before, or with, a construction waiver request.''

Comment 6: Michigan R. 336.1202 conflicts with the Act and EPA regulations governing minor source review because it essentially amounts to a director's discretion provision to provide new exemptions from the substantive requirements of the permit to install requirements. That is because the source does not have to submit relevant information about the new or modified source to determine if it would interfere with the control strategy or cause or contribute to a NAAQS violation until after construction has begun, the new or modified source's proposed location and impact on air quality would not have to be disclosed to the public until after construction has begun, and if the source was planning on requesting enforceable emission limitations to avoid major source permitting requirements, no review by the MDEQ, the public, or EPA would be done until after construction has begun.

EPA Response: As discussed above, a complete application for a PTI is required with an application for a waiver. Because any source seeking synthetic minor or netting limitations is considered major until such time as a permit with practically enforceable limitations is issued, the rule would only allow a waiver for true minor actions. Finally, the rule prohibits operation until a final permit is issued, and that permit must meet the public notice procedures of the approved SIP.

C. Michigan R. 336.1209 Use of Old Permits To Limit Potential to Emit

Michigan R. 336.1209 allows a source to rely on a permit to install or a permit to operate issued by MDEQ before May 6, 1980 (prior to approval in the SIP), or issued by Wayne county before a delegation of authority to Wayne county pursuant to state statute for the purposes of applicability to Michigan R. 336.1210. Michigan R. 336.1210 is the state's Title V operating permit program.

Comment 1: This rule could allow a source to avoid the state's Title V requirements by relying on emission limits in permits that the state or Wayne County no longer have the ability to enforce due to the permit being based on rules that are extremely out of date or no longer on the books.

EPA Response: Changes to rules do not invalidate permits already issued. If the permits issued were non-expiring, they are still legally binding regardless of changes to the state's permitting rules. EPA sees this provision as reaffirming the state's authority to enforce these permits.

Comment 2: The provisions of Michigan Rule 336.1209 that allow sources to rely on pre-1980 permits and permit limits may result in permits that are inconsistent with EPA's criteria for ''practically enforceable'' limits. Those criteria include the requirement that the permit expressing the emission limits must identify the methods for determining compliance with the limit and require monitoring, recordkeeping and reporting. The commenter notes that neither Michigan R. 336.1209 or Michigan R. 336.1205(1)(a) specifically require that the permit to be used to avoid Title V requirements include these compliance assurance requirements.

EPA Response: Michigan R. 336.1209 requires that the permit contain production and/or operational limits consistent with the requirements of Michigan R. 336.1205(1)(a). Michigan R. 336.1205(1)(a) requires that limits be enforceable as a practical matter. While Michigan R. 336.1205(1)(a) does provide some detail regarding the types of limits that could be used and the timeframes for the limits, EPA does not see the language in this rule as defining ''enforceable as a practical matter'' and sees nothing in the language that would be inconsistent with EPA policy on what makes a limit enforceable as a practical matter. Furthermore, the commenter has not described how avoiding an operating permit requirement would impact the state's preconstruction permitting program.

Comment 3: EPA has established certain criteria that need to be met in order to establish enforceable limits on potential to emit, which include among other things EPA and public notice and the opportunity to comment on a potential to emit limit. (See 1/25/95 EPA Memo with Subject ''Options for Limiting Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)'' at 3–4.)

EPA Response: The reference cited by the commenters is a discussion regarding the criteria for SIP approval of a federally enforceable state operating permit program (FESOP). As noted in the referenced memo, a criterion for approval of a FESOP program is that permits ''be issued in a process that provides for review and an opportunity for comment by the public and by EPA.'' Michigan R. 336.1209 is not a FESOP program, and the criteria for FESOP approval is not an appropriate measure for this rule.

Comment 4: To a large extent, EPA's criteria for creating practically enforceable emission limits to avoid major source permitting was developed pursuant to the 1987 Court decision *United States* v. *Louisiana Pacific,* 682 F. Supp. 112(D. Colo. 1987), 682 F.

Supp. 1141 (D. Colo. 1988). By allowing Michigan sources to rely on permits issued well before this Court decision and before May 6, 1980, it seems highly doubtful that the Michigan or Wayne County permits upon which a source might rely to avoid Title V permitting meet EPA's more recent criteria for creating practically enforceable limits on potential to emit. Until it is clear that EPA has undertaken a review of these older programs and verified as such, as well as verified that the state or Wayne County still has authority to enforce such permits, EPA must not approve Michigan R. 336.1209 as part of the Michigan SIP.

EPA Response: The commenter seems to suggest that any limit predating the *United States* v. *Louisiana Pacific* decision and EPA's subsequent guidance could not be enforceable as a practical matter. Minor permit programs had been a part of state SIPs for nearly a decade before the decision and EPA's subsequent guidance. The fact that the EPA and the court found the Louisiana Pacific permit deficient is not evidence that all prior permits were somehow deficient. The rule requires that the old permit contain limits that are enforceable as a practical matter and that the permittee continue to maintain records, conduct monitoring, and submit reports to show that the source is in compliance with those terms.

D. Michigan R. 336.1278 Exclusion From Exemption and Michigan R. 336.1278a Scope of Permit Exemptions

Michigan R. 336.1278 and 336.1278a work together to define the scope of the permit exemptions in Michigan R. 336.1280 through 336.1290 and to ensure that sources choosing to forgo a case-by-case permitting decision collect and maintain data necessary to demonstrate that any construction related activities qualified for the exemptions. Michigan R. 336.1278 excludes major activities subject to either the PSD or major non-attainment programs from using the exemptions. This rule also affirms that the exemptions only apply to the requirement to obtain a construction permit and that all other applicable requirements including existing permit limitations must be met. Michigan R. 336.1278a requires sources using an exemption to maintain records that demonstrate the applicability of the exemption including information such as a description of equipment installed, date of installation, identification of the specific exemption being applied and an analysis that the exemption exclusions in Michigan R. 336.1278 do not apply.

Comment 1: Michigan's PTI regulations are an umbrella permit program that apply to new major sources and major modifications as well as minor sources and modifications. Many of the PTI exemptions, particularly the broadly-worded exemptions in Michigan R. 336.1285, could allow otherwise major modifications to escape review, despite the limitations in Michigan R. 336.1278 and 336.1278a. Thus, EPA is not justified in relying on Michigan R. 336.1278 and R. 336.1278a for assurance that all of the PTI exemptions in Michigan R. 336.1280 through Michigan R. 336.1290 will not allow a project to escape major source permitting.

EPA Response: EPA agrees with the commenter that the provisions in Part 2 apply to both minor sources and major modifications. EPA disagrees that the PTI regulations exemption would allow major modifications to escape review. The commenter is correct to a certain extent that the provisions in Part 2 apply to both major and minor construction activities. For example, the Part 2 rules do address the general requirement to obtain a permit, public notice procedures, and grounds for permit denial of all construction permit programs. However, the Part 2 rules do not define the applicability criteria for the state's PSD and major non-attainment NSR programs. The state's PSD rules in Part 18 and major non-attainment NSR rules in Part 19 define the specific requirements, including applicability, of those major source construction permitting programs. Michigan R. 336.1278 prohibits the use of the exemptions if the activity would be subject to PSD or major non-attainment permitting requirements. The applicability procedures in Part 18 and Part 19 are independently applicable, and nothing in Part 2 of the Michigan Rules would alter them; therefore, EPA finds that the exclusion in Michigan R. 336.1278 is adequate.

Comment 2: The specific provisions of Michigan R. 336.1278 fail to ensure that projects that should be required to obtain a PSD or major non-attainment permit will not be exempt from a PTI pursuant to the exemptions in Michigan R. 336.1280 through R. 336.1290 because Michigan R. 336.1278(1) does not use the same terms that are used in the PSD or non-attainment NSR regulations for identifying what changes may trigger NSR review. Specifically, the PSD and nonattainment NSR rules use the term ''project'' which is defined as ''a physical change or change in the method of operation of an existing major stationary source'' and Michigan R. 336.1278 uses the term ''activity.'' Michigan R. 336.1278(1)(b) defines ''activity'' as ''the concurrent and related installation, construction, reconstruction, relocation, or modification of any process or process equipment.'' It does not appear that this definition encompasses changes in the method of operation of any process or process equipment. The commenter also asserts that the definition of ''activity'' is inconsistent with EPA's aggregation policy because EPA policy does not require that changes be concurrent.

EPA Response: The MDEQ definition of ''activity'' includes ''modification of any process or process equipment.'' MDEQ defines ''modify'' in Michigan R. 336.1113(e). The definition of ''modify'' includes physical changes in, or changes in the method of operation of an existing process or process equipment. MDEQ has not excluded changes in the method of operation as suggested by the commenter. The commenter made a similar comment with respect to aggregation in their comments on the waiver provision at Michigan R. 336.1202. See EPA's response to Comment 3 in Section II.B of this action.

Comment 3: While Michigan R. 336.1278a(1)(c) does require an analysis demonstrating that Michigan R. 336.1278 does not apply to the process or process equipment, the rule does not clearly require such analysis for modification to process equipment.

EPA Response: EPA disagrees with this comment. It is clear that the ''exempt process or exempt process equipment'' in Michigan R. 336.1278a is referencing the exempt activity as defined by each of the categories of exemptions in Michigan R. 336.1280 through 336.1290. If the exempt process or exempt process equipment as defined by a specific exemption would include modifications to existing equipment, the facility applying the exemption would be required to maintain an analysis that the exemption applies to the modification of equipment.

Comment 4: Michigan R. 336.1278a(1)(c) does not specify how the analysis that Michigan R. 336.1278 does not apply should be done. Given that the language and terms of Michigan R. 336.1278(1) are not consistent with the terms and applicability procedures of the major NSR rules, it is imperative that the recordkeeping rule at Michigan R. 336.1278a(1)(c) specify the applicability procedures in the major PSD and non-attainment NSR rules. Given the complex procedures, how they differ for new emissions units versus existing emissions units, and the fact that Michigan R. 336.1278(1) uses different terminology than the major

source permitting rules, this is a major omission.

EPA Response: As explained previously, nothing in the Part 2 rules impacts applicability under the state's major source permitting rules in Part 18 and Part 19. EPA believes that the expectation of Michigan R. 336.1278a(1)(c) is clear in that it requires a source applying any of the exemptions to maintain an analysis and records that support that (1) the project was not major pursuant to the requirements of the approved Part 18 or Part 19 programs, and (2) that the process or process equipment in question, meets the applicability criteria of whichever specific exemption they are claiming as defined by that exemption. Michigan very clearly states this in their May 15, 2012, letter from Dan Wyant to Susan Hedman. In its explanation of how these rules work to limit the scope of the exemptions, MDEQ states ''A source must, therefore, first determine if it is excluded from exemption under Rule 278 before evaluating whether it is eligible for one of the specific exemptions in Rules 280 through 290.'' In other words, major source permitting applicability must be determined before consideration of the Part 2 exemptions.

Comment 5: Michigan R. 336.1278a does not clearly require an analysis demonstrating that the specific exemption being used applies to the activity. Michigan R. 336.1278a must require an analysis demonstrating the applicability of an exemption, not just a description of the exempt process and an identification of the exemption being applied as suggested by Michigan R. 336.1278a(1)(a) and (b).

EPA Response: Michigan R. 336.1278a(1) states ''To be eligible for a specific exemption listed in R 336.1280 to R 336.1291, any owner or operator of an exempt process or exempt process equipment must be able to provide information demonstrating the applicability of the exemption.'' The language in Michigan R. 336.1278a(1)(a) and (b) are examples of what that information might be and not an all-inclusive list of required information. EPA believes that the intent of the rule is clear in that a source opting to use an exemption must keep any data required to demonstrate applicability of an exemption. The specifics of the necessary data are determined by each exempt category. If the exemption is based on size or capacity of a unit, the source must keep data on the size of the emission unit. If the exemption is based on the type of activity and associated emissions, the source would need to maintain records describing the exact nature of the change and an analysis of the resulting change in emissions. EPA does not agree that further clarification in Michigan R. 336.1278a is necessary.

Comment 6: The recordkeeping requirements of Michigan R. 336.1278a are not sufficient to ensure that activities will not escape major NSR permitting and are not adequate to ensure lawful implementation of all the permit exemptions. The rule does not clearly require the preparation of a demonstration at the time of the exemption. The rule does not clearly require that any demonstration be prepared and retained, instead it appears that it could be prepared once MDEQ requests it. Finally, the commenter objects to the rule only requiring submittal of records upon request by MDEQ arguing that the state will not be able to ensure proper implementation without upfront approval of the use of the exemptions by the state.

EPA Response: The fact that the Michigan R. 336.1278a(2) has set a deadline for responding to a written request by the state does not equate to a requirement for no records until such time as the state asks. The first requirement of every exemption is ''This rule does not apply if prohibited by R 336.1278 and unless the requirements of R 336.1278a have been met.'' Because Michigan R. 336.1278a(1) requires that ''to be eligible'' for an exemption, the owner/operator of a source must be able to provide the information in Michigan R. 336.1278a(1) and each individual exemption requires that those rules have been met, the clear intent is that the information demonstrating the applicability of the exemption be developed before the change and records kept immediately upon implementation. Finally, the commenter seems to suggest that only a requirement for upfront permitting authority approval is enforceable. 40 CFR 51.160(e) requires the state's procedures to ''identify types and sizes of facilities, buildings, structures, or installations which will be subject to review.'' The application requirements of 40 CFR 51.160(c) only apply to those activities subject to review. If the state had established blanket tonnage thresholds, we would not expect that projects under those thresholds would require a notice to the permitting authority and that the permitting authority would affirm that those projects are below the threshold. MDEQ has defined the types and sizes of facilities subject to review—any construction activity not listed in the categories of exemptions. Nothing in the Act or 40 CFR 51.160 would require notice or application from a source not subject to review. With respect to enforceability, like tonnage thresholds, the exemptions are enforced through periodic inspection of facilities.

E. Michigan R. 336.1280–R. 336.1290 PTI Exemptions

Michigan R. 336.1280–R. 336.1290 define the specific categories of exemptions.

1. General comments on Michigan PTI exemptions and MDEQ and EPA analysis of exemptions

Comment 1: In the November 9, 1999, proposed disapproval, EPA stated the state ''must demonstrate why these sources need not be subject to review in accordance with *Alabama Power* de minimis or administrative necessity criteria.'' EPA indicated such a demonstration would likely include ''(1) an analysis of the types and quantities of emissions from exempted sources, and (2) an analysis which shows that exempting such facilities from permitting review will not interfere with maintenance of the NAAQS or applicable control strategy, and otherwise fulfills the purposes of the minor NSR regulations.'' With respect to assuring that this SIP relaxation won't interfere with attainment or maintenance of the NAAQS or otherwise fulfill the requirements for minor new source review, EPA is relying on MDEQ's submittals from 2003 and 2017 to show that the SIP revision won't interfere with attainment or maintenance of the NAAQS. In those submittals, MDEQ provided example emission estimates for a select set of exemptions but not for all of the exemptions in Michigan R. 336.1280–336.1290.

EPA Response: In our review of the 2003 and 2017 submittals, EPA did not find any new exemption that was not sufficiently addressed by MDEQ to demonstrate non-interference. The commenters have not provided any specific examples. We think it is also important to note that in 1999 EPA did not conclude that any of the new exemptions were in fact a relaxation of the existing SIP in the proposed disapproval. EPA's finding was that MDEQ had failed to provide the required analysis addressing the effect of the changes on the current SIP.

Comment 2: MDEQ did not document the basis for its emission factors used for its emission estimates, and it is not clear that MDEQ has used realistic worst case emission factors.

EPA Response: The commenters did not provide any specific examples of undocumented emission factors. In our review of the emission estimates

provided, MDEQ has used emission factors from AP–42 or other EPA documents, manufacturer's data, stack testing, information from past state permitting actions, data from the Michigan Air Emission Reporting System, mass balance, or some combination of these sources to estimate emissions. The data used is clearly documented by MDEQ for each estimate. There are a few exemptions that do not result in emissions of any criteria pollutant or any pollutant at all. In those circumstances, MDEQ has provided an explanation of why those processes would not result in emissions of a pollutant regulated under section 110 of the Act. For example, Michigan R. 336.1285(2)(ii) exempts ''fuel cells that use phosphoric acid, molten carbonate, proton exchange membrane, or solid oxide or equivalent technologies.'' In their analysis, MDEQ does not provide an emission calculation, but provides an explanation for why no emissions of criteria pollutants are expected from this technology. EPA finds that MDEQ has used appropriate sources for emission factors and that the commenters have provided no evidence supporting their claims.

Comment 3: EPA's proposed approval of these exemptions fail to fulfill the purpose of the minor NSR regulations. The December 31, 2002, major source permitting rule revisions significantly revised and limited applicability to major source permitting for modifications at major sources. In justifying that rulemaking, EPA cited to state's minor NSR rules as providing the needed oversight of modifications at existing major source in the cases where modifications at major sources could more readily be considered minor modifications. For example, EPA stated in the preamble to the 2002 rules that it anticipated a ''large majority of the projects that are not major modifications may nonetheless be required to undergo a permit action through States' minor NSR permit programs'' and stated that such programs could provide an opportunity to ensure that the permitting authority agrees with a source's emission projections.

EPA Response: EPA disagrees that the MDEQ minor NSR permitting program will not address ''a large majority of the projects that are not major modifications.'' In the 2002 rulemaking, EPA did not state that every change that was no longer subject to the major source permitting requirements due to NSR Reform would be picked up by the state minor NSR programs, and statements in the preamble to NSR Reform are not evidence that the Michigan minor NSR program is not part of a program serving the intended purpose of section 110(a)(2)(C) of the Act to prevent construction that would interfere with attainment and maintenance of the NAAQS. MDEQ has been implementing these exemptions for over a decade and EPA is not aware of a NAAQS violation resulting from their use and the commenters have not presented any specific evidence that they could result in a violation.

2. Rule Specific Comments

a. Michigan R. 336.1285(2)(a) PTI Exemptions

Michigan R. 336.1285(2)(a) exempts ''routine maintenance, parts replacement, or other repairs that are considered by the department to be minor, or relocation of process equipment within the same geographical site not involving any appreciable change in the quality, nature, quantity, or impact of the emission of an air contaminant therefrom.'' The rule also includes examples of changes that would be covered by the exemption. These examples help to define the scope of changes MDEQ intended the exemption to cover. EPA specifically noted concerns with this exemption in a November 9, 1999, proposed disapproval. This exemption is part of the approved SIP. Michigan had made some fairly minor changes such as changing the word ''commission'' to ''Department.'' The only substantive change was the addition of the word ''routine.'' Because it might be interpreted as defining ''routine maintenance, repair and replacement'' under the major source permitting rules, EPA was concerned that the ambiguity might lead to sources inappropriately applying the exemption to major source permitting. There have been significant changes to the structure of MDEQ's major source permitting rules since 1999. At that time, PSD permits were issued pursuant to a delegation of 40 CFR 52.21 through the general requirements of the Part 2 rules. The state's major non-attainment permitting rules were also included in Part 2 at that time. MDEQ now has a SIP approved PSD program, and the major source permitting requirements have been moved to separate sections of the Michigan Administrative Code. The PSD rules are in Part 18 and the major NSR rules are in Part 19. EPA believes the previously listed concerns are effectively addressed by the requirements of Michigan R. 336.1278 and 336.1278a in conjunction with the move of major source applicability criteria to separate rule sections.

Comment 1: The terms ''minor'' and ''appreciable'' are vague, undefined terms that are subject to varying interpretations. Given that the facilities will be making the determinations of whether an activity can be exempt under Michigan R. 336.1285(2)(a) and not MDEQ, the likelihood of wide and varying interpretations of this provision are great, and thus the limitations of this exemption are unenforceable. The minor NSR provisions for SIPs at 40 CFR 51.160(a) and (e) require the state to clearly define the sizes and types of sources subject to review and to do so through legally enforceable procedures, and MDEQ has not done so.

EPA Response: EPA disagrees that the cited terms make the limitations unenforceable. We believe that the terms, in context, have their common meanings, and that MDEQ has satisfactorily described the intent of these rules. For example, the state's interpretation of ''appreciable'' as stated in their May 15, 2012, letter is the common definition of the word, ''capable of being perceived or measured.'' A change in emissions that is capable of being measured is actually a fairly restrictive limitation. EPA also believes that the state has developed adequate policy for their permitting program and exemptions to minimize the likelihood of misuse. More importantly, on page 11 of the document ''Response to the United States Environmental Protection Agency's May 12, 2014, Need for Additional 110(l) Analysis,'' included in the 2017 submittal, MDEQ has clearly indicated that this exemption ''is in no way intended to define routine maintenance, repair and replacement,'' and confirm their adherence to current EPA policy on the matter.

Comment 2: The fact that this rule allows ''relocation of process equipment within the same geographical site is extremely problematic, as any relocation of a source of air emission can change that source's impact on air quality and can negate any prior air quality analyses that have been done for the source.

EPA Response: This is language that has already been approved into the Michigan SIP, and is not open for comment through this action.

Comment 3: This rule could be considered to redefine ''routine maintenance, repair, and replacement'' under the major source PSD and nonattainment NSR rules. This was a concern raised by EPA, to which MDEQ responded to in part that its ''Part 2 exemptions are designed for use by small emitting sources.'' However,

nothing in the PTI rules or exemptions limit those permit requirements to ''small emitting sources.'' Indeed, the PTI program encompasses PSD and nonattainment NSR requirements and activities at existing major source subject to PTI requirements.

EPA Response: As stated previously, EPA believes the additional restrictions included in Michigan R. 336.1278 and R. 336.1278a have adequately addressed these concerns. MDEQ clearly requires that a source first determine that a change is not subject to major source permitting requirements prior to implementing any of the listed exemptions. Furthermore, MDEQ has confirmed their adherence to current EPA guidance on routine maintenance, repair and replacement in the 2017 submittal as described above.

Comment 4: While Michigan R. 336.1285(2)(a) gives examples of the types of parts replacement it considers to be ''minor,'' some of those examples could be construed as allowing component replacement that should not be considered routine. Specifically, Michigan provides examples that include replacement of fans, pumps, or motors ''that do not alter the operation of the source,'' replacement of boiler tubes, replacement of engines, compressor or turbines ''as part of a normal maintenance program.''

EPA Response: See response to comment 3 above.

b. Michigan R. 336.1285(2)(b) PTI Exemptions

Michigan R. 336.1285(2)(b) exempts ''changes in a process or process equipment which do not involve installing, constructing, or reconstructing an emission unit and which do not involve any meaningful change in the quality and nature or any meaningful increase in the quantity of the emission of an air contaminant therefrom.''

Comment 1: This rule has vague, undefined terms such as ''any meaningful change,'' ''quality'' or ''nature'' of emissions, and ''any meaningful increase in the quantity of emissions.'' It is unclear from the rule how changes are to be evaluated and the criteria upon which ''meaningful'' would be judged. This provision is clearly not enforceable and thus does not meet the minor NSR provisions of 40 CFR 51.160(a) and (e) to clearly define the sizes and types of sources subject to review and to do so through legally enforceable procedures.

EPA Response: EPA disagrees that the cited terms make the limitations unenforceable. We believe that the terms, in context, have their common meanings, and that that MDEQ has satisfactorily described the intent of these rules. In its May 15, 2012, letter, MDEQ states that ''meaningful'' would be defined as ''having meaning or purpose.'' In the context of a minor construction permitting program that would include a change that would result in an increase that could interfere with the NAAQS or increment. The rule also lists examples of changes that could be allowed by the rule such as a change in supplier of a particular raw material. While EPA agrees that there is some ambiguity in the term ''meaningful,'' the examples in the rule itself are adequate to appropriately narrow the scope of the exemption.

Comment 2: Many of the examples of the types of changes identified in the rule that might be allowable are concerning and could allow a modification that should be reviewed for major NSR applicability. The fact that the rule limits changes to those which do not involve installing, constructing, or reconstructing an emission unit is not sufficiently protective given that the exemption still allows modifying an emissions unit. While the provisions of the rule are vague and subject to interpretation, the examples given in the rule of the types of process changes that could be exempt from a PTI show that emission increases could occur without review. EPA itself recognized this when it requested MDEQ complete an analysis under Section 110(l) of the Act.

EPA Response: EPA's request for an analysis under section 110(l) of the Act was in no way an indication that EPA believed this exemption would allow major modifications to go unpermitted. States are obligated to provide an analysis under Section 110(l) for any changes to coverage under the approved SIP. As discussed previously in this action, EPA is satisfied that the changes that MDEQ has made to Michigan R. 336.1278 and 336.1278a, will prevent the use of the exemptions for actions that are subject to major construction permitting requirements. Major NSR and/or PSD applicability must be determined pursuant to Michigan Rules Part 18 and Part 19 before the exemptions in Part 2 can be applied.

c. Michigan R. 336.1285(2)(c) PTI Exemptions

Michigan R. 336.1285(2)(c) exempts the following changes from minor construction permitting:

''Changes in a process or process equipment that do not involve installing, constructing, or reconstructing an emission unit and that involve a meaningful change in the quality and nature or a meaningful increase in the quantity of the emission of an air contaminant resulting from any of the following:

(i) Changes in the supplier or supply of the same type of virgin fuel, such as coal, no. 2 fuel oil, no. 6 fuel oil, or natural gas.

(ii) Changes in the location, within the storage area, or configuration of a material storage pile or material handling equipment.

(iii) Changes in a process or process equipment to the extent that such changes do not alter the quality and nature, or increase the quantity, of the emission of the air contaminant beyond the level which has been described in and allowed by an approved permit to install, permit to operate, or order of the department.''

Comment 1: EPA apparently decided no increase in emissions would occur with this exemption; however, it is clear that actual emissions could increase with this exemption. Further, if there are no allowable emissions limits described for a pollutant or emissions unit in a permit or MDEQ order, then it appears even allowable emissions could increase under this exemption. Changes in types of coal burned can significantly increase emissions and therefore could actually impact the NAAQS.

EPA Response: EPA disagrees with the commenter. Michigan R. 336.1285(2)(c)(i) is limited to a change in supplier or supply of the same type of fuel. EPA would not expect state minor NSR programs create limits on the supplier of a raw material and the potential impact on emissions from a change in supplier is minimal. Nothing in this rule would allow a facility to change the type of fuel combusted as suggested by the commenter. Michigan R. 336.1285(2)(c)(ii) only allows moving storage piles or equipment within the existing storage area. A change in the location of equipment and storage piles should have no impact on the quantity of emissions; furthermore, when modelling impact on NAAQS from a storage area, total emissions from the storage area are modeled as an area source. Specific locations of piles or handling equipment are not modeled. Because the rule limits changes to the existing storage area, we would not expect an impact on the NAAQS with these types of changes either. Finally, Michigan R. 336.1285(2)(c)(iii) specifically excludes changes that would increase the quantity of emissions beyond that already allowed in a permit or order issued by MDEQ. Therefore, a change in the type of fuel combusted that results in an increase in emissions, as suggested by the

commenter, would be excluded from the use of this exemption.

Comment 2: It must be pointed out that the exemptions in Michigan R. 336.1285(2)(c), being based essentially on a comparison of allowable-to-allowable emission increases, is based on an entirely inconsistent emissions increase approach than the major source permitting rules. The Courts have previously found that allowable-to-allowable emissions test are not authorized under major source permitting programs.

EPA Response: As previously discussed in this document, nothing in these rules impact applicability under major source permitting programs. MDEQ clearly requires that a source first determine that a change is not subject to major source permitting requirements prior to implementing any of the listed exemptions. With respect to requirements for applicability under minor NSR programs, the requirements of section 110(a)(2)(C) and 40 CFR 51.160 do not expressly require the use of any particular applicability test, and therefore do not prohibit the use of an allowable-to-allowable or actual-to-actual test.

Comment 3: Michigan R. 336.1285(2)(c)(ii) could readily allow a source to violate terms of an existing permit (including a major source PSD or non-attainment NSR permit) by allowing changes in the location or configuration of a material storage pile or material handling equipment. Any air modeling analysis that was done for such a source would have considered the location of material handling emissions in relation to publicly accessible land and roads. Given that fugitive emissions from material handling and/or storage piles have in many cases been modeled to cause or contribute to violations of the NAAQS or PSD increments for particulate matter (PM), particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}) and particulate matter with an aerodynamic diameter less than or equal to 2.5 microns ($PM_{2.5}$), this cannot be considered as protective of the NAAQS.

EPA Response: Michigan R. 336.1278(4) states that the exemptions only apply to the requirement to obtain a PTI and ''do not exempt any source from complying with any other applicable requirement or existing permit limitation.'' Therefore, no exemption in Michigan R. 336.1280 through 336.1290 would allow a source to violate terms of an existing permit as suggested by the commenter. Furthermore, as discussed above, the exemption limits relocation of equipment and piles to within the existing storage area. Due to the way in which emissions from storage areas are addressed in a modeling analysis this would result in no impact on previous modeling.

d. Michigan R. 336.1285(2)(d)–(f)

Michigan R. 336.1285(2)(d) exempts the replacement or reconstruction of air pollution control equipment with equivalent or more efficient control equipment. Michigan R. 336.1285(2)(e) exempts the installation of control equipment required by a National Emission Standard for Hazardous Air Pollutants. Michigan R. 336.1285(2)(f) exempts the installation and construction of air pollution control equipment that does not result in a significant increase in a pollutant from the pollution controls.

Comment 1: EPA did not require a section 110(l) analysis for Michigan R. 336.1285(d); however, this provision could allow for the replacement of existing controls with controls that could create a new source of emissions. For example, if a scrubber is installed at a unit utilizing dry sorbent injection for sulfur dioxide (SO_2) control, the scrubber would add sources such as lime delivery and storage for scrubber waste disposal. EPA should not have excluded this provision from the requirement for a section 110(l) analysis.

EPA Response: See EPA response to comments on the 110(l) analysis in Section II. F. below.

e. Michigan R. 336.1285(2)(g)–(mm)

Comment: Michigan R. 336.1285(2)(g)–(mm) provide for 33 specific and diverse exemptions from the PTI requirements. There are certain activities that seem as if they could be significant sources of air emissions, especially because a company could claim multiple PTI exemptions from these activities.

EPA Response: As explained previously, EPA believes the limiting language in Michigan R. 336.1278 and 336.1278a is sufficient to ensure that projects subject to major construction permitting requirements are excluded from the use of the exemptions. EPA has also previously addressed the definition of activity in the rule and believes that the rule requires the appropriate aggregation of multiple small changes when making applicability decisions.

f. Michigan R. 336.1280–336.1284 and Michigan R. 336.1286–336.1290

Comment: There are certain activities in Michigan R. 336.1280 through 336.1284 and Michigan R. 336.1286 through 336.1290 that seem as if they could be significant sources of air emissions, especially because a company could claim multiple PTI exemptions from these activities.

EPA Response: As explained previously, EPA believes the limiting language in Michigan R. 336.1278 and 336.1278a is sufficient to ensure that projects subject to major construction permitting requirements are excluded from the use of the exemptions. EPA has also previously addressed the definition of activity in the rule and believes that the rule requires the appropriate aggregation of multiple small changes when making applicability decisions.

F. Comments Concerning the 110(l) Demonstration

EPA received several comments regarding the 110(l) analysis provided by MDEQ. Section 110(l) of the CAA states that ''[t]he Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this chapter.'' 42 U.S.C. 7410(l). EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. Generally, a SIP revision may be approved under section 110(l) if EPA finds it will at least preserve status quo air quality. See *Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006); *GHASP* v. *EPA*, No. 06–61030 (5th Cir. Aug. 13, 2008); see also, *e.g.,* 70 FR 53 (Jan. 3, 2005), 70 FR 28429 (May 18, 2005) (proposed and final rules, upheld in *Kentucky Resources,* which discuss EPA's interpretation of section 110(l).

In considering the new exemptions in Michigan R. 336.1280 through Michigan R. 336.1290, EPA examined the emission projections provided by MDEQ in the 2003 and 2017 submittals, the structure of the existing SIP permitting rules and the structure of each new exemption, and in some cases conservative air quality analysis (modeling or qualitative analysis in the case of ozone) provided in the 2017 submittal. MDEQ's currently approved permitting SIP generally requires a PTI for any change resulting in an increase in a regulated pollutant unless the particular change falls into one of the categories of exemptions contained in Michigan R. 336.1280 through Michigan R. 336.1290. MDEQ's revisions expand the exempt categories. Several of the exempt categories would have no associated emissions of criteria pollutants. Several other categories of

exemptions contain production and operation restrictions and function as a permit by rule. Where the exemption did not contain enforceable limitations on production and operation, and projected emission increases were greater than 10 tons per year of a criteria pollutant, MDEQ provided an air quality analysis. MDEQ and EPA have evaluated the impacts of the proposed revisions, and determined that they do not interfere with attainment of any NAAQS or any other CAA requirement because the use of the exemption provides the same level of control measures as the control measures that would be included in an individual construction permit, the exemption would result in little or no increase in emissions of a criteria pollutant, or MDEQ has provided a suitable air quality analysis demonstrating no interference with attainment, reasonable further progress, or any other requirement of the Act.

Comment 1: It appears that MDEQ and EPA assumed that, if emission increases were less than the major source modification significance levels, then the increase could not interfere with attainment or maintenance of the NAAQS.

EPA Response: EPA agrees that major source modification significance levels alone would be insufficient to demonstrate non-interference. As explained elsewhere in this action, MDEQ's non-interference demonstration took into account factors in addition to the significance levels, *i.e.,* emission projections, the structure of the existing SIP permitting rules and the structure of each new exemption, and in some cases conservative air quality analysis (modeling or qualitative analysis in the case of ozone) provided in the 2017 submittal. When evaluating the effect of the new exemptions, MDEQ and EPA first considered the level of control required by the current SIP. A permit issued under the currently approved SIP does not explicitly require an air quality analysis be performed. The currently approved program ensures the establishment of control measures in the permit. A number of the exemptions are structured as prohibitory rules and as such include control measures that are similar to the control measures that would be included in an individual permit. These may include restrictions on production and operation, restrictions on size of equipment, required control technology, or limits on raw materials used, in order to qualify for the exemption. Under these circumstances, EPA finds that these prohibitory rules, or permits by rule, preserve the status quo of the existing SIP. For other exemptions, MDEQ has demonstrated that the exemption will not result in an increase in emissions or have the potential to emit a criteria pollutant at all. If the exemption has no associated criteria pollutant emissions, no further analysis is necessary. For exemptions that could result in small increases in criteria pollutants, generally less than 10 tons per year, MDEQ has presented an analysis of the observed impacts from eliminating the individual permit requirement. MDEQ has reviewed the state emissions inventory to determine the amount and magnitude of emissions from the sources that are being exempted, and they have reviewed data from monitors within the state. MDEQ has not found that moving away from an individual permit for these smaller exempted sources have resulted in violations of the NAAQS. EPA has reviewed MDEQ's analysis and agrees that no NAAQS violations would result from these small emissions increases. Furthermore, the commenter has not cited any example of an individual permit for these exempt categories that would have established any additional control measures. Finally, for the single exemption that would relax the current SIP and would result in an increase of a criteria pollutant greater than 10 tons per year, MDEQ provided a conservative modeling analysis demonstrating that exempting from permitting sources of that type and size would be unlikely to result in a violation of the NAAQS. EPA has also reviewed this modeling analysis and agrees that it supports MDEQ's conclusion.

Comment 2: The impact of an activity's emissions on air pollutant concentrations is dependent on a myriad of factors including but not limited to stack height, temperature, velocity, topography, other buildings in the vicinity, and background pollutant concentrations; therefore, no specific ton per year level of emissions can be considered as protection of the NAAQS in all locations, and especially for short term average NAAQS.

EPA Response: EPA agrees that it is not possible to set a single ton per year threshold for all situations that would prevent interference. EPA disagrees that the rules set such a ton per year threshold. As discussed elsewhere, tons per year was only one of the factors MDEQ utilized to demonstrate non-interference. As previously stated, EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved.

Comment 3: MDEQ failed to evaluate emissions for the worst-case scenario under each exemption. This is especially true for the broad exemptions of Michigan R. 336.1285 where MDEQ just gave examples of emission estimates for certain exemptions.

EPA Response: There are a few exemptions where MDEQ did not provide a worst-case analysis; however, in those cases, MDEQ has provided real world examples of how the exemptions have been applied and the resulting emissions increases that are representative of the larger projects that would likely use the exemption. For example, for Michigan R. 336.1285(2)(b)(i)(H), which exempts lengthening a paint drying oven to allow for longer curing time, the emission estimates provided by MDEQ are based on an actual project at a major auto manufacturer.

Comment 4: MDEQ failed to evaluate the cumulative emissions increases that could be exempt for a single source relying on multiple exemptions (such as adding several oil-fired equipment of less than 20 MMBtu/hour pursuant to Michigan R. 336.1282(2)(b)).

EPA Response: MDEQ has provided projected increases from each of the exemptions, and EPA has found the analysis provided by MDEQ to be reasonable. With respect to the specific example provided by the commenter, the fuel burning exemption at Michigan R. 336.1282(2)(b) is structured as a prohibitory rule. The limitations imposed by the rule are equivalent to the types of limitations that would be included in a permit under the currently approved SIP. Moving from an individual permit system to a permit by rule system would preserve the status quo of the existing SIP.

Comment 5: EPA did not require a Section 110(l) analysis for Michigan R. 336.1285(2)(d) which allows for replacement of an air pollution control equipment with equivalent or more efficient equipment. However, this provision could allow an increase in emissions—for example, if a scrubber is installed at a unit utilizing dry sorbent injection for SO_2 control, the scrubber would add sources such as lime delivery and storage and for waste disposal. Thus, EPA should not have exempted this rule from a 110(l) analysis.

EPA Response: EPA did not exempt this rule from 110(l) requirements. EPA did determine that no additional analysis beyond the analysis of the exemption included with the 2003 submittal was necessary. As discussed above, EPA does not interpret 110(l) as requiring a full attainment or maintenance demonstration. The exemption is limited to the replacement

of existing controls with identical or more efficient controls. Some form of add-on control technology must already exist to use this exemption. In the example provided by the commenter, where a source replaced a dry flue gas desulfurization unit with a wet flue gas desulfurization unit, both the existing controls and the new controls would have used lime in the process. The facility would have already had sources associated with lime delivery and storage, and both controls result in waste material.

Comment 6: While EPA required a 110(l) analysis for Michigan R. 336.1285(2)(e) and (f), MDEQ simply evaluated the emission increase from a couple of examples and did not estimate worst case emissions.

EPA Response: EPA believes that the examples selected by MDEQ are representative of the types of changes that would actually use the exemptions.

Comment 7: EPA and MDEQ have not demonstrated that permit exemptions for activities with emission increases less than PSD significance levels will not interfere with attainment or maintenance of the NAAQS and will otherwise be consistent with the requirements of the Act.

EPA Response: EPA's conclusion that the changes to exempt categories will not interfere with attainment or maintenance of the NAAQS is not based on the assumption that increases less than the PSD significance thresholds will not impact the NAAQS. As discussed above, EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. In considering the new exemptions in Michigan R. 336.1280 through Michigan R. 336.1290, EPA examined the emission projections provided by MDEQ in the 2003 and 2017 submittals, the structure of the existing SIP permitting rules and the structure of each new exemption, and in some cases conservative air quality analysis (modeling or qualitative analysis in the case of ozone) provided in the 2017 submittal.

Comment 8: MDEQ's modeling demonstrates that emission increases at levels much lower than the PSD significance levels could threaten attainment of the NAAQS and that other contributing factors such as stack characteristics and background concentration of an area must also be taken into account. Furthermore, because the modeling performed shows modeled concentrations near the 24-hour $PM_{2.5}$ NAAQS, MDEQ's modeling demonstrates that Michigan R. 336.1285(p) could result in a violation of a NAAQS.

EPA Response: The modeling submitted in support of Michigan R. 336.1285(2)(p) is sufficiently conservative to demonstrate that the exemption is unlikely to result in a violation of a NAAQS. While the modeled concentration for larger tower dryers when combined with a conservative background are approaching the 24-hour $PM_{2.5}$ NAAQS, this type of equipment is uncommon in the state of Michigan and would be located in rural areas where background concentrations tend to be lower. The more common column dryers would have a significantly lower impact on $PM_{2.5}$ concentrations.

Comment 9: EPA cannot justify approving Michigan's minor source review exemptions based on how such activities were previously permitted by MDEQ.

EPA Response: As stated above EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. When evaluating the effect of any new exemption, EPA must first consider the level of control required by the current SIP. In this case, the evaluation concerns the effect of the individual construction permit issued as required by the currently approved permitting rules. A permit issued under the currently approved SIP does not explicitly require an air quality analysis be performed. What is assured under the currently approved program is the establishment of control measures in the permit. A number of the exemptions are structured as prohibitory rules and include control measures that are similar to the control measures that would be included in an individual permit. These may include restrictions on production and operation, restrictions on size of equipment, required control technology, or limits on raw materials used. Under these circumstances, EPA finds that these prohibitory rules, or permits by rule, preserve the status quo of the existing SIP.

Comment 10: In the proposed approval EPA states, ''where an exemption could result in an increase of a regulated pollutant in amounts greater than 10 tons per year, MDEQ provided modeling, or in the case of ozone, a qualitative analysis to demonstrate that the emissions that could result from the exempt categories would have no significant impact on compliance with the NAAQS.'' A modeling analysis was only included for Michigan R. 336.1285(2)(p), yet a review of Attachment H to the 2003 submittal shows several categories with estimates exceeding 10 tons per year. Specifically, the commenter has identified the fuel burning equipment exemptions in Michigan R. 336.1282(2)(b).

EPA Response: EPA disagrees to the extent that the commenter is suggesting that a demonstration of non-interference requires modeling for all exemptions. As previously discussed, the fuel burning exemptions in Michigan R. 336.1285(b) are structured as permits by rule and contain enforceable restrictions on capacity and raw materials which are equivalent to the controls that would be included in a permit under the currently approved SIP. Moving from an individual permit system to a permit by rule system would preserve the status quo of the existing SIP. The only exemption that relaxes the current SIP permitting requirements with a resulting increase greater than 10 tons per year is the grain handling exemption at Michigan R. 336.1285(p), for which MDEQ provided a modeling analysis showing that the revision would not interfere with attainment of the NAAQS.

G. Comments Concerning the Docket

Approximately a week before the end of the first comment period for this rulemaking, EPA was informed of issues with the electronic docket at *regulations.gov*. The docket incorrectly linked to numerous unrelated documents. Additionally, upon review, EPA noted that certain documents related to the rulemaking were not present. The interested parties requested that the docket be fixed and that EPA extend the comment period. Because of the lack of time remaining on the comment period, EPA was unable to extend the comment period, and informed the interested parties that EPA would address the docket issues and reopen the comment period for an additional 30 days. The comments received after the close of the first comment period noted the docket issues in the comments. EPA added missing information to the docket in September 2017 and published a notice reopening the comment period for 30 days on November 2, 2017.

In comments received during the first reopening, commenters noted that the electronic file for the September 2003 submittal from MDEQ was missing an attachment. The missing information was added to the electronic docket in November of 2017, and the interested parties were informed that EPA would reopen the comment period for a second time for a period of 15 days. The second reopening of the comment period was published on January 9, 2017. EPA believes that the correction of the

electronic docket and the two notices reopening the comment period for the rulemaking address all comments related to missing information in the docket.

The comments received during the first reopening also noted that EPA had included copies of several MDEQ policy documents to the docket. The commenters noted that if EPA is proposed to approve any of these documents as part of the SIP, EPA must issue a revised proposed rulemaking making clear to the public which documents it is proposing to approve. EPA is not approving these documents into the SIP and the summary of documents EPA is incorporating into the SIP in Section VI ''Incorporation by Reference'' in the proposed rulemaking is correct. The policy documents were added because EPA thought they would be of interest to the public. EPA is not relying on these documents to support approval of the rules, and there is no need to re-propose based on the addition of these documents to the docket as suggested by the commenters.

III. What action is EPA taking?

EPA is approving all changes submitted by MDEQ except for changes to Michigan R 336.1205 which includes provisions for public notice. EPA will not be taking any action with respect to the changes in public notice and will be addressing Michigan R 336.1205 in a separate action. The already approved public notice procedures will remain in the SIP until EPA takes action on Michigan R 336.1205.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the Act as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 21, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

[1] 62 FR 27968 (May 22, 1997).

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

■ 2. In § 52.1170, the table in paragraph (c) is amended by revising the entries under the heading ''Part 2. Air Use Approval'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*
	Part 2—Air Use Approval			
R 336.1201	Permits to install	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1201a	General permits to install	7/01/2003	08/31/2018, [Insert **Federal Register** citation].	
R 336.1202	Waivers of approval	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1203	Information required	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1204	Authority of agents	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1206	Processing of applications for permits to install	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1207	Denial of permits to install	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1209	Use of old permits to limit potential to emit	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1212	Administratively complete applications; insignificant activities; streamlining applicable requirements; emissions reporting and fee calculations.	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1216	Modifications to renewable operating permits	7/26/1995	08/31/2018, [Insert **Federal Register** citation].	
R 336.1219	Amendments for change of ownership or operational control.	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1221	Construction of sources of particulate matter, sulfur dioxide, or carbon monoxide in or near nonattainment areas; conditions for approval.	7/17/1980	1/12/1982, 47 FR 1292.	
R 336.1240	Required air quality models	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1241	Air quality modeling demonstration requirements	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1278	Exclusion from exemption	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	
R 336.1278a	Scope of permit exemptions	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1280	Permit to install exemptions; cooling and ventilating equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1281	Permit to install exemptions; cleaning, washing, and drying equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1282	Permit to install exemptions; furnaces, ovens, and heaters.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1283	Permit to install exemptions; testing and inspection equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1284	Permit to install exemptions; containers	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1285	Permit to install exemptions; miscellaneous	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1286	Permit to install exemptions; plastic processing equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1287	Permit to install exemptions; surface coating equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1288	Permit to install exemptions; oil and gas processing equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1289	Permit to install exemptions; asphalt and concrete production equipment.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1290	Permit to install exemptions; emission units with limited emissions.	12/20/2016	08/31/2018, [Insert **Federal Register** citation].	
R 336.1299	Adoption of standards by reference	6/20/2008	08/31/2018, [Insert **Federal Register** citation].	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
*	*	*	*	*

* * * * *

[FR Doc. 2018–18853 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0701; FRL–9983–11—Region 3]

Air Plan Approval; District of Columbia; State Implementation Plan for the Interstate Transport Requirements for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the District of Columbia (the District) that pertains to the good neighbor and interstate transport requirements of the Clean Air Act (CAA) for the 2008 ozone national ambient air quality standards (NAAQS). The CAA's good neighbor provision requires EPA and states to address the interstate transport of air pollution that affects the ability of other states to attain and maintain the NAAQS. Specifically, the good neighbor provision requires each state in its SIP to prohibit emissions that will significantly contribute to nonattainment, or interfere with maintenance, of a NAAQS in another state. The District submitted a SIP revision on June 13, 2014 that addresses the interstate transport requirements for the 2008 ozone NAAQS. On July 5, 2018, EPA published a proposed rule for just the good neighbor provision of the District's June 13, 2014 submittal. EPA is approving the District's SIP as having adequate provisions to meet the requirements of the good neighbor provision for the 2008 ozone NAAQS in accordance with section 110 of the CAA.

DATES: This final rule is effective on October 1, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0701. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814–5787, or by email at *schmitt.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 13, 2014, the District Department of the Environment (DDOE) on behalf of the District submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. On April 13, 2015 (80 FR 19538), EPA approved all parts of the District's June 13, 2014 submittal with the exception of the portion of the submittal that addressed section 110(a)(2)(D)(i)(I) of the CAA. Section 110(a)(2)(D)(i)(I), also called the good neighbor provision, consists of two prongs that require that a state's [1] SIP must contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that ''contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard.'' Under section 110(a)(2)(D)(i)(I) of the CAA, EPA gives independent significance to the matter of nonattainment (prong 1) and to that of maintenance (prong 2).

On July 5, 2018 (83 FR 31350), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia, approving the portion of the June 13, 2014 District SIP revision addressing prongs 1 and 2 of the interstate transport requirements for section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.[2]

II. Summary of SIP Revision and EPA Analysis

In its June 13, 2014 submittal, the District identified the implemented regulations within its SIP that limit nitrogen dioxide (NO_X) and/or volatile organic compound (VOC) emissions from District sources.[3] The District indicates that there are no electric generating units (EGUs) [4] or other large industrial sources of NO_X emissions within the District. In the submittal, the District also included information on non-EGUs and mobile sources and listed the SIP-approved measures that help to reduce NO_X and VOC emissions from non-EGU and mobile sources within the District. In the submittal, the District points out that it will continue to rely on federal measures to reduce NO_X emissions from onroad and nonroad engines. The District states its sources are already well controlled, and states further reductions beyond the District's current SIP measures are not economically feasible.

EPA evaluated the District's submittal for the 2008 ozone NAAQS, considering: Ozone precursor emissions; an analysis of District source sectors; and in-place controls and regulations. Due to the District's small number of sources and the high cost of further reductions, EPA proposed in its July 5, 2018 NPR that the District's SIP, as presently approved, contains adequate measures to prevent District sources from interfering with maintenance or contributing significantly to nonattainment in another state for the 2008 ozone NAAQS. The rationale for EPA's proposed action was discussed in greater detail in the NPR and accompanying technical support document (TSD) and will not be restated here.

[1] The term state has the same meaning as provided in CAA section 302(d) which specifically includes the District of Columbia.

[2] All the other infrastructure SIP elements for the District for the 2008 ozone NAAQS were addressed in a separate rulemaking. See 80 FR 19538 (April 13, 2015).

[3] Both NO_X and VOCs are precursors to ozone formation.

[4] The District's last remaining EGUs were decommissioned in 2012, in part to meet permit requirements incorporated into the District's Regional Haze SIP. 77 FR 5191 (February 2, 2012).

In this rulemaking action, EPA is approving one portion of the District's June 13, 2014 submittal—the portion addressing prongs 1 and 2 of section 110(a)(2)(D)(i)(I) of the CAA. EPA previously acted on other portions of Delaware's June 13, 2014 SIP submittal for the 2008 ozone NAAQS.[5]

III. Comments and EPA's Response

EPA received a total of four anonymous comments on the July 5, 2018 NPR. All of the comments received are included in the docket for this action. Three of the comments did not concern any of the specific issues raised in the NPR, nor did they address EPA's rationale for the proposed approval of the District's submittal. Therefore, EPA is not responding to those comments. EPA did receive one comment considered to be relevant to this rulemaking action.

The commenter indicates that EPA was supposed to take action on the District's SIP revision within 12 months of receiving the SIP submittal. The commenter also indicates the length of time (4 years) it took for EPA to approve the SIP revision from the time of its submittal and questions if transported pollution could have been eliminated if SIP revisions like this one were approved in a timely manner. The commenter asks what air quality and human health impacts the delay of this action has had on neighboring states.

EPA acknowledges that it missed the statutory deadline to take action on the good neighbor portion of the District's June 13, 2014 SIP submittal.[6] However, at this time, EPA is taking final action on this SIP revision, and by doing so it will meet all such outstanding obligations under the CAA. The commenter provided no analysis of the statutory consequences, if any, from the action. Further, EPA disagrees with the commenter's questioning that the delayed action on the good neighbor portions of the District's SIP revision has impacted air quality and human health in neighboring states. As explained in the NPR, EPA believes that the District's SIP, as presently approved, contains adequate measures to prevent District sources from interfering with other states' attainment and/or maintenance for the 2008 ozone NAAQS. Thus, EPA's late action on the good neighbor portion of the District of Columbia's June 13, 2014 SIP submittal did not cause any delay in air quality and human health protections as the SIP relies on already in-place regulations and controls that prevent District sources from significantly contributing to nonattainment, or interfering with maintenance, of the 2008 ozone NAAQS in another state.

IV. Final Action

EPA is approving the portion of the June 13, 2014 District SIP revision addressing prongs 1 and 2 of the interstate transport requirements for section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone NAAQS.

On April 13, 2015 (80 FR 19538), EPA approved the following infrastructure elements or portions thereof from the June 13, 2014 submittal: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action approves the remaining portions of the June 13, 2014 SIP revision, which address prongs 1 and 2 of section 110(a)(2)(D)(i)(I) of the CAA, also known as the good neighbor provision. EPA did not take action upon these elements in the Agency's prior SIP approval action, published on April 13, 2015 (80 FR 19538).

V. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

[5] On April 13, 2015 (80 FR 19538), EPA approved portions of the District's June 13, 2014 submittal for the 2008 ozone NAAQS addressing the following: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). In that action, EPA stated it would take later action on the portion of the June 13, 2014 SIP submittal addressing section 110(a)(2)(D)(i)(I) of the CAA.

[6] For clarification, section 110(k)(2) requires EPA to take action 12 months after a SIP revision becomes complete, not 12 months after it is submitted, as the commenter indicates.

Court of Appeals for the appropriate circuit by October 30, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, addressing the District of Columbia's good neighbor provision for the 2008 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: August 21, 2018.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding a new entry for ''Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS'' after the existing entry for ''Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS'' to read as follows:

§ 52.470 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	District of Columbia	6/13/14	8/31/18, [Insert **Federal Register** citation].	This action addresses CAA element 110(a)(2)(D)(i)(I).
*	*	*	*	*

[FR Doc. 2018–18855 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0109; FRL–9982–81—Region 8]

Interstate Transport Prongs 1 and 2 for the 2010 Sulfur Dioxide (SO_2) Standard for Colorado, Montana, North Dakota, South Dakota and Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of State Implementation Plan (SIP) submissions from Colorado, Montana, North Dakota, South Dakota and Wyoming addressing the Clean Air Act (CAA or Act) interstate transport SIP requirements for the 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). These submissions address the requirement that each SIP contain adequate provisions prohibiting air emissions that will have certain adverse air quality effects in other states. The EPA is approving portions of these infrastructure SIPs for the aforementioned states as containing adequate provisions to ensure that air emissions in the states will not significantly contribute to nonattainment or interfere with maintenance of the 2010 SO_2 NAAQS in any other state.

DATES: This rule is effective on October 1, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA– EPA–R08–OAR–2018–0109. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the ''For Further Information Contact'' section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. EPA Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7104, or *clark.adam@epa.gov.*

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

I. Background

On June 4, 2018, the EPA proposed to approve submissions from Colorado, Montana, North Dakota, South Dakota and Wyoming as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS (83 FR 25617). An explanation of the CAA requirements, a detailed analysis of the states' submissions, and the EPA's rationale for approval of each submission were all provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on July 5, 2018. The EPA received one comment letter from the North Dakota Department of Health (NDDH), one comment letter from the Wyoming Department of Environmental Quality (WDEQ) and six anonymous comments on the proposal. The six anonymous comments lacked the required specificity to the Colorado, Montana, North Dakota, South Dakota or Wyoming SIP submissions and the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I). NDDH and WDEQ's comments are addressed below, while the anonymous comments are not addressed because they fall outside the scope of our proposed action.

II. Response to Comments

Comment: NDDH stated that the 2010 and 2016 SO_2 emissions levels for their state listed in the proposal rule's ''Table 1—SO_2 Emission Trends'' (83 FR 25618) appeared too high, and that the 2000–2016 SO_2 reduction in the table for North Dakota should be 79% rather than the 44% listed in this Table 1. In addition to this recommended

correction, NDDH agreed with the EPA's proposed approval of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS for the state of North Dakota, asserting that ''sources in North Dakota do not significantly contribute to SO_2 concentrations in nonattainment or maintenance areas in other states.'' NDDH stated that SO_2 emissions in North Dakota continue to decrease, specifically noting the shutdown of the coal-fired electric generating unit Stanton Station in 2017, the forthcoming conversion of the University of North Dakota heating plant from coal to natural gas (permit currently under review), and the continued replacement of coal-fired electrical generation by wind electrical generation as a portion of total electrical generation in the state between 2012 and 2017. NDDH also provided 2017 SO_2 monitoring design values, showing that these levels continue to be below the 2010 SO_2 NAAQS.

Response: The EPA agrees with the state that the 2010 and 2016 SO_2 emission levels for North Dakota listed in ''Table 1—SO_2 Emission Trends'' require correction. With regard to the 2016 SO_2 emissions, we derived these emissions data from the EPA's ''Air Pollutant Emissions Trends'' web page which was updated on March 28, 2018,[1] after the values for Table 1 had been calculated. For this reason, the 2016 SO_2 emissions levels and the 2000–2016 SO_2 emissions reduction for each state listed in Table 1 of the proposed rule are not consistent with those currently presented on the EPA's ''Air Pollutant Emissions Trends'' web page. Therefore, the EPA has recreated ''Table 1—SO_2 Emission Trends'' below.

REVISED TABLE 1—SO_2 EMISSION TRENDS IN TONS PER YEAR

State	2000	2005	2010	2016	SO_2 reduction, 2000–2016 (%)
Arizona	118,528	90,577	73,075	41,415	65
Colorado	115,122	80,468	60,459	25,547	78
Idaho	34,525	35,451	14,774	10,016	71
Iowa	265,005	222,419	142,738	56,139	79
Kansas	148,416	199,006	80,267	18,624	87
Minnesota	148,899	156,468	85,254	35,480	76
Montana	57,517	42,085	26,869	18,338	68
Nebraska	86,894	121,785	77,898	54,934	37
New Mexico	164,631	47,671	23,651	17,959	89
North Dakota	275,138	159,221	119,322	58,058	79
Oklahoma	145,862	169,464	136,348	81,890	44
South Dakota	41,120	28,579	16,202	3,081	92
Utah	58,040	52,998	29,776	15,512	73
Wyoming	141,439	122,453	91,022	51,769	63

The EPA also agrees with NDDH that the 2010 emissions value for North Dakota was incorrect in ''Table 1—SO_2 Emission Trends.'' That value has been corrected in this revised version of the table. The 2010 SO_2 emissions levels for all other states, as well as all 2000 and 2005 emissions levels, remain unchanged from those in ''Table 1—SO_2 Emission Trends'' in the proposed rulemaking. The corrected values for North Dakota illustrate an even greater decline in emissions of SO_2 than that discussed in the proposed rulemaking. The corrected values in this table are therefore consistent with the EPA's analysis in its proposed determination that emissions from North Dakota are not in violation of section 110(a)(2)(D)(i)(I).

The EPA notes that North Dakota's comment refers to ''nonattainment or maintenance *areas*'' (emphasis added) as part of its reiteration that sources within the state do not have certain downwind impacts on other states. The EPA has routinely interpreted the obligation to prohibit emissions that ''significantly contribute to nonattainment'' of the NAAQS in downwind states to be independent of formal designations because exceedances can happen in any area. Similarly, the EPA does not interpret the reference to ''maintenance'' under section 110(a)(2)(D)(i)(I) to be limited to maintenance areas, as this provision requires evaluation of the potential impact of upwind emissions on *all* areas that are currently measuring clean data, but may have issues maintaining that air quality. Nothing in the CAA limits states' obligations under section 110(a)(2)(D)(i)(I) to downwind areas that have been formally designated.

Regarding the additional information provided by NDDH to support the EPA's proposed conclusion that the state meets the requirements of 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS, the EPA agrees that this information is supportive of that conclusion.

Comment: WDEQ expressed support of the EPA's proposed approval of their SIP as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS. However, WDEQ disagreed with the EPA's statement in our proposal that ''Wyoming's analysis does not independently address whether the SIP contains adequate provisions prohibiting emissions that will interfere with maintenance of the 2010 SO_2 NAAQS in any other state.'' 83 FR 25631. WDEQ asserted that its weight of evidence demonstration for prong 1, ''significant contribution to nonattainment,'' also adequately addresses the requirements for prong 2, ''interference with maintenance.'' WDEQ also stated that there were no other 2010 SO_2 nonattainment or maintenance areas in neighboring states to address at the time of its submission apart from the Billings, Montana 2010 SO_2 maintenance area, which WDEQ addressed in that submission when the

[1] As noted at proposal, these values were derived using the EPA's web page *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data*. Specifically, a link on this web page titled ''State Average Annual Emissions Trend'' which connected to a spreadsheet. As shown on the ''Read Me'' page of this spreadsheet, the ''draft state trends'' were updated on March 28, 2018. This update has caused the 2016 SO_2 emissions levels in the prior iteration of the spreadsheet to change for all states.

area was still designated as nonattainment.[2]

Response: The EPA disagrees that WDEQ's analysis of potential impact on the Billings area represents an independent analysis of 110(a)(2)(D)(i)(I) prong 2. WDEQ's March 6, 2015 submission analyzed Wyoming's potential impact on the Billings area and the lack of additional nonattainment areas in surrounding states to determine whether the Wyoming SIP meets the requirements of prong 1 and prong 2. However, the court in North Carolina v. EPA, (531 F.3d 896, DC Cir. 2008) was specifically concerned with areas not designated nonattainment when it rejected the view that ''a state can never 'interfere with maintenance' unless the EPA determines that at one point it 'contribute[d] significantly to nonattainment.' '' 531 F.3d at 910. The court pointed out that areas barely attaining the standard due in part to emissions from upwind sources would have ''no recourse'' pursuant to such an interpretation. Id. In accordance with the court's decision and as noted in our proposal, ''the EPA interprets CAA section 110(a)(2)(D)(i)(I) prong 2 to require an evaluation of the potential impact of a state's emissions on areas that are currently measuring clean data, but that may have issues maintaining that air quality, rather than only former nonattainment, and thus current maintenance, areas.'' 83 FR 25621. For this reason, Wyoming's analysis of the Billings area alone would not independently address 110(a)(2)(D)(i)(I) prong 2, based on the EPA's longstanding interpretation of this provision. Because WDEQ did not conduct such an analysis as part of its weight of evidence, the EPA supplemented the state's analysis (see proposal at 83 FR 25631) and proposed to find that Wyoming does not interfere with maintenance of the 2010 SO_2 NAAQS in any other state.

With respect to the assertions WDEQ makes in its comments regarding maintenance areas, the EPA does not interpret the reference to ''maintenance'' under section 110(a)(2)(D)(i)(I) to be limited to maintenance areas. As previously described, this provision requires evaluation of the potential impact of upwind emissions on *all* areas that are currently measuring clean data, but may have issues maintaining that air quality. Nothing in the CAA limits states' obligations under section 110(a)(2)(D)(i)(I) to downwind areas that have been formally designated.

[2] As noted at proposal, the Billings 2010 SO_2 maintenance area was in nonattainment status at the time of Wyoming's March 6, 2015 submission, and was redesignated to attainment on May 10, 2016.

III. Final Action

The EPA is approving the following submission as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS: Colorado's July 17, 2013 and February 16, 2018 submissions; Montana's July 15, 2013 submission; North Dakota's March 7, 2013 submission; South Dakota's December 20, 2013 submission; and Wyoming's March 6, 2015 submission. This action is being taken under section 110 of the CAA.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

requirements, Sulfur dioxide, Volatile organic compounds.

Dated: August 27, 2018.

Debra Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart G—Colorado

■ 2. Section 52.352 is amended by adding paragraph (f) to read as follows:

§ 52.352 Interstate transport.

* * * * *

(f) Addition to the Colorado State Implementation Plan of the Colorado Interstate Transport SIP regarding 2010 Standards, submitted to EPA on July 17, 2013, and February 16, 2018, for both elements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS.

Subpart BB—Montana

■ 3. Section 52.1393 is amended by adding paragraph (e) to read as follows:

§ 52.1393 Interstate transport requirements.

* * * * *

(e) EPA is approving the Montana 2010 SO_2 NAAQS Infrastructure Certification, submitted to EPA on July 15, 2013, for both elements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS.

Subpart JJ—North Dakota

■ 4. Section 52.1833 is amended by adding paragraph (h) to read as follows:

§ 52.1833 Section 110(a)(2) infrastructure requirements.

* * * * *

(h) EPA is approving the North Dakota 2010 SO_2 NAAQS Infrastructure Certification, submitted to EPA on March 7, 2013, for both elements of CAA section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS.

Subpart QQ—South Dakota

■ 5. Section 52.2170, paragraph (e), is amended by adding table entry XXII. to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(e) * * *

Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
*	*	*	*	*
XXII. Section 110(a)(2)(D)(i)(I) Interstate Transport Requirements for the 2010 SO_2 NAAQS.	Submitted: 12/20/2013	10/1/2018	[*Insert **Federal Register** citation*], 8/31/2018.	

Subpart ZZ—Wyoming

■ 6. Section 52.2620, paragraph (e), is amended by adding table entry (31) to read as follows:

§ 52.2620 Identification of plan.

* * * * *

(e) * * *

Rule No.	Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
(31) XXXI	Interstate transport SIP for Section 110(a)(2)(D)(i)(I) prongs 1 and 2 for the 2010 SO_2 NAAQS..	3/6/2015	10/1/2018	[*Insert **Federal Register** citation*], 8/31/2018.	

[FR Doc. 2018–18892 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 83, No. 170
Friday, August 31, 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

Rural Housing Service

7 CFR Parts 3550 and 3555

RIN 0575–AD13

Single Family Housing Direct and Guaranteed Loan Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Through this action, the Rural Housing Service (RHS or Agency) is proposing to amend its regulations for the direct and guaranteed single family housing loan and grant programs.

DATES: Comments on the proposed rule must be received on or before October 30, 2018.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW, Washington, DC 20250–0742.

All written comments will be available for public inspection during regular work hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Shannon Chase, Finance and Loan Analyst, Single Family Housing Direct Loan Origination Branch, USDA Rural Development, STOP 0783, 1400 Independence Ave. SW, Washington, DC 20250–0783, Telephone: (515) 305–0399. Email: *shannon.chase@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The RHS is proposing to amend its regulations for the direct and guaranteed single family housing loan and grant programs in 7 CFR parts 3550 and 3555 by:

(1) Revising the definition of very low-, low-, and moderate-income to allow for a two-tier income limit structure (also known as income banding) within the single family housing direct loan and grant programs.

(2) Clarifying that net family assets are not considered when calculating repayment income, and that net family assets exclude amounts in voluntary retirement accounts, tax advantaged college, health, or medical savings or spending accounts, and other amounts deemed by the Agency not to constitute net family assets.

(3) Revising the methodology used to determine the area loan limits to use a percentage(s), as determined by the Agency, of the applicable local HUD section 203(b) limit.

(4) As a result of income banding, converting borrowers currently receiving payment assistance method 1 to payment assistance method 2 should they receive a subsequent loan.

(5) Revising the definition of low-income to allow for the two-tier income limit structure (income banding) within the single family housing guaranteed loan program.

Statutory Authority

Section 510(k) of Title V the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12866

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 must be exhausted.

Unfunded Mandates Reform Act

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

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' It is the determination of the Agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, neither an Environmental Assessment nor an Environmental Impact Statement is required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the undersigned has determined and certified by signature of this document that this rule, while affecting small entities, will not have an adverse economic impact on small entities. This rule does not impose any significant new requirements on program recipients nor does it adversely impact proposed real estate transactions involving program recipients as the buyers.

Executive Order 12372, Intergovernmental Review of Federal Programs

This program/activity is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. (See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175.

Programs Affected

The following programs, which are listed in the Catalog of Federal Domestic Assistance, are affected by this proposed rule: Number 10.410, Very Low to Moderate Income Housing Loans (specifically the section 502 direct and guaranteed loans), and Number 10.417, Very Low-Income Housing Repair Loans and Grants (specifically the section 504 direct loans and grants).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection activities associated with this rule are covered under OMB Number: 0575–0172. This proposed rule contains no new reporting or recordkeeping requirements that would require approval under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act, 44 U.S.C. 3601 et. seq., 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.

Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion , sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights. 1400 Independence Avenue SW, Washington, DC 20250–9410;

(2) *Fax:* (202)690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

I. Background

In order to improve the delivery of the single family housing loan programs and to promote consistency among the programs when appropriate, RHS proposes making the following revisions to 7 CFR parts 3550 and 3555.

(1) Revising the definition of very low-, low-, and moderate-income in § 3550.10 to allow for a two-tier income limit structure (income banding) for the single family housing direct loan and grant programs.

The revisions will help minimize the impact of varying minimum wages among states and territories and the observed disconnect between minimum wages and the low median income in many areas. Under current regulations, the income of a household with two people earning the minimum wage would exceed the low-income eligibility limit in 39 to 93 percent of the counties in 16 states and territories. In other words, under current regulations and income limits, the income from a two-person household earning minimum wage may be considered too high to qualify for a direct loan.

In accordance with Section 501(b)(4) of the Housing Act of 1949 (42 U.S.C. 1471(b)(4)), the terms ''low income families or persons'' and ''very low-income families or persons'' mean those families and persons whose income do not exceed the respective levels established for low-income families and very low-income families under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*). The income levels in the Housing Act of 1937 are generally established by the U.S. Department of Housing and Urban Development (HUD). RHS currently uses the HUD income levels without income banding. However, HUD programs authorized by the Housing Act of 1937 focus on renting as opposed to home purchases, which contributes to the disqualification of households with minimum wage earners as described above. The Agency has been operating a pilot in 23 states to test the alternate methodology of a two-tier income limit structure to address this issue.

For the pilot, the Agency used the authority in 42 U.S.C. 1437a(b)(2)(D), which provides for HUD and USDA to consult on income ceilings for rural areas, taking into account the types of programs that will use the income ceilings as well as subsidy characteristics. Based on this authority, the Agency used a two-tier income limit structure for the single family housing programs which bands together 1–4 person households using the 4-person income level set by HUD, and 5–8 person households using the 8-person income level established by HUD. The pilot has successfully served more borrowers, providing meaningful

homeownership opportunities to those who would otherwise be denied. The Agency is now proposing to use income banding to determine all limits for very low-income, low-income, moderate-income, 38 year term, and adjusted median income.

Such banding has successfully been used to establish the moderate income limits in the guaranteed single family housing loan program for years (the term ''moderate income'' is not defined in Section 501(b)(4) of the Housing Act of 1949 and therefore is not restricted in the same way as ''very low-'' and ''low-income'').

The Agency has consulted with HUD, and both agencies agree that the two-tier income limit approach is suitable for the USDA single family housing loan and grant programs. The impacted income definitions in § 3550.10 will be revised to simply state that the respective limit is ''an adjusted income limit developed in consultation with HUD''. The two-tier income limits will be published annually via a Procedure Notice and posted to the Agency website at *https://www.rd.usda.gov/files/RD-DirectLimitMap.pdf*.

The Agency also proposes to revise the definition of moderate income so that it does not exceed the moderate income limit established for the guaranteed single family housing loan program. The Agency will publish a specific limit in the program handbook.

The revisions to the income definitions will ultimately allow the Agency and HUD to account for the differences between renting (which is the focus of HUD and 42 U.S.C. 1437 *et seq.*) and owning a home. This proposed action will improve program availability to the intended recipients.

(2) Revising § 3550.54(d) to remove the requirement that net family assets be included in the calculation of repayment income.

Currently, net family assets are considered for determining annual income, down payment purposes, and repayment income. The Agency proposes to exclude net family assets from repayment income calculations because repayment income focuses on the income of those who sign the promissory note, whereas net family assets considers the finances of other family members. Net family assets will still be considered for annual income and down payment purposes.

The Agency also proposes to revise the regulation so that the list of net family assets considered for annual income and down payment purposes would exclude amounts in voluntary retirement accounts such as individual retirement accounts (IRAs), 401(k) plans, Keogh accounts, and the cash value of life insurance policies.

In addition, the Agency proposes to exclude the value of tax advantaged college savings plans, the value of tax advantaged health or medical savings or spending accounts, and other amounts deemed by the Agency, from net family assets considered in the determination of annual income and down payments.

Excluding these types of assets when considering annual income or down payment requirements will help safeguard the assets for their intended purposes and promote a healthy financial support system for the household when it does incur education and health care costs, or enters retirement.

The Agency also proposes removing from net family assets the value, in excess of the consideration received, for any business or household assets disposed of for less than the fair market value during the 2 years preceding the income determination. This proposed change recognizes that it is not productive or meaningful to consider assets which have been disposed of in the past.

Lastly, the Agency proposes two minor changes primarily for consistency between the direct and guaranteed single family housing loan regulations. The Agency proposes to include in net family assets any equity in capital investments for consistency with the guaranteed single family housing loan regulations, as well as obtaining a full understanding of an applicant's financial condition before making a decision on a loan. In the exclusions from net family assets, the Agency proposes to change the language from ''American Indian trust land'' to ''American Indian restricted land''. The terms ''trust land'' and ''restricted'' are often used interchangeably, and the proposed revision is for consistency between the direct and guaranteed program regulations, and will not result in any substantive changes.

(3) Revising the methodology used to determine the area loan limits in § 3550.63(a) to use a percentage(s), as determined by the Agency, of the applicable local HUD section 203(b) limit.

The revisions to the area loan limit methodology will streamline the determination of area loan limits and improve the reliability of the data set used to establish the area loan limits. The current process to annually establish the area loan limits uses a data set based on overly restrictive nationalized parameters and requires a significant amount of staff time on all levels (field, state, and national). Currently, § 3550.63(a) allows for two methods that a State Director may use to establish area loan limits. The first option is based on the cost to construct a modest home plus the market value of an improved lot based on recent sales data. The second option allows the State Director to use State Housing Authority (SHA) limits as long as the limit is within 10 percent of the cost data plus the market value of the improved lot. This second option is rarely used because the SHA limits are usually not within the 10 percent limit.

For the first option, the most widely used option, the Agency contracts with a third party that provides building cost data for real estate valuations to obtain construction costs, but those construction costs are based on parameters for homes that do not reflect the varied modest homes available to program borrowers. In addition, obtaining the market value is a time-consuming process relying on collecting and updating recent home sales data, which is particularly difficult given Agency staff appraiser shortages over the past few years.

The Agency has been operating a pilot to test the alternate methodology of basing the area loan limits on a percentage of the FHA Forward One-Family mortgage limits (the HUD 203(b) limit). Under the pilot, 80 percent of the HUD 203(b) limit was used to establish the area loan limits in selected pilot states. The 80 percent was established based on a side-by-side, county-by-county comparison of the Agency's existing area loan limits to various percentages of the HUD 203(b) limits. It was determined that 80 percent of the HUD 203(b) limits was adequate to cover the loan amounts in the majority of states (vs. lower percentages of 60–70 percent).

While the pilot states generally experienced increases in their area loan limits, the increases were not significant, in part because an applicant's qualification amount continues to be limited to repayment ability, property eligibility criteria (for example, properties financed through the program are currently subject to 2,000 square feet), and other factors. Average loan amounts in the pilot states increased 13.4 percent from Fiscal Year 2015 to 2017, while average loan amounts in the non-pilot states have increased 5.4 percent during the same period.

The Agency believes the higher percent increase in the pilot states is acceptable for several reasons. For example, the alternate methodology makes new construction under the program more feasible, and new

construction can improve a rural community's housing stock and economy. In addition, this proposed action will save the Agency more than $70,000 each year (which is the cost to obtain the construction cost data set from a nationally recognized residential cost provider). A significant amount of staff time will also be saved.

The Agency will determine the percentage(s) based on housing market conditions and trends, and publish the percentage(s) in the program handbook. The resulting area loan limits will be posted to the Agency website at *https://www.rd.usda.gov/files/RD-SFHAreaLoanLimitMap.pdf*. The proposed change allows the Agency to adjust the percentage(s) as necessary in order to be responsive to housing market conditions and trends.

(4) Revising § 3550.68(b)(2) to convert a borrower currently receiving payment assistance method 1 to payment assistance method 2 should that borrower receive a subsequent loan.

The proposed change is related to the income banding proposal, as payment assistance method 2 will more closely align the subsidy with what is actually needed for affordability. The proposed change avoids potentially over-subsidizing borrowers using payment assistance method 1 under the income banding system, and reduces the potential for negative impacts to the program's subsidy rate.

(5) Revising the definition of low-income in § 3555.10 for the single family housing guaranteed loan program to allow for the two-tier income limit structure (income banding) discussed above. The two-tier income limits will be published annually via a Procedure Notice and posted to the Agency website at *https://www.rd.usda.gov/files/RD-GRHLimitMap.pdf*.

The single family housing guaranteed loan program provides guarantees to lenders who make loans to low- and moderate-income borrowers in rural areas who are without sufficient resources or credit to obtain a loan without the guarantee. As mentioned, the guaranteed loan program already uses the two-tier income limit structure for moderate income limits. The proposed change would allow the two-tier income limit structure to be used for determining the very low- and low-income limits in the guaranteed loan program.

List of Subjects in 7 CFR Parts 3550 and 3555

Administrative practice and procedure, Environmental impact statements, Fair housing, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, 7 CFR parts 3550 and 3555 are proposed to be amended as follows:

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480(k).

Subpart A—General

■ 2. Section 3550.10 is amended by revising the definitions of ''low income'', ''moderate income'', and ''very low income'' to read as follows:

§ 3550.10 Definitions.

* * * * *

Low income. An adjusted income limit developed in consultation with HUD under 42 U.S.C. 1437a(b)(2)(D).

* * * * *

Moderate income. An adjusted income that does not exceed the moderate income limit for the guaranteed single family housing loan program authorized by Section 502(h) of the Housing Act of 1949, as amended.

* * * * *

Very low income. An adjusted income limit developed in consultation with HUD under 42 U.S.C. 1437a(b)(2)(D).

* * * * *

Subpart B—Section 502 Origination

■ 3. In § 3550.54:
■ a. Revise the first sentence of paragraph (d) introductory text;
■ b. Revise paragraphs (d)(1) introductory text and (d)(1)(i);
■ c. Revise paragraphs (d)(1)(iv) through (vi);
■ d. Remove paragraph (d)(1)(vii);
■ e. Revise paragraphs (d)(2)(i) and (v); and
■ f. Add paragraphs (d)(2)(vi) through (x).

The revisions and additions read as follows:

§ 3550.54 Calculation of income and assets.

* * * * *

(d) Net family assets. Income from net family assets must be included in the calculation of annual income. * * *

(1) Net family assets include, but are not limited to:

(i) Equity in real property or other capital investments, other than the dwelling or site;

* * * * *

(iv) Stocks, bonds, and other forms of capital investments that are accessible to the applicant without retiring or terminating employment;

(v) Lump sum receipts such as lottery winnings, capital gains, inheritances; and

(vi) Personal property held as an investment.

(2) * * *

(i) Interest in American Indian restricted land;

* * * * *

(v) Amounts in voluntary retirement plans such as individual retirement accounts (IRAs), 401(k) plans, and Keogh accounts (except at the time interest assistance is initially granted);

(vi) The value of an irrevocable trust fund or any other trust over which no member of the household has control;

(vii) Cash value of life insurance policies;

(viii) The value of tax advantaged college savings plans (529 plan, Coverdell Education Savings Account, etc.);

(ix) The value of tax advantaged health or medical savings or spending accounts; and

(x) Other amounts deemed by the Agency not to constitute net family assets.

■ 4. In § 3550.63, paragraph (a)(1) is revised to read as follows in its entirety:

§ 3550.63 Maximum loan amount.

* * * * *

(a) * * *

(1) The area loan limit is the maximum value of the property RHS will finance in a given locality. This limit is based on a percentage(s) of the applicable local HUD section 203(b) limit. The percentage(s) will be determined by the Agency and published in the program handbook. The area loan limits will be reviewed at least annually and posted to the Agency website.

(i) [Removed]
(ii) [Removed]
(iii) [Removed]
(iv) [Removed]
(v) [Removed]

* * * * *

■ 5. In § 3550.68, paragraph (b)(2) is revised to read as follows:

§ 3550.68 Payment subsidies.

* * * * *

(b) * * *

(2) If a borrower receiving payment assistance using payment assistance method 1 received a subsequent loan, payment assistance method 2 will be used to calculate the subsidy for the initial loan and subsequent loan.

* * * * *

PART 3555—GUARANTEED RURAL HOUSING PROGRAM

■ 6. The authority citation for part 3555 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480(k).

Subpart A—General

■ 2. Section 3555.10 is amended to revising the definition of ''low-income'' to read as follows:

§ 3555.10 Definitions and abbreviations.

* * * * *

Low-income. An adjusted income limit developed in consultation with HUD under 42 U.S.C. 1437a(b)(2)(D).

* * * * *

Dated: August 1, 2018.

Joel C. Baxley,

Administrator, Rural Housing Service.

[FR Doc. 2018–18683 Filed 8–30–18; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0763; Product Identifier 2018–NM–052–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 and 787–9 airplanes. This proposed AD was prompted by a determination that certain areas in the tire/wheel threat zones could be susceptible to damage, which could result in loss of braking on one main landing gear (MLG) truck, loss of nose wheel steering, and loss of directional control on the ground when below rudder effectiveness speed. This proposed AD would require installing hydraulic tubing, a pressure-operated check valve, and new flight control software. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 15, 2018.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0763.

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–2018–0763; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th Street, Des Moines, WA 98198; phone and fax: 206–231–3546; email: *Kelly.McGuckin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0763; Product Identifier 2018–NM–052–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

Boeing determined that certain areas in the tire/wheel threat zones could be susceptible to damage due to a thrown tire tread or tire burst. This could result in a loss of braking on one MLG truck, loss of nose wheel steering, and loss of directional control on the ground when below rudder effectiveness speed. The Model 787 hydraulic system is configured with a reserve steering system intended to maintain the nose wheel steering function in the event that a thrown tire tread or tire burst leads to a brake system failure such that differential braking cannot be used for directional control. Boeing has determined that damage from a MLG thrown tire tread or tire burst event could also result in the loss of the reserve steering system, resulting in loss of directional control on the ground and consequent runway excursion.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletins B787–81205–SB290032–00 and B787–81205–SB290033–00, both Issue 001, both dated November 17, 2017. This service information describes procedures for installing hydraulic tubing and installing a pressure-operated check valve. These documents are distinct since they apply to different airplane models.

We also reviewed Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018. This service information describes procedures for installing new flight control software.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of the service information described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0763.

Difference Between This Proposed AD and the Service Information

This proposed AD would require the software installation specified in Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018, prior to or concurrently with the tubing and valve installation on Model 787–9 airplanes. The effectivity in this service information applies to Model 787–8 and 787–9 airplanes; however, this proposed AD would only require those actions be accomplished on Model 787–9 airplanes.

Possible Additional Rulemaking for Software Installation

We are considering additional rulemaking for Model 787–8 and 787–9 airplanes to require the software installation specified in Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018, within a compliance time that may occur earlier than that for the tubing and valve installation specified in this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 87 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Number of affected airplanes	Cost on U.S. operators
Tubing and Pressure-operated Check Valve installation for Model 787–8 airplanes (Groups 1 and 3).	37 work-hours × $85 per hour = $3,145.	$55,940	$59,085	7	$413,595
Tubing and Pressure-operated Check Valve installation for Model 787–8 airplanes (Group 2).	36 work-hours × $85 per hour = $3,060.	55,940	59,000	0	0
Tubing and Pressure-operated Check Valve installation for Model 787–8 airplanes (Groups 4 through 6).	33 work-hours × $85 per hour = $2,805.	55,940	58,745	47	2,761,015
Tubing and Pressure-operated Check Valve installation for Model 787–9 airplanes (Groups 1 through 4).	36 work-hours × $85 per hour = $3,060.	55,940	59,000	33	1,947,000
Software installation for Model 787–9 airplanes ..	2 work-hours × $85 per hour = $170.	0	170	33	5,610

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2018–0763; Product Identifier 2018–NM–052–AD.

(a) Comments Due Date

We must receive comments by October 15, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 787–8 airplanes identified in Boeing Alert Service Bulletin B787–81205–SB290032–00, Issue 001, dated November 17, 2017.

(2) Model 787–9 airplanes identified in Boeing Alert Service Bulletin B787–81205–SB290033–00, Issue 001, dated November 17, 2017.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic Power.

(e) Unsafe Condition

This AD was prompted by a determination that certain areas in the tire/wheel threat zones could be susceptible to damage, which could result in loss of braking on one main landing gear (MLG) truck, loss of nose wheel steering, and loss of directional control on the ground when below rudder effectiveness speed. We are issuing this AD to address damage from a MLG thrown tire tread or tire burst event, which could result in loss of directional control on the ground and consequent runway excursion.

(f) Compliance

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

(g) Required Actions

(1) At the applicable time specified in paragraph 5, ''Compliance,'' of Boeing Alert Service Bulletin B787–81205–SB290032–00, Issue 001, dated November 17, 2017 (for Model 787–8 airplanes); or Boeing Alert Service Bulletin B787–81205–SB290033–00, Issue 001, dated November 17, 2017 (for Model 787–9 airplanes); as applicable; except as specified in paragraph (i) of this AD: Do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB290032–00, Issue 001, dated November 17, 2017; or Boeing Alert Service Bulletin B787–81205–SB290033–00, Issue 001, dated November 17, 2017, as applicable.

(2) For Model 787–9 airplanes: Prior to or concurrently with accomplishing the actions required by paragraph (g)(1) of this AD, do all applicable actions (including software installation) identified as RC, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 002, dated March 8, 2018.

(h) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin B787–81205–SB270039–00, Issue 001, dated July 31, 2017.

(i) Exception to Service Information

For purposes of determining compliance with the requirements of this AD: Where the service information identified in paragraph (g)(1) of this AD uses the phrase ''the Issue 001 date on this service bulletin,'' this AD requires using ''the effective date of this AD.''

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

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

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

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

(k) Related Information

(1) For more information about this AD, contact Kelly McGuckin, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3546; email: *Kelly.McGuckin@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on August 17, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18812 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0788; Product Identifier 2018–NM–004–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A330–200, –200F, and –300 series airplanes. This proposed AD was prompted by a revision of the airworthiness limitations section (ALS), which provides new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. This proposed AD would require revising the maintenance or inspection program to incorporate new maintenance requirements and airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 15, 2018.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330–A340@airbus.com;* internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0788; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0788; Product Identifier 2018–NM–004–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0228, dated November 21, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330 and A340 series airplanes. The MCAI states:

> The airworthiness limitations are currently defined and published in the Airbus A330 and A340 Airworthiness Limitations Section (ALS) documents. The airworthiness limitations applicable to the System Equipment Maintenance Requirements, which are approved by EASA, are specified in Airbus A330 and A340 ALS Part 4. Failure to comply with these instructions could result in an unsafe condition.
>
> EASA issued AD 2016–0011 [which corresponds to FAA AD 2017–05–10, Amendment 39–18821 (82 FR 13379, March 13, 2017) (''AD 2017–05–10'')] to require the actions as specified in Airbus A330 and A340 ALS Part 4 at Revision 05 and Revision 04, respectively.
>
> Since this [EASA] AD was issued, Airbus published Revision 06 and Revision 05, respectively, of Airbus A330 and A340 ALS Part 4, which introduce new and more restrictive maintenance requirements and/or airworthiness limitations.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016–0011, which is superseded, and requires accomplishment of the actions specified in Airbus A330 ALS Part 4 Revision 06, or A340 ALS Part 4 Revision 05, as applicable.

The unsafe condition is reduced control of the airplane due to the failure of system components.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0788.

Relationship Between Proposed AD and AD 2017–05–10

This NPRM would not propose to supersede AD 2017–05–10. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program to incorporate new maintenance requirements and airworthiness limitations. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2017–05–10.

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017. This service information describes preventative maintenance requirements and associated airworthiness limitations applicable to aircraft systems susceptible to aging effects. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the maintenance or inspection program to incorporate new maintenance requirements and airworthiness limitations.

Differences Between This Proposed AD and the MCAI or Service Information

EASA AD 2017–0228, dated November 21, 2017, specifies that if there are findings from the ALS inspection tasks, corrective actions must be accomplished in accordance with Airbus SAS maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

This proposed AD does not include Model A340 series airplanes in the Applicability. AD 2014–23–17, Amendment 39–18033 (79 FR 71304, December 2, 2014), currently addresses the identified unsafe condition for Model A340 series airplanes. We have also added EASA AD 2017–0228, dated November 21, 2017, to the required airworthiness action list (RAAL) for Model A340 series airplanes.

Airworthiness Limitations Based on Type Design

The FAA recently became aware of an issue related to the applicability of ADs that require incorporation of an ALS

revision into an operator's maintenance or inspection program.

Typically, when these types of ADs are issued by civil aviation authorities of other countries, they apply to all airplanes covered under an identified type certificate (TC). The corresponding FAA AD typically retains applicability to all of those airplanes.

In addition, U.S. operators must operate their airplanes in an airworthy condition, in accordance with 14 CFR 91.7(a). Included in this obligation is the requirement to perform any maintenance or inspections specified in the ALS, and in accordance with the ALS as specified in 14 CFR 43.16 and 91.403(c), unless an alternative has been approved by the FAA.

When a TC is issued for a type design, the specific ALS, including revisions, is a part of that type design, as specified in 14 CFR 21.31(c).

The sum effect of these operational and maintenance requirements is an obligation to comply with the ALS defined in the type design referenced in the manufacturer's conformity statement. This obligation may introduce a conflict with an AD that requires a specific ALS revision if new airplanes are delivered with a later revision as part of their type design.

To address this conflict, the FAA has approved alternative methods of compliance (AMOCs) that allow operators to incorporate the most recent ALS revision into their maintenance/inspection programs, in lieu of the ALS revision required by the AD. This eliminates the conflict and enables the operator to comply with both the AD and the type design.

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD.

This proposed AD therefore would apply to Airbus SAS airplanes identified in paragraph (c) of this proposed AD with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the date of the ALS revision identified in this proposed AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the TC data sheet.

Costs of Compliance

We estimate that this proposed AD affects 104 airplanes of U.S. registry.

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2018–0788; Product Identifier 2018–NM–004–AD.

(a) Comments Due Date

We must receive comments by October 15, 2018.

(b) Affected ADs

This AD affects AD 2017–05–10, Amendment 39–18821 (82 FR 13379, March 13, 2017) (''AD 2017–05–10'').

(c) Applicability

This AD applies to Airbus SAS Model A330–201, A330–202, A330–203, A330–223, A330–243, A330–223F, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, and A330–343 airplanes, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before September 18, 2017.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a revision of the airworthiness limitations section (ALS), which provides new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. We are issuing this AD to prevent reduced airplane control due to the failure of system components.

(f) Compliance

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

(g) Maintenance Program Revision

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, by incorporating Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017. The initial compliance times for the actions specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017, are within the applicable compliance times specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017, or within 90 days after the effective date of this AD, whichever occurs later, except as required by paragraph (h) of this AD.

(h) Exceptions to Initial Compliance Times

(1) Where Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017, defines a calendar compliance time for elevator servo-controls having part number (P/N) SC4800–2, SC4800–3, SC4800–4, SC4800–6, SC4800–7, or SC4800–8 as ''August 31, 2004,'' the calendar compliance time is June 13, 2007 (34 months after August 13, 2004 (the effective date of AD 2004–13–25, Amendment 39–13707 (69 FR 41394, July 9, 2004))).

(2) Where Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017, defines a calendar compliance time for spoiler servo-controls (SSCs) having P/N 1386A0000–01, 1386B0000–01, 1387A0000–01, or 1387B0000–01 as ''December 31, 2003,'' the calendar compliance time is November 19, 2005 (13 months after October 19, 2004 (the effective date of AD 2004–18–14, Amendment 39–13793 (69 FR 55326, September 14, 2004))).

(3) Where Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017, defines a calendar compliance time for elevator servo-controls having P/N SC4800–73, SC4800–93, SC4800–103, and SC4800–113 as ''June 30, 2008,'' the calendar compliance time is September 16, 2009 (17 months after April 16, 2008 (the effective date of AD 2008–06–07, Amendment 39–15419 (73 FR 13103, March 12, 2008; corrected April 15, 2008 (73 FR 20367)))).

(4) The initial compliance time for replacement of the retraction brackets of the main landing gear (MLG) having a part number specified in paragraphs (h)(4)(i) through (h)(4)(xvi) of this AD is before the accumulation of 19,800 total landings on the affected retraction brackets of the MLG, or within 900 flight hours after April 9, 2012 (the effective date of AD 2012–04–07, Amendment 39–16963 (77 FR 12989, March 5, 2012)), whichever occurs later.

(i) 201478303.
(ii) 201478304.
(iii) 201478305.
(iv) 201478306.
(v) 201478307.
(vi) 201478308.
(vii) 201428380.
(viii) 201428381.
(ix) 201428382.
(x) 201428383.
(xi) 201428384.
(xii) 201428385.
(xiii) 201428378.
(xiv) 201428379.
(xv) 201428351.
(xvi) 201428352.

(5) Where Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017, defines a calendar compliance time for the modification of SSCs on three hydraulic circuits having P/N MZ4339390–01X, MZ4306000–01X, MZ4339390–02X, MZ4306000–02X, MZ4339390–10X, or MZ4306000–10X as ''March 5, 2010,'' the calendar compliance time is April 14, 2011 (18 months after October 14, 2009 (the effective date of AD 2009–18–20, Amendment 39–16017 (74 FR 46313, September 9, 2009) (''AD 2009–18–20'')).

(6) Where Note (17) of Sub-Part 1, ''Life Limits,'' of Section 3, ''Systems Life-Limited Components,'' of Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017, defines a calendar date of ''September 5, 2008,'' as a date for the determination of accumulated flight cycles since the airplane's initial entry into service, the date is October 14, 2009 (the effective date of AD 2009–18–20).

(7) Where Note (17) of Sub-Part 1, ''Life Limits,'' of Section 3, ''Systems Life-Limited Components,'' of Airbus A330 Airworthiness Limitations Section (ALS) Part 4, System Equipment Maintenance Requirements (SEMR), Revision 06, dated September 18, 2017, defines a calendar compliance time as ''March 5, 2010,'' for the modification of affected servo controls, the calendar compliance time is April 14, 2011 (18 months after October 14, 2009 (the effective date of AD 2009–18–20)).

(i) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(j) Terminating Actions for the Requirements of AD 2017–05–10

Accomplishing the actions required by paragraph (g) of this AD terminates all requirements of AD 2017–05–10.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0228, dated November 21, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0788.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3229.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330–A340@airbus.com;* internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on August 22, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18814 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0764; Product Identifier 2018–NM–074–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus SAS Model A330–200 Freighter series airplanes, Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes. This proposed AD was prompted by defects found during production tests of ram air turbine (RAT) units; investigation revealed that the defects were due to certain RAT hydraulic pumps having an alternative manufacturing process of the pump pistons. This proposed AD would require replacing any defective RAT hydraulic pump with a serviceable part and re-identifying the RAT module part number. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 15, 2018.

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

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

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0764; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0764; Product Identifier 2018–NM–074–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0062, dated March 20, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200 Freighter series airplanes, Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes. The MCAI states:

> Four A330 RAT units were returned to the supplier due to low discharge pressure. These defects were detected during Airbus production tests. Subsequent investigations by the RAT manufacturer UTAS (formerly Hamilton Sundstrand) revealed that some RAT hydraulic pumps, [part number] P/N 5916430, were involved in an alternative manufacturing process of the pump pistons. This resulted in form deviations (rough surface finish and sharp edges), which caused excessive wear and damage to the bore where the pistons moved.
>
> This condition, if not corrected, could lead to low performance of the pump, possibly resulting in reduced control of the aeroplane, particularly if occurring following a total engine flame out, or during a total loss of normal electrical power generation.
>
> To address this potential unsafe condition, Airbus published [service bulletin] SB A330–29–3130 and SB A340–29–4098, providing instructions for identification and replacement of the affected parts.
>
> For the reasons described above, this [EASA] AD requires replacement of the affected parts. This [EASA] AD also requires re-identification of the RAT module.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0764.

Other Related Rulemaking

The FAA issued AD 2016–14–01, Amendment 39–18582 (81 FR 44983, July 12, 2016); corrected (81 FR 51097, August 3, 2016) (''AD 2016–14–01''). AD 2016–14–01 applies to certain Airbus SAS Model A330–200 Freighter series airplanes; Model A330–200 and A330–300 series airplanes; Model A340–200 and A340–300 series airplanes; Model A340–500 series airplanes; and Model A340–600 series airplanes. AD 2016–14–01 requires identification of the manufacturer, part number, and serial number of the RAT, and re-identification and modification of the RAT if necessary. AD 2016–14–01 was prompted by a report indicating that, during an operational test of a RAT, the RAT did not deploy in automatic mode. AD 2016–14–01 was issued to prevent non-deployment of the RAT, which, following a total engine flame-out, or during a total loss of normal electrical power generation, could result in reduced control of the airplane.

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Service Bulletins A330–29–3130 and A340–29–4098, both dated May 3, 2017. This service information describes procedures for replacing any affected RAT hydraulic pump with a serviceable

part and re-identifying the RAT module part number. These documents are distinct since they apply to different airplane models.

UTC Aerospace Systems has issued Service Bulletin ERPS06M–29–22, dated March 17, 2017, and Revision 1, dated June 27, 2017. This service information identifies affected part and serial numbers for the RAT hydraulic pump. These documents are distinct since UTC Aerospace Systems Service Bulletin ERPS06M–29–22, Revision 1, dated June 27, 2017, adds a Parker part number reference to each Hamilton Sundstrand hydraulic part number.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 103 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 14 work-hours × $85 per hour = Up to $1,190	$0	Up to $1,190	Up to $122,570.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2018–0764; Product Identifier 2018–NM–074–AD.

(a) Comments Due Date

We must receive comments by October 15, 2018.

(b) Affected ADs

This AD affects AD 2016–14–01, Amendment 39–18582 (81 FR 44983, July 12, 2016); corrected (81 FR 51097, August 3, 2016) (''AD 2016–14–01'').

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus SAS Model A330–223F and –243F airplanes.

(2) Airbus SAS Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Airbus SAS Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Airbus SAS Model A340–211, –212, –213 airplanes.

(5) Airbus SAS Model A340–311, –312, and –313 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic Power.

(e) Reason

This AD was prompted by defects found during production tests of ram air turbine (RAT) units; investigation revealed that the defects were due to certain RAT hydraulic pumps having an alternative manufacturing process of the pump pistons. We are issuing this AD to prevent low performance of the pump, which, following a total engine flame-out, or during a total loss of normal electrical power generation, could result in reduced control of the airplane.

(f) Compliance

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

(g) Definitions for This AD

(1) An affected part is a RAT hydraulic pump having part number (P/N) 5916430 and a serial number identified in UTC Aerospace Systems Service Bulletin ERPS06M–29–22, dated March 17, 2017, or Revision 1, dated June 27, 2017.

(2) A serviceable part is a RAT hydraulic pump identified as acceptable in Airbus Service Bulletin A330–29–3130 or A340–29–4098, both dated May 3, 2017, as applicable.

(3) Group 1 airplanes are airplanes on which an affected part is installed.

(4) Group 2 airplanes are airplanes on which no affected part is installed. A Model A330 airplane on which Airbus SAS Modification 206604 has been embodied in production is a Group 2 airplane, provided that the airplane remains in that configuration.

(h) Replacement and Re-identification for Group 1 Airplanes

(1) Within 18 months after the effective date of this AD; replace any affected RAT hydraulic pump with a serviceable part, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3130 or A340–29–4098, both dated May 3, 2017, as applicable.

(2) Concurrently with the replacement required by paragraph (h)(1) of this AD, re-identify the part number of the serviceable RAT module, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–29–3130 or A340–29–4098, both dated May 3, 2017, as applicable.

Note 1 to paragraph (h)(2) of this AD: Airbus Service Bulletins A330–29–3130 and A340–29–4098, both dated May 3, 2017, provide guidance for re-identification of the part numbers of the RAT hydraulic pumps that are not affected, and the part numbers of the RAT modules that are not equipped with an affected hydraulic pump.

(i) Compliance With AD 2016–14–01

After re-identification of a RAT module on an airplane, as required by paragraph (h)(2) of this AD, the airplane remains compliant with the RAT module re-identification requirements of AD 2016–14–01 for that airplane.

(j) Parts Installation Prohibition

(1) For Group 1 airplanes: After replacement of any affected RAT hydraulic pump as required by paragraph (h)(1) of this AD, do not install any affected RAT hydraulic pump.

(2) For Group 2 airplanes: As of the effective date of this AD, do not install any affected RAT hydraulic pump.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or The European Aviation Safety Agency (EASA); or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0062, dated March 20, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0764.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on August 16, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18811 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0762; Product Identifier 2018–NM–033–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2016–07–23, which applies to all Airbus SAS Model A318, A319, A320, and A321 series airplanes. AD 2016–07–23 requires, for certain airplanes, repetitive replacements of the fixed fairing upper and lower attachment studs of both the left-hand (LH) and right-hand (RH) main landing gear (MLG); and repetitive inspections for corrosion, wear, fatigue cracking, and loose studs of each forward stud assembly of the fixed fairing door upper and lower forward attachments of both the LH and RH MLG; and replacement if necessary. AD 2016–07–23 also provides an optional terminating modification for the repetitive replacements of the fixed fairing upper and lower attachment studs. Since we issued AD 2016–07–23, we have determined that for some airplane configurations, associated fixed fairing assembly part numbers susceptible to fatigue cracking were not listed in certain service information required by AD 2016–07–23. In addition, we have determined that additional work is necessary to re-identify the fixed fairing assembly part number on certain airplanes. This proposed AD would retain the requirements of AD 2016–07–23 and, for certain airplanes, require re-identification of the LH and RH fixed fairing assemblies' part numbers. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 15, 2018.

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

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

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St.,

Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0762; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0762; Product Identifier 2018–NM–033–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We issued AD 2016–07–23, Amendment 39–18468 (81 FR 26115, May 2, 2016) (''AD 2016–07–23''), for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. AD 2016–07–23 requires, for certain airplanes, repetitive replacements of the fixed fairing upper and lower attachment studs of both the LH and RH MLG; and repetitive inspections for corrosion, wear, fatigue cracking, and loose studs of each forward stud assembly of the fixed fairing door upper and lower forward attachment of both the LH and RH MLG; and replacement if necessary. AD 2016–07–23 also provides an optional terminating modification for the repetitive replacements of the fixed fairing upper and lower attachment studs. AD 2016–07–23 resulted from reports of in-flight loss of fixed and hinged MLG fairings, and reports of post-modification MLG fixed fairing assemblies that have wear and corrosion. We issued AD 2016–07–23 to address in-flight detachment of an MLG fixed fairing and consequent damage to the airplane.

Actions Since AD 2016–07–23 Was Issued

Since we issued AD 2016–07–23, we have determined that for some airplane configurations, associated fixed fairing assembly part numbers susceptible to fatigue cracking were not listed in certain service information required by AD 2016–07–23. In addition, we have determined that additional work is necessary to re-identify the fixed fairing assembly part number after completion of the optional terminating modification. This proposed AD would retain the requirements of AD 2016–07–23 and require re-identification of the part number of the LH and RH fixed fairing assemblies after completion of the optional terminating modification.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0023, dated January 26, 2018; corrected February 5, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A318 and A319 series airplanes; all Airbus SAS Model A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, and A320–233 airplanes; and all Airbus SAS Model A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231 and A321–232 airplanes. The MCAI states:

> Several occurrences were reported of in-flight loss of main landing gear (MLG) fixed and hinged fairings. The majority of reported events occurred following scheduled maintenance activities. One result of the investigation was that a discrepancy between the drawing and the maintenance manuals was discovered. The maintenance documents were corrected to prevent mis-rigging of the MLG fixed and hinged fairings, which could induce fatigue cracking.
>
> Prompted by these findings, Airbus issued Service Bulletin (SB) A320–52–1083, providing instructions for a one-time inspection of the MLG fixed fairing composite insert and the surrounding area, replacement of the adjustment studs at the lower forward position and adjustment to the new clearance tolerances. That SB was replaced by Airbus SB A320–52–1100 (modification (mod) 27716) introducing a re-designed location stud, rod end and location plate at the forward upper and lower leg fixed-fairing positions. Subsequently, reports were received of post-mod 27716/post-SB A320–52–1100 MLG fixed fairing assemblies with corrosion, which could also induce cracking.
>
> This condition, if not detected and corrected, could lead to further cases of in-flight detachment of a MLG fixed fairing, possibly resulting in injury to persons on the ground and/or damage to the aeroplane.
>
> To address this potential unsafe condition, EASA issued AD 2014–0096 to require repetitive detailed inspections (DET) of the MLG fixed fairings, and, depending on findings, accomplishment of applicable corrective actions. That [EASA] AD also prohibited installation of certain MLG fixed fairing rod end assemblies and studs as replacement parts on aeroplanes incorporating Airbus mod 27716 in production, or modified in accordance with Airbus SB A320–52–1100 (any revision) in service.
>
> Since EASA AD 2014–0096 was issued, Airbus developed an alternative inspection programme to meet the [EASA] AD requirements. In addition, a terminating action (mod 155648) was developed, which was made available for in-service aeroplanes through Airbus SB A320–52–1165.
>
> Consequently, EASA issued AD 2015–0001 (later revised), retaining the requirements of EASA AD 2014–0096, which was superseded, and adding an optional terminating action for the repetitive inspections. For post-mod aeroplanes, *i.e.* incorporating Airbus mod 155648 in production, or modified by Airbus SB A320–52–1165 in service, the only remaining requirement was to ensure that pre-mod components are no longer installed.
>
> Since EASA AD 2015–0001R1 [which corresponds to FAA AD 2016–07–23] was issued, Airbus revised SB A320–52–1165 to include additional work, to re-identify the fairing assembly part number (P/N). During the preparation of this additional work, it was noted that several configurations and associated P/N were not listed in the original SB, which may have an impact on aeroplanes on which SB A320–52–1165 original issue or Revision (rev.) 01 was already accomplished. It has also been noticed that the instructions for reidentification of two P/N were not correct in revision 02 of this SB.
>
> For the reasons described above, this [EASA] AD retains the requirement of EASA AD 2015–0001R1, which is superseded, but requires using the SB at rev. 03.
>
> This [EASA] AD also requires accomplishment of additional work [re-identification of the part number for the LH and RH fixed fairing assemblies] for those aeroplanes on which parts were replaced in accordance with the instructions of Airbus SB A320–52–1165 at original issue, rev. 01 or rev. 02 and correct (re)identification as applicable.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0762.

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued the following service information.

• Airbus Service Bulletin A320–52–1100, Revision 01, dated March 12, 1999. This service information describes procedures for modification of the airplane to post-Airbus Modification 27716 configuration (by replacing the location stud, rod end, and location plate at the forward upper and lower leg fixed-fairing positions of the MLG door assemblies). The modification includes a resonance frequency inspection for debonding of the composite insert and delamination of the honeycomb area around the insert, and applicable corrective actions. Corrective actions include repairing the insert. The actions in this service information are an optional terminating modification.

• Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015. This service information describes procedures for inspection of the fixed fairing door upper and lower forward attachments of the LH and RH MLG, and replacement of the fixed fairing upper and lower attachment studs of the LH and RH MLG.

• Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017. The service information describes procedures for replacing the fixed fairing attachment stud assemblies of the MLG door assembly with new assemblies, and re-identifying the part number of the LH and RH MLG fixed fairing assemblies. The actions in this service information are an optional terminating modification.

The service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would retain all of the requirements of AD 2016–07–23. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 901 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
18 work-hours × $85 per hour = $1,530	$4,110	$5,640	$5,081,640

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
Up to 18 work-hours × $85 per hour = $1,530	Up to $4,110	Up to $5,640

We estimate the following costs to do any necessary replacements or re-identifications that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements or re-identifications:

ON-CONDITION COSTS

Labor cost	Parts cost	Cost per product
Up to 20 work-hours × $85 per hour = $1,700	Up to $4,110	Up to $5,810

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–07–23, Amendment 39–18468 (81 FR 26115, May 2, 2016), and adding the following new AD:

Airbus SAS: Docket No. FAA–2018–0762; Product Identifier 2018–NM–033–AD.

(a) Comments Due Date

We must receive comments by October 15, 2018.

(b) Affected ADs

This AD replaces AD 2016–07–23, Amendment 39–18468 (81 FR 26115, May 2, 2016) (''AD 2016–07–23'').

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model A318–111, A318–112, A318–121, and A318–122 airplanes.

(2) Model A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, and A319–133 airplanes.

(3) Model A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, and A320–233 airplanes.

(4) Model A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231 and A321–232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports of in-flight loss of fixed and hinged main landing gear (MLG) fairings, and reports of post-modification MLG fixed fairing assemblies that have wear and corrosion. This AD was also prompted by a determination that for some airplane configurations, associated fixed fairing assembly part numbers susceptible to fatigue cracking were not listed in certain service information required by AD 2016–07–23. In addition, we have determined that additional work is necessary to re-identify the fixed fairing assembly part number on certain airplanes. We are issuing this AD to prevent in-flight detachment of an MLG fixed fairing and consequent damage to the airplane.

(f) Compliance

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

(g) Retained Repetitive Replacements, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2016–07–23, with no changes. For airplanes in pre-Airbus Modification 27716 and pre-Airbus Service Bulletin A320–52–1100 configuration, with any of the components installed that are identified in paragraphs (g)(1) through (g)(5) of this AD: At the applicable compliance time specified in paragraph (h) of this AD, replace fixed fairing upper and lower attachment studs of both left-hand (LH) and right-hand (RH) MLG, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015. Repeat the replacements thereafter at intervals not to exceed 6,500 flight cycles.

(1) Plate—support having part number (P/N) D5284024820000.

(2) Plate—support having P/N D5284024820200.

(3) Stud—adjustment having P/N D5284024420000.

(4) Rod end assembly (lower) having P/N D5284000500000.

(5) Rod end assembly (upper) having P/N D5284000600000.

(h) Retained Compliance Times for the Requirements of Paragraph (g) of This AD, With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2016–07–23, with no changes. For airplanes identified in paragraph (g) of this AD, except as provided by paragraph (o) of this AD: Do the initial replacement required by paragraph (g) of this AD at the latest of the times specified in paragraphs (h)(1) through (h)(4) of this AD.

(1) Before the accumulation of 6,500 total flight cycles since the airplane's first flight.

(2) Within 6,500 flight cycles since the last installation of a pre-Airbus Modification 27716 stud on the airplane.

(3) Within 1,500 flight cycles after June 6, 2016 (the effective date of AD 2016–07–23).

(4) Within 8 months after June 6, 2016 (the effective date of AD 2016–07–23).

(i) Retained Repetitive Inspections, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2016–07–23, with no changes. For airplanes in post-Airbus Modification 27716 or post-Airbus Service Bulletin A320–52–1100 configuration, with any of the components installed that are identified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD: At the applicable compliance time specified in paragraph (j) of this AD, do a detailed inspection of the LH and RH MLG forward stud assemblies of the fixed fairing door upper and lower forward attachments of both LH and RH MLG for indications of corrosion, wear, fatigue cracking, and loose studs, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015. Repeat the detailed inspection thereafter at intervals not to exceed 12 months. Replacement of both LH and RH MLG forward stud assemblies on an airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015, extends the interval for the next detailed inspection to 72 months; and the inspection must be repeated thereafter at intervals not to exceed 12 months.

(1) Stud—adjustment having P/N D5285600720000.

(2) Rod end assembly (lower) having P/N D5285600400000.

(3) Rod end assembly (upper) having P/N D5285600500000.

(j) Retained Compliance Times for the Requirements of Paragraph (i) of This AD, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2016–07–23, with no changes. For airplanes identified in paragraph (i) of this AD, except as provided by paragraph (o) of this AD: Do the initial inspection required by paragraph (i) of this AD at the latest of the times specified in paragraphs (j)(1) through (j)(4) of this AD.

(1) Before the accumulation of 72 months since the airplane's first flight.

(2) Within 72 months since the last installation of a post-Airbus Modification 27716 assembly or since accomplishment of the actions specified in Airbus Service Bulletin A320–52–1100.

(3) Within 1,500 flight cycles after June 6, 2016 (the effective date of AD 2016–07–23).

(4) Within 8 months after June 6, 2016 (the effective date of AD 2016–07–23).

(k) Retained Corrective Action, With Revised Service Information

This paragraph restates the requirements of paragraph (k) of AD 2016–07–23, with revised service information. If any discrepancy (including any indication of corrosion, wear, fatigue cracking, or loose studs) of any MLG forward stud assembly is found during any inspection required by paragraph (i) of this AD, except as specified in paragraph (l) of this AD: Before further flight, replace the discrepant upper and lower fixed fairing forward stud assemblies of the LH and RH MLG, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015; or Airbus Service Bulletin A320–52–1165, Revision 01, dated October 23, 2015, excluding Appendix 01, dated November 3, 2014, and including Appendix 02, dated October 23, 2015; or Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017. As of the effective date of this AD only Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015; or Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017, may be used.

(l) Retained Corrective Action or Repetitive Inspections for Certain Corrosion Findings, With Revised Service Information

This paragraph restates the requirements of paragraph (l) of AD 2016–07–23, with revised service information. If any corrosion is found during any inspection required by paragraph (i) of this AD on any MLG fixed fairing forward stud assembly (upper, lower, LH or RH), but the corroded stud is not loose: Do the action specified in paragraph (l)(1) or (l)(2) of this AD.

(1) Before further flight, replace the affected assembly, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015; or Airbus Service Bulletin A320–52–1165, Revision 01, dated October 23, 2015, excluding Appendix 01, dated November 3, 2014, and including Appendix 02, dated October 23, 2015; or Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017. As of the effective date of this AD only Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015; or Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017, may be used.

(2) Within 4 months after finding corrosion, and thereafter at intervals not to exceed 4 months, do a detailed inspection for indications of corrosion, wear, fatigue cracking, and loose studs of the forward stud assembly of the affected (LH or RH) MLG, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015.

(m) Retained Corrective Action for Inspections Specified in Paragraph (l)(2) of This AD, With Revised Service Information

This paragraph restates the requirements of paragraph (m) of AD 2016–07–23, with revised service information. If any indication of wear, fatigue cracking, or loose studs of any forward stud assembly is found during any inspection required by paragraph (l)(2) of this AD: Before further flight, replace the affected (LH or RH) MLG fixed fairing forward stud assembly, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015; or Airbus Service Bulletin A320–52–1165, Revision 01, dated October 23, 2015, excluding Appendix 01, dated November 3, 2014, and including Appendix 02, dated October 23, 2015; or Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017. As of the effective date of this AD only Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015; or Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017, may be used.

(n) Retained Terminating Action, With Revised Service Information

This paragraph restates the requirements of paragraph (n) of AD 2016–07–23, with revised service information.

(1) Replacement of parts on an airplane, as required by paragraph (g), (k), (l)(1), or (m) of this AD, does not constitute terminating action for the repetitive inspections required by paragraph (i) of this AD, except as specified in paragraph (n)(3) of this AD.

(2) The repetitive replacements required by paragraph (g) of this AD may be terminated by modification of the airplane to post-Airbus Modification 27716 configuration, including a resonance frequency inspection for debonding of the composite insert and delamination of the honeycomb area around the insert, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1100, Revision 01, dated March 12, 1999, provided all applicable corrective actions are done before further flight. Thereafter, refer to paragraph (i) of this AD to determine the compliance time for the next detailed inspection required by this AD.

(3) Modification of an airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1165, Revision 01, dated October 23, 2015, excluding Appendix 01, dated November 3, 2014, and including Appendix 02, dated October 23, 2015; or Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017, constitutes terminating action for actions required by paragraphs (g) through (m) of this AD for the airplane on which the modification is done. As of the effective date of this AD only Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017, may be used.

(o) Retained Exceptions to Certain AD Actions, With No Changes

This paragraph restates the requirements of paragraph (o) of AD 2016–07–23, with no changes. An airplane on which Airbus Modification 155648 has been embodied in production is not affected by the requirements of paragraphs (g) and (i) of this AD, provided that no affected component, identified by part number as specified in paragraphs (g)(1) through (g)(5) and (i)(1) through (i)(3) of this AD, has been installed on that airplane since first flight of the airplane.

(p) Retained Parts Installation Prohibition, With No Changes

This paragraph restates the requirements of paragraph (p) of AD 2016–07–23, with no changes.

(1) For airplanes in pre-Airbus Modification 27716 or pre-Airbus Service Bulletin A320–52–1100 configuration: No person may install a component identified in paragraphs (g)(1) through (g)(5) of this AD on any airplane after doing the actions provided in paragraph (n)(2) of this AD.

(2) For airplanes in post-Airbus Modification 27716 or post Airbus Service Bulletin A320–52–1100 configuration: As of the effective date of this AD, no person may install a component identified in paragraphs (g)(1) through (g)(5) of this AD on any airplane.

(3) For airplanes in pre-Airbus Modification 155648 or pre-Airbus Service Bulletin A320–52–1165 configuration: No person may install a component identified in paragraphs (g)(1) through (g)(5) and (i)(1) through (i)(3) of this AD on any airplane after doing the actions provided in paragraph (n)(3) of this AD.

(4) For airplanes in post-Airbus Modification 155648 or post-Airbus Service Bulletin A320–52–1165 configuration: As of the effective date of this AD, no person may install a component identified in (g)(1) through (g)(5) and (i)(1) through (i)(3) of this AD on any airplane.

(q) Retained No Reporting Requirement, With No Changes

This paragraph restates the requirements of paragraph (q) of AD 2016–07–23, with no changes. Although Airbus Service Bulletin A320–52–1163, Revision 01, including Appendix 01, dated June 22, 2015, specifies to submit certain information to the manufacturer, and specifies that action as ''RC'' (Required for Compliance), this AD does not include that requirement.

(r) New Requirement of This AD: Additional Work

For any airplane on which, before the effective date of this AD, any part was installed or replaced, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1165, dated November 3, 2014; Revision 01, dated October 13, 2015; or Revision 02, dated February 12, 2016: Within 12 months after the effective date of this AD, accomplish the instructions identified as ''additional work'' in the Accomplishment Instructions of Airbus Service Bulletin A320–52–1165,

Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017, as applicable to the airplane configuration.

(s) New Terminating Action

Modification of an airplane in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017, or as specified in paragraph (r) of this AD constitutes terminating action for the requirements of paragraphs (g), (i), (k), (l), and (m) of this AD for that airplane.

(t) New Parts Installation Prohibition

(1) Do not install on any airplane a component specified in paragraphs (g)(1) through (g)(5) of this AD, as required by paragraph (t)(1)(i) or (t)(1)(ii) of this AD, as applicable.

(i) For airplanes in pre-Airbus Modification 27716 or pre-Airbus Service Bulletin A320–52–1100 configuration: After completing the optional modification specified in paragraph (n)(2) of this AD.

(ii) For airplanes in post-Airbus Modification 27716 or post Airbus Service Bulletin A320–52–1100 configuration: As of the effective date of this AD.

(2) Do not install on any airplane a component specified in paragraphs (g)(1) through (g)(5) of this AD or paragraphs (i)(1) through (i)(3) of this AD, as required by paragraph (t)(2)(i) or (t)(2)(ii) of this AD, as applicable.

(i) For airplanes in pre-Airbus Modification 155648 or pre-Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017, configuration: After completion of the additional work required by paragraph (r) of this AD.

(ii) For airplanes in post-Airbus Modification 155648 or post-Airbus Service Bulletin A320–52–1165, Revision 03, excluding Appendix 01 and including Appendix 02, dated November 9, 2017, configuration: As of the effective date of this AD.

(u) Credit for Previous Actions

(1) This paragraph provides credit for optional actions provided by paragraph (n)(2) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–52–1100, dated December 7, 1998.

(2) This paragraph provides credit for the actions required by paragraphs (g), (i), (k), (l), and (m) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–52–1163, dated February 4, 2014.

(3) This paragraph provides credit for the actions required by paragraphs (k), (l)(1), (m), and (n)(3) of this AD if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–52–1165, Revision 01, dated October 23, 2015, excluding Appendix 01, dated November 3, 2014, and including Appendix 02, dated October 23, 2015.

(v) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (w)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

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

(ii) AMOCs approved previously for AD 2016–07–23 are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, 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, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as specified by paragraph (q) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(w) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0023, dated January 26, 2018; corrected February 5, 2018; for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0762.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on August 17, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–18813 Filed 8–30–18; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–041]

Standards for Business Practices of Interstate Natural Gas Pipelines

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to incorporate by reference, with certain enumerated exceptions, the latest version (Version 3.1) of business practice standards adopted by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) applicable to natural gas pipelines in place of the currently incorporated version (Version 3.0) of those business practice standards.

DATES: Comments are due October 1, 2018.

ADDRESSES: Comments, identified by the docket number of this proceeding, may be filed electronically at *http://www.ferc.gov* in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail or hand-delivery to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Stanley Wolf (technical issues), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–6841, *E-mail: stanley.wolf@ferc.gov.*

Oscar F. Santillana (technical issues), Office of Energy Market Regulation, Federal Energy Regulatory

Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–6392, *E-mail: oscar.santillana@ferc.gov.*

Gary D. Cohen (legal issues), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Telephone: (202) 502–8321, *E-mail: gary.cohen@ferc.gov.*

SUPPLEMENTARY INFORMATION:

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164 FERC ¶ 61,125

United States of America

Federal Energy Regulatory Commission

Standards for Business Practices of Interstate Natural Gas Pipelines

Docket No. RM96–1–041

Notice of Proposed Rulemaking

(August 21, 2018)

1. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations at 18 CFR 284.12 to incorporate by reference, with certain enumerated exceptions,[1] the latest version (Version 3.1) of business practice standards adopted by the NAESB Wholesale Gas Quadrant (WGQ) applicable to natural gas pipelines that NAESB reported to the Commission on September 29, 2017 in place of the currently incorporated version (Version 3.0) of those business practice standards. The implementation of these standards and regulations will promote the additional efficiency and reliability of the natural gas industries' operations thereby helping the Commission to carry out its responsibilities under the Natural Gas Act. In addition, the proposed revisions are necessary to establish more efficient coordination between the natural gas and electric industries. Requiring such information ensures both a common means of communication and common business practices to limit miscommunication for participants engaged in the sale of electric energy at wholesale and the transportation of natural gas.

I. Background

2. Since 1996, the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate natural gas pipelines to create a more integrated and efficient pipeline grid. These regulations have been promulgated in the Order No. 587 series of orders,[2] wherein the Commission has incorporated by reference standards for interstate natural gas pipeline business practices and electronic communications that were developed and adopted by NAESB's WGQ. Upon incorporation by reference, this version of the standards will replace the currently incorporated version (Version 3.0) of those business practice standards, will become part of the Commission's regulations, and compliance by interstate natural gas pipelines will become mandatory.

3. On September 29, 2017, NAESB filed a report informing the Commission that it had adopted and ratified WGQ Version 3.1 of its business practice standards applicable to natural gas pipelines. The NAESB report identifies all the changes made to the Version 3.0 Standards and summarizes the deliberations that led to the changes being made. It also identifies changes to the existing standards that were considered but not adopted due to a lack of consensus or other reasons.

II. Discussion

4. In this NOPR, the Commission proposes to incorporate by reference, in its regulations, Version 3.1 of the NAESB WGQ consensus business practice standards, with certain exceptions.[3] We propose that any compliance filings made in accordance with a final rule on this subject be made 90 days after issuance of any final rule in this proceeding or on the first business day thereafter if falling on a weekend or holiday. This will allow time for the Commission to process the compliance filings before the effective date of the new standards.[4]

5. As the Commission found in Order No. 587, adoption of consensus standards is appropriate, because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Moreover, because the industry conducts business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as a means to carry out policy objectives or activities.

6. We discuss below some specific aspects of NAESB's filing.

A. Modifications to Previous Version of Standards

7. NAESB adopted two substantive revisions concerning the Nominations Related Standards, which govern shipper requests to schedule service on

[1] As explained below, in section II.B.1, the Commission is not proposing in this proposed rule to incorporate by reference the optional model contracts and the eTariff-related standards included in the North American Energy Standards Board (NAESB) Wholesale Gas Quadrant (WGQ) Version 3.1 package of business practice standards.

[2] This series of orders began with the Commission's issuance of *Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587, FERC Stats. & Regs. ¶ 31,038 (1996).

[3] In the discussion below we identify the NAESB WGQ Version 3.1 Standards that we propose *not* to incorporate by reference.

[4] *See supra* P 21, where we propose that compliance with the new standards will be required beginning on the first business day of the month after the fourth full month following issuance of a final rule in this proceeding.

natural gas pipelines. One revision revises Standard 1.3.82 to establish a standard rounding process (requiring calculations to at least the seventh decimal place) for elapsed-prorated-scheduled quantity [5] calculations to provide for needed numerical uniformity and granularity for users of these NAESB procedures. The other Nomination Related Standards revision was to revise the ''Service Requester'' element of Standard 1.3.27,[6] which specifies some of the information that should be included in a nomination request, from a Mandatory designation to a Business Conditional [7] designation. Thus, instead of forcing a specific upstream or downstream (unthreaded) nomination [8] to be tied to a specific contract (using a specific threaded nomination), upstream nominations may now be distributed among several contracts (using a Pathed Non-Threaded nomination structure), which generally increases flexibility to customers.

8. NAESB also adopted three revisions to the WGQ Electronic Delivery Mechanism Standards, which establish the framework for the electronic dissemination and communication of information between parties in the North American Wholesale Gas marketplace. First, NAESB revised Standard 4.3.80 to increase the allowable field length in ASCII Comma Separated Value Files to 3000 characters because that increases the amount of information that can be conveyed, but reasonably limits it in conformity with commonly used software such as Excel. Second, NAESB adopted new Standard 4.3.106 to allow checkboxes and radio buttons in the Transmission Service Providers' Electronic Bulletin Boards (EBBs) to indicate ''Yes'' and/or ''No'' responses to data elements, which is more convenient than the current drop down list. Third, NAESB modified its standards to update the operating systems and web browsers that entities should support to allow users to take advantage of recent developments in computer technology and use. Additionally, language was added to clarify the Secure Sockets Layer/Transport Layer Security protocols, which encrypt data to hide information from electronic observers on the internet. The new standard provides guidance on the timing for adoption of a new version of Secure Sockets Layer/Transport Layer Security protocols—new versions of these protocols should be used within 9 months of the version becoming generally available. In addition, the new standard clarifies that Secure Sockets Layer is a colloquial term that encompasses both Secure Sockets Layer and Transport Layer Security.

9. Other changes adopted by NAESB included changes to the NAESB WGQ data sets and other technical implementation documentation, which provide the technological support necessary to use the NAESB standards effectively. One such change was to add a new Business Conditional data element ''Agent'' and corresponding technical implementation to the Nomination data set Standard 1.4.1 and the Scheduled Quantity data set Standard 1.4.5. Currently, in the data sets, the Service Requester is defined as the Shipper or their Agent; however, language included in the implementation guides states that both the Shipper and Agent will be identified. Thus, this change adds a data element ''Agent'' to the data sets to allow the Service Requestor to identify both the shipper and its agent if it uses an agent to nominate and schedule on the pipeline.

10. NAESB also adopted revisions to the Flowing Gas Related data sets and technical implementation, which address quantitative issues relating generally to allocation, imbalances and measurement of flowing gas. Specifically, NAESB added three Business Conditional data elements to the Authorization to Post Imbalances data set (Standard 2.4.9). The addition of the three data elements will allow a Service Requester to authorize specific contracts and quantities of imbalances for specified periods of time to be posted.

11. In addition, NAESB revised the Imbalance Trade data set (Standard 2.4.11) to reinstate language providing the confirming party the ability to reject a trade in the Imbalance Trade data set when an auto-confirm agreement with a confirming party is in place. NAESB states that in its WGQ Version 2.1 publication, before the Imbalance Trading data sets were consolidated, the Imbalance Trade Confirmation contained a Yes/No indicator that the confirming party could use to indicate its acceptance or rejection of the trade. This indicator informed a pipeline whether the confirming party agreed to the terms of the trade that the initiating trader had posted. When the data sets were consolidated, this data element was dropped because it was assumed that if a confirming party did not agree with the posted terms it would not confirm the trade, which was effective only if the pipeline did not have an auto-confirm agreement with that confirming party. Accordingly, to address situations where there are auto-confirm agreements, NAESB has now revised Standard 2.4.11 to add a new Business Conditional data element ''Imbalance Trade Response'' with an ''Accept/Reject'' code value. This Accept/Reject indicator informs the pipeline whether the confirming party agrees to the terms of the trade that the initiating trader had posted.

12. NAESB also revised Standard 2.4.6 to add two Senders Option data elements,[9] ''Comments'' and ''Volume-Uncorrected'' to the Measured Volume

[5] Standard 1.2.12 of the Nominations Related Standards defines the elapsed-prorated-scheduled quantity to mean:

That portion of the scheduled quantity that would have theoretically flowed up to the effective time of the intraday nomination being confirmed, based upon a cumulative uniform hourly quantity for each nomination period affected.

[6] NAESB also made conforming revisions to the related data sets and documents: Standard 1.4.1 of the Nomination data set, Standard 1.4.5 of the Scheduled Quantity data set, Standard 2.4.4 of the Shipper Imbalance data set, Standard 1.4.2 of the Nomination Quick Response data set, Standard 2.4.1 of the Pre-Determined Allocation document and Standard 2.4.3 of the Allocation document.

[7] Standard 1.2.2 of the Nominations Related Standards provides that a Business Conditional data element is one that is based on current variations in business practice.

[8] NAESB's Nomination Data Dictionary, WGQ Version 3.1, Standard 1.4.1, retains from the Version 3.0 standard the field for ''Model Type Data'' that identifies which of three types of nomination structures is being used. These are: Pathed, Non-Pathed and Pathed Non-Threaded. Having these three types of model type data allows specificity as to the details of the nomination. A pathed nomination uses one nomination line item to transact business and, therefore, has one transaction type. A non-pathed nomination uses two nomination line items to transact business and, therefore, has two transaction types. A pathed non-threaded nomination uses three nomination line items to transact business and has three transaction types.

NAESB also provides the following further clarification of these concepts in the description of the technical implementation of business processes included as part of Standard 1.4.1, where NAESB explains that:

[a] ''Pathed'' nomination is actually a ''Pathed Threaded'' nomination because (1) the physical path of the pipeline locations and service contract(s) is fully described in the nomination, and (2) the logical thread of a specific supplier entity to a specific market entity at specific pipeline locations for a specific quantity is also fully described. ''Non-Pathed'' nominations are actually ''Non-Pathed Non-Threaded'' nominations because (1) physical ''location location-to to-location'' paths are not described in the nominations, and (2) no ties of specific supply entities to specific market entities are established. And for ''Pathed Non-Threaded'' nominations, (1) the physical path of the pipeline locations, service contract(s), and quantity is fully described, and (2) no ties of specific supply entities to specific market entities are established. *See* NAESB WGQ Version 3.1 Business Practice Standards, Nominations Related Standards, Standard 1.4.1, at 87 (Sep. 29, 2017).

[9] Nominations Standard 1.2.2 provides that Sender's Option means that this element is an option for the sender to send and, if sent, the receiver should store and use the contents of the data element.

Audit Statement [10] in order to communicate raw data on volumes in addition to the final volumes which are communicated through the existing data element ''Volume Corrected.'' Thus, users will now be able to indicate what initial data they received in addition to how that data was ultimately corrected, and to provide comments concerning that data, which relate to what meter was used to measure the data.

13. NAESB also adopted revisions to the Capacity Release Related data sets and technical implementation. Specifically, NAESB revised Standard 5.4.24 to add a new Business Conditional data element, ''Waive Bidder Credit Indicator'' and corresponding code values to the Offer data set. The additional data element indicates to a Bidder whether the Releasing Shipper will waive, pursuant to the Transmission Service Provider's tariff, the Bidder's creditworthiness pre-qualification.

14. Further, NAESB revised Standard 6.3.1 (*i.e.,* the NAESB Base Contract for Sale and Purchase of Natural Gas) to add language to the disclaimer to provide a copyright notification and direct the reader to the NAESB Copyright Policy and Companies with Access to NAESB Standards under the Copyright Policy posted on the NAESB website. Identical language was added to three additional NAESB WGQ Contracts.

15. Lastly, NAESB adopted modifications to the cover page of Standard 6.3.1 to add a self-identification provision that assists end users in determining whether counterparties are commercial market participants as defined by the United States Commodity Futures Trading Commission.

B. Standards Proposed Not To Be Incorporated by Reference

16. The Commission proposes to continue its past practice [11] of not incorporating by reference into its regulations any optional model contracts, because the Commission does not require the use of these contracts.[12] In addition, consistent with our findings in past proceedings, the Commission is not proposing to incorporate by reference the Wholesale Electric Quadrant/WGQ eTariff Related Standards, because the Commission has already adopted standards and protocols for electronic tariff filings based on the NAESB Standards.[13]

C. Proposed Implementation Procedures

17. The Commission is proposing to continue the compliance filing requirements as revised in Order No. 587–V.[14] This would require compliance with the NAESB WGQ Version 3.1 standards on the first business day of the month after the fourth full month following issuance of a final rule in this proceeding. As the Commission found in Order No. 587–V, adoption of the revised compliance filing requirements increases the transparency of the pipelines' incorporation by reference of the NAESB WGQ Standards so that shippers and the Commission will know which tariff provision(s) implements each standard as well as the status of each standard.[15] Likewise, consistent with past practice, the Commission will post on its eLibrary website (under Docket No. RM96–1–041) a sample tariff format, to provide filers an illustrative example to aid them in preparing their compliance filings.

18. Consistent with our practice in Order No. 587–V, each pipeline should designate a single tariff section under which every NAESB WGQ Standard incorporated by reference by the Commission is listed.[16] The pipeline tariff filings should list all the incorporated standards with which the pipeline will comply. In addition, for any standard that the pipeline seeks approval not to comply with, the tariff filing must identify the standard in question and either identify the provision in its tariff that complies with the standard; [17] or provide an explanation of any waiver, extension of time, or other variance with respect to compliance with the standard that would excuse compliance.[18]

19. Consistent with our findings in Order No. 587–V,[19] we propose that requests for waivers that do not meet the requirements set forth in Order No. 587–V will not be granted. In particular, as we explained in Order No. 587–V, waivers are unnecessary and will not be granted when the standard applies only on condition the pipeline performs a business function and the pipeline currently does not perform that function.[20]

20. If the pipeline is requesting a continuation of an existing waiver or extension of time, it must include a table in its transmittal letter that identifies the standard for which a waiver or extension of time was granted, and the docket number or order citation to the proceeding in which the waiver or extension of time was granted. The pipeline must also present an explanation for why such waiver or extension of time should remain in force with regard to the WGQ Version 3.1 Standards.

21. This continues the Commission's practice of having pipelines include in their tariffs a common location that identifies the way the pipeline is incorporating all the NAESB WGQ Standards and the standards with which it is required to comply. As explained above, the Commission will post on its eLibrary website (under Docket No. RM96–1–041) a sample tariff format, to provide filers an illustrative example to aid them in preparing their compliance filings.[21]

III. Notice of Use of Voluntary Consensus Standards

22. Office of Management and Budget Circular A–119 (section 11) (February 10, 1998) provides that Federal Agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference voluntary consensus standards developed by the WGQ.

IV. Incorporation by Reference

23. The Office of the Federal Register requires agencies incorporating material by reference in final rules to discuss, in the preamble of the final rule, the ways that the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials.[22] The regulations also require agencies to summarize, in the preamble of the final rule, the material it incorporates by reference. The standards we are

[10] NAESB's business process and practices overview of the Flowing Gas Standards states that the Measured Volume Audit Statement data set is used to report gas measurement information in support of the allocation, imbalance, invoice and audit processes.

[11] *See, e.g., Standards for Business Practices of Interstate Natural Gas Pipelines,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,708, at P 20 (2015) (WGQ Version 3.0 NOPR).

[12] *Id., Standards for Business Practices of Interstate Natural Gas Pipelines,* Order No. 587–V, FERC Stats. & Regs. ¶ 31,332, at n.11 (2012).

[13] *WGQ Version 3.0 NOPR,* FERC Stats. & Regs. ¶ 32,708 at P 20; *Electronic Tariff Filings,* Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

[14] Order No. 587–V, FERC Stats. & Regs. ¶ 31,332 at PP 36–39.

[15] *Trans-Union Interstate Pipeline L.P.,* 141 FERC ¶ 61,167, at P 36 (2012) (Order No. 587–V Compliance Order).

[16] *Id.* P 36; WGQ Version 3.0 NOPR, FERC Stats. & Regs. ¶ 32,708 at P 25.

[17] *Id.*

[18] *Id.*

[19] Order No. 587–V, FERC Stats. & Regs., ¶ 31,332.

[20] Order No. 587–V Compliance Order, 141 FERC ¶ 61,167 at PP 4, 38.

[21] *Id.* P 24.

[22] 1 CFR 51.5 (2017). *See* Incorporation by Reference, 79 FR 66267 (Nov. 7, 2014).

proposing to incorporate by reference consist of seven suites of NAESB WGQ Business Practice Standards that touch on a variety of topics and are designed to streamline the transactional processes for the wholesale gas industry by promoting a more competitive and efficient market. These include the: WGQ Additional Business Practice Standards; WGQ Nominations Related Business Practice Standards; WGQ Flowing Gas Related Business Practice Standards; Invoicing Related Business Practice Standards; Quadrant Electronic Delivery Mechanism Related Business Practice Standards; Capacity Release Related Business Practice Standards; and internet Electronic Transport Related Business Practice Standards. These can be summarized as follows.

24. The WGQ Additional Business Practice Standards address six areas: Creditworthiness, Storage Information, Gas/Electric Operational Communications, Operational Capacity, Unsubscribed Capacity, and Location Data Download.

- The Creditworthiness related standards describe requirements for the exchange of information, notification, and communication between parties during the creditworthiness evaluation process.
- The Storage Information related standards define the information to be provided to natural gas service requesters related to storage activities and/or balances.
- The Gas/Electric Operational Communications related standards define communication protocols intended to improve coordination between the gas and electric industries in daily operational communications between transportation service providers and gas-fired power plants. The standards include requirements for communicating anticipated power generation fuel for the upcoming day as well as any operating problems that might hinder gas-fired power plants from receiving contractual gas quantities.
- The Operational Capacity related standards define requirements of the transportation service provider related to the reporting and requesting of a transportation service provider's operational capacity, total scheduled quantity, and operationally available capacity.
- The Unsubscribed Capacity related standards define requirements of the transportation service provider related to reporting and requesting a transportation service provider's available unsubscribed capacity.
- The Location Data Download related standards define requirements for the use of codes assigned by the transportation service provider for locations and common codes for parties communicating electronically.

25. The WGQ Nominations Related Business Practice Standards define the process by which a natural gas service requester with a natural gas transportation contract nominates (or requests) service from a pipeline or a transportation service provider for the delivery of natural gas.

26. The WGQ Flowing Gas Related Business Practice Standards define the business processes related to the communication of entitlement rights of flowing gas at a location, of the entitlement rights on a contractual basis, of the management of imbalances, and of the measurement and gas quality information of the actual flow of gas.

27. The Invoicing Related Business Practice Standards define the process for the communication of charges for services rendered (Invoice), communication of details about funds rendered in payment for services rendered (Payment Remittance), and communication of the financial status of a customer's account (Statement of Account).

28. The Quadrant Electronic Delivery Mechanism Related Business Practice Standards define the framework for the electronic dissemination and communication of information between parties in the North American wholesale gas marketplace for Electronic Data Interchange (EDI)/Electronic Delivery Mechanism (EDM) transfers, batch flat file/EDM transfers, informational postings websites, EBB/EDM and interactive flat file/EDM.

29. The Capacity Release Related Business Practice Standards define the business processes for communication of information related to the selling of all or any portion of a transmission service requester's contract rights.

30. The internet Electronic Transport Related Business Practice Standards define the implementation of various technologies necessary to communicate transactions and other electronic data using standard protocols for electronic commerce over the internet between trading partners.

31. Our regulations provide that copies of the standards incorporated by reference may be obtained from the North American Energy Standards Board, 801 Travis Street, Suite 1675, Houston, TX 77002, Phone: (713) 356–0060. Copies of the standards may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE, Washington, DC 20426, Phone: (202) 502–8371, *http://www.ferc.gov.*

32. NAESB is a private consensus standards developer that develops voluntary wholesale and retail standards related to the energy industry. The procedures used by NAESB make its standards reasonably available to those affected by Commission regulations, which generally is comprised of entities that have the means to acquire the information they need to effectively participate in Commission proceedings. Participants can join NAESB, for an annual membership cost of $7,000, which entitles them to full participation in NAESB and enables them to obtain these standards at no additional cost. Non-members may obtain the Individual Standards Manual or Booklets for each of the seven Manuals by email for $250 per manual, which in the case of these standards would total $1,750. Non-members also may obtain the complete set of Standards Manuals, Booklets, and Contracts on USB flash drive for $2,000. NAESB also provides a free electronic read-only version of the standards for a three business day period or, in the case of a regulatory comment period, through the end of the comment period. In addition, NAESB considers requests for waivers of the charges on a case-by-case basis depending on need.

V. Information Collection Statement

33. 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.[23] Therefore, the Commission is submitting its proposed information collection to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995. 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 penalized for failing to respond to these collections of information unless the collection of information displays a valid OMB control number.

34. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

[23] 5 CFR 1320.11 (2017).

35. *Public Reporting Burden:* The Commission's burden estimates for the proposals in this NOPR are for one-time implementation of the information collection requirements of this NOPR (including tariff filing, documentation of the process and procedures, and information technology work).

36. The collections of information related to this NOPR fall under FERC–545 (Gas Pipeline Rates: Rate Change (Non-Formal)) [24] and FERC–549C (Standards for Business Practices of Interstate Natural Gas Pipelines).[25] The following estimates of reporting burden are related only to this NOPR and anticipate the costs to pipelines for compliance with the Commission's proposals in this NOPR. The burden estimates are primarily related to implementing these standards and regulations and will not result in ongoing costs.

RM96–1–041 NOPR

[Standards for Business Practices of Interstate Natural Gas Pipelines]

	Number of respondents [26] (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hr. per response (4)	Total annual burden hours and total annual cost [27] (3) * (4) = (5)	Annual costs per respondent ($) (5) * (1) = (6)
FERC–545 (one-time)	165	1	165	10 hrs.; $1,020	1,650 hrs.; $168,000	1,020
FERC–549C (one-time)	165	1	165	22 hrs.; $2,244	3,630 hrs.; $370,260	2,244
Total			330		5,280 hrs.; $538,560	

The one-time burden (for both the FERC–545 and FERC–549C) will be averaged over three years:

FERC–545: 1,650 hours ÷ 3 = 550 hours/year over three years

FERC–549C: 3,630 hours ÷ 3 = 1,210 hours/year over three years

The number of responses is also averaged over three years (for both the FERC–545 and FERC–549C):

FERC–545: 165 responses ÷ 3 = 55 responses/year

FERC–549C: 165 responses ÷ 3 = 55 responses/year

The responses and burden for Years 1–3 will total respectively as follows:

Year 1: 55 responses; 550 hours (FERC–545); 1,210 hours (FERC–549C)

Year 2: 55 responses; 550 hours (FERC–545); 1,210 hours (FERC–549C)

Year 3: 55 responses; 550 hours (FERC–545); 1,210 hours (FERC–549C)

Title: FERC–545, Gas Pipeline Rates: Rates Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed information collections.

OMB Control Nos.: 1902–0154 (FERC–545), 1902–0174 (FERC–549C).

Respondents: Business or other for profit (*e.g.,* Natural Gas Pipelines, applicable to only a few small businesses).

Frequency of Responses: One-time implementation (related to business procedures, capital/start-up).

Necessity of Information: The proposals in this NOPR would, if implemented, upgrade the Commission's current business practices and communication standards by specifically: (1) Updating the Nominations Related Standards to standardize a rounding process for the elapsed-prorated-scheduled quantity calculation, and dictate that the ''Service Requester Contract'' data element signify business conditional nominations, rather than mandatory nominations; (2) updating the WGQ Electronic Delivery Mechanism related Standards to make three minor revisions designed to add clarity, update the minimum technical characteristics to account for changes in technology since the previous version (Version 3.0) of the WGQ standards, and update the minimum and suggested operating systems and web browsers that entities should support; and (3) revising the NAESB WGQ data sets or other technical implementation documentation while not resulting in modifications to the underlying business practice standards. The package of standards also includes minor corrections.

The implementation of these data requirements will provide additional transparency to informational posting websites and will improve communication standards. The implementation of these standards and regulations will promote the additional efficiency and reliability of the natural gas industries' operations thereby helping the Commission to carry out its responsibilities under the Natural Gas Act. In addition, the Commission's Office of Enforcement will use the data for general industry oversight.

Internal Review: The Commission has reviewed the requirements pertaining to business practices of natural gas pipelines and made a preliminary determination that the proposed revisions are necessary to establish more efficient coordination between the gas and electric industries. Requiring such information ensures both a common means of communication and common business practices to limit miscommunication for participants engaged in the sale of electric energy at wholesale and the transportation of natural gas. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline industries. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

37. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director],

[24] FERC–545 covers rate change filings made by natural gas pipelines, including tariff changes.

[25] FERC–549C covers Standards for Business Practices of Interstate Natural Gas Pipelines.

[26] The number of respondents is the number of entities in which a change in burden from the current standards to the proposed exists, not the total number of entities from the current or proposed standards that are applicable.

[27] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2017 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm#13-0000*) and scaled to reflect benefits using the relative importance of employer costs in employee compensation from May 2017 (available at *https://www.bls.gov/oes/current/naics2_22.htm*). The hourly estimates for salary plus benefits are:

Computer and Information Systems Manager (Occupation Code: 11–3021), $96.51

Electrical Engineer (Occupation Code: 17–2071), $66.90

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

The average hourly cost (salary plus benefits), weighting all of these skill sets evenly, is $102.36. The Commission rounds it to $102/hour.

email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873.

38. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, telephone: (202) 395–0710, fax: (202) 395–4718].

VI. Environmental Analysis

39. 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.[28] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for rules regarding sales, exchange, and transportation of natural gas that require no construction of facilities.[29] Therefore, an environmental review is unnecessary and has not been prepared as part of this NOPR.

VII. Regulatory Flexibility Act

40. The Regulatory Flexibility Act of 1980 (RFA) [30] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if proposed regulations would not have such an effect.

41. Approximately 165 interstate natural gas pipelines, both large and small, are potential respondents subject to the requirements adopted by this rule. Most of the natural gas pipelines regulated by the Commission do not fall within the RFA's definition of a small entity,[31] 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.[32] For the year 2018, only eleven companies not affiliated with larger companies had annual revenues in combination with its affiliates of $27.5 million or less and therefore could be considered a small entity under the RFA. This represents about seven percent of the total universe of potential respondents that may have a significant burden imposed on them. The Commission estimates that the one-time implementation cost of the proposals in this NOPR is $538,560 (or $3,264 per entity, regardless of entity size).[33] The Commission does not consider the estimated $3,264 impact per entity to be significant. Moreover, these requirements are designed to benefit all customers, including small businesses that must comply with them. Further, as noted above, adoption of consensus standards helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of industry participants representing all segments of the industry. Because of that representation and the fact that industry conducts business under these standards, the Commission's regulations should reflect those standards that have the widest possible support.

42. Accordingly, pursuant to 605(b) of the RFA,[34] the regulations proposed herein should not have a significant economic impact on a substantial number of small entities.

VIII. Comment Procedures

43. The Commission invites interested persons to submit comments on the matters and issues proposed in this document to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due October 1, 2018. Comments must refer to Docket No. RM96–1–041, and must include the commenter's name, the organization they represent (if applicable), and their address in their comments.

44. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

45. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

46. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IX. Document Availability

47. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington DC 20426.

48. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

49. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 284

Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Issued: August 21, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, *Code of Federal Regulations,* as follows.

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

[29] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2017).

[30] 5 U.S.C. 601–612.

[31] *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 (2017).

[32] 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.

[33] This number is derived by dividing the total cost figure by the number of respondents. $538,560/165 = $3,264.

[34] 5 U.S.C. 605(b).

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. 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.

■ 2. Section 284.12 is amended by:
■ a. Revising paragraph (a)(1); and
■ b. Removing from paragraph (a)(2) the phrase ''*http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*'' and adding ''*www.archives.gov/federal-register/cfr/ibr-locations.html*'' in its place.

The revision reads as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) An interstate pipeline that transports gas under subparts B or G of this part must comply with the business practices and electronic communications standards as promulgated by the North American Energy Standards Board, as incorporated herein by reference in paragraphs (a)(1)(i) thru (vii) of this section.

(i) Additional Standards (Version 3.1, September 29, 2017);

(ii) Nominations Related Standards (Version 3.1, September 29, 2017);

(iii) Flowing Gas Related Standards (Version 3.1, September 29, 2017);

(iv) Invoicing Related Standards (Version 3.1, September 29, 2017);

(v) Quadrant Electronic Delivery Mechanism Related Standards (Version 3.1, September 29, 2017);

(vi) Capacity Release Related Standards (Version 3.1, September 29, 2017); and

(vii) internet Electronic Transport Related Standards (Version 3.1, September 29, 2017).

* * * * *

[FR Doc. 2018–18473 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0535; FRL–9983–00—Region 9]

Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of three state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or ''the Act'') requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') in the San Joaquin Valley, California ozone nonattainment area. First, the EPA is proposing to approve the portions of the *2016 Ozone Plan for the 2008 8-Hour Ozone Standard* (''2016 Ozone Plan'') that address the requirements to demonstrate attainment by the applicable attainment date and implementation of reasonably available control measures, among other requirements. Second, the EPA is proposing to approve the portions of the *Revised Proposed 2016 State Strategy for the State Implementation Plan* (''2016 State Strategy'') related to the ozone control strategy for San Joaquin Valley for the 2008 ozone standards, including a specific aggregate emissions reduction commitment. Lastly, the EPA is proposing to approve an air district rule addressing the emission statement requirement for ozone nonattainment areas. The EPA is not taking action at this time on the portions of the San Joaquin Valley 2016 Ozone Plan that address the requirements for a reasonable further progress (RFP) demonstration, motor vehicle emissions budgets (MVEBs), a base year emissions inventory, and contingency measures for failure to attain or to meet reasonable further progress milestones. We intend to address these remaining elements in a forthcoming proposal.

DATES: Written comments must arrive on or before October 1, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0535 at *https://www.regulations.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Laura Lawrence, EPA Region IX, (415) 972–3407, *lawrence.laura@epa.gov*.

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

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I. Regulatory Context

A. Ozone Standards, Area Designations and SIPs

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight.[1] These two pollutants, referred

[1] The State of California typically refers to reactive organic gases (ROG) in its ozone-related submissions since VOC in general can include both

to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[2]

Under section 109 of the CAA, the EPA promulgates NAAQS for pervasive air pollutants, such as ozone. The EPA has previously promulgated NAAQS for ozone in 1979 and 1997.[3] In 2008, the EPA revised and further strengthened the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 parts per million (ppm) averaged over an 8-hour period.[4] Although the EPA further tightened the 8-hour ozone NAAQS to 0.070 ppm in 2015, this action relates to the requirements for the 2008 ozone NAAQS.[5]

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the country as attaining or not attaining the NAAQS. The San Joaquin Valley was designated as nonattainment for the 2008 ozone standards on May 21, 2012, and classified as Extreme.[6]

Under the CAA, after the EPA designates areas as nonattainment for a NAAQS, states with nonattainment areas are required to submit SIP revisions that provide for, among other things, attainment of the NAAQS within certain prescribed periods that vary depending on the severity of nonattainment. Areas classified as Extreme must attain the NAAQS within 20 years of the effective date of the nonattainment designation.[7]

In California, the California Air Resources Board (CARB or ''State'') is the state agency responsible for the adoption and submission to the EPA of California SIPs and SIP revisions, and it has broad authority to establish emissions standards and other requirements for mobile sources. Local and regional air pollution control districts in California are responsible for the regulation of stationary sources and are generally responsible for the development of regional air quality plans. In the San Joaquin Valley, the San Joaquin Valley Air Pollution Control District (SJVAPCD or ''District'') develops and adopts air quality management plans to address CAA planning requirements applicable to that region. Such plans are then submitted to CARB for adoption and submittal to the EPA as revisions to the California SIP.

B. The San Joaquin Valley Ozone Nonattainment Area

The San Joaquin Valley nonattainment area for the 2008 ozone standards consists of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the western portion of Kern County. The San Joaquin Valley nonattainment area stretches over 250 miles from north to south, averages a width of 80 miles, and encompasses over 23,000 square miles. It is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east.[8]

The population of the San Joaquin Valley in 2015 was estimated to be nearly 4.2 million people, and is projected to increase by 25.3 percent in 2030 to over 5.2 million people.[9] Ambient 8-hour ozone concentrations in the San Joaquin Valley are above the level of the 2008 8-hour ozone NAAQS. The maximum design value for the area, based on certified data at the Parlier monitor (Air Quality System ID: 06–019–4001), is 0.092 ppm for the 2015–2017 period.[10]

C. CAA and Regulatory Requirements for 2008 8-Hour Ozone Nonattainment Area SIPs

States must implement the 2008 ozone standards under Title 1, part D of the CAA, which includes section 172 (''Nonattainment plan provisions in general'') and sections 181–185 of subpart 2 (''Additional Provisions for Ozone Nonattainment Areas''). To assist states in developing effective plans to address ozone nonattainment problems, in 2015 the EPA issued a SIP Requirements Rule (SRR) for the 2008 ozone standards (''2008 Ozone SRR'') that addresses *e.g.,* attainment dates, requirements for emissions inventories, attainment and RFP demonstrations, and the transition from the 1997 8-hour ozone standards to the 2008 8-hour ozone standards and associated anti-backsliding requirements.[11] The 2008 Ozone SRR is codified at 40 CFR part 51, subpart AA. We discuss each of the CAA and regulatory requirements for 2008 8-hour ozone plans in more detail below.

The EPA's 2008 Ozone SRR was challenged, and on February 16, 2018, the U.S. Court of Appeals for the D.C. Circuit (''D.C. Circuit'') published its decision in *South Coast Air Quality Management. District* v. *EPA*[12] vacating portions of the 2008 Ozone SRR. The 2008 Ozone SRR required the baseline emissions inventory for RFP plans to be the emissions inventory for the most recent calendar year for which a triennial inventory is required to be submitted to the EPA under subpart A (''Air Emissions Reporting Requirements'') of 40 CFR part 51, and it allowed states to use an alternative year, between 2008 and 2012, for the baseline emissions inventory provided the state demonstrates why the alternative baseline year is appropriate. In the *South Coast* decision, the D.C. Circuit vacated the provisions of the 2008 Ozone SRR that allowed states to justify and use an alternative baseline year for demonstrating RFP. The RFP demonstrations in several California ozone plans developed to address nonattainment area requirements for the 2008 ozone standards, including the ozone plan for the South Coast Air Basin and San Joaquin Valley, are based on the alternative baseline year of 2012. In response to the *South Coast* decision regarding alternative baseline years, the South Coast Air Quality Management District filed a petition in the D.C. Circuit requesting rehearing on the RFP

reactive and unreactive gases. However, since ROG and VOC inventories pertain to common chemical species (*e.g.,* benzene, xylene, *etc.*), we refer to this set of gases as VOC in this proposed rule.

[2] *See* ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone'' dated March 2008.

[3] The ozone NAAQS promulgated in 1979 was 0.12 parts per million (ppm) averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). The ozone NAAQS promulgated in 1997 was 0.08 ppm averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).

[4] *See* 73 FR 16436 (March 27, 2008).

[5] Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

[6] *See* 77 FR 30088 (May 21, 2012).

[7] *See* CAA section 181(a)(1), 40 CFR 51.1102 and 51.1103(a).

[8] For a precise definition of the boundaries of the San Joaquin Valley 2008 ozone nonattainment area, see 40 CFR 81.305.

[9] The population estimates and projections include all of Kern County, not just the portion of Kern County within the jurisdiction of the SJVAPCD. *See* Chapter 1 and table 1–1 of the District's 2016 Ozone Plan for the 2008 8-Hour Ozone Standard.

[10] *See* Air Quality System (AQS) Design Value Report, 20180621_DVRpt_SJV_2008-8hrO3_2015-2017.pdf in the docket for this proposed action. The AQS is a database containing ambient air pollution data collected by the EPA and state, local, and tribal air pollution control agencies from over thousands of monitors.

[11] *See* 80 FR 12264, March 6, 2015.

[12] *South Coast Air Quality Management District* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018) (''*South Coast*'').

baseline year issue to clarify that nonattainment areas may use the year of the nonattainment designation (*i.e.,* 2012 for the 2008 ozone standards) as the baseline year for calculating RFP.[13] Because the D.C. Circuit has not yet issued a response to the petitions filed for rehearing, the EPA is not proposing action at this time on the San Joaquin Valley's RFP demonstration for the 2008 ozone standards.[14] Several required attainment plan elements are related to the RFP demonstration, namely the MVEBs, the base year emissions inventory, and contingency measures. Therefore, the EPA is also not proposing action at this time on these three elements. For completeness, however, in this proposed action, we provide a summary of all the required elements, including those for which we will be proposing action at a later time.

II. Submissions From the State of California To Address 2008 Ozone Requirements in the San Joaquin Valley

A. Summary of Submissions

On August 24, 2016, in response to the area's designation as nonattainment and classification of Extreme for the 2008 ozone NAAQS, CARB submitted the 2016 Ozone Plan to the EPA as a revision to the California SIP.[15] Prior to submittal to the EPA, CARB approved the 2016 Ozone Plan, which had previously been adopted by the District and forwarded to CARB for approval and submittal to the EPA.

The 2016 Ozone Plan submittal consists of documents originating from the District (*e.g.,* the 2016 Ozone Plan with Appendices and the District Governing Board Resolution) and CARB (*e.g.,* the CARB Staff Report and Appendices, and the CARB Resolution adopting the 2016 Ozone Plan and CARB Staff Report as a SIP revision).[16] The 2016 Ozone Plan addresses the requirements for base year and projected future year emissions inventories, air quality modeling demonstrating attainment of the 2008 ozone NAAQS by the applicable attainment year, provisions demonstrating implementation of reasonably available control measures (RACM), provisions for advanced technology/clean fuels for boilers, provisions for transportation control strategies and measures, a demonstration of RFP, and contingency measures for failure to make RFP or attain, among other requirements.

The 2016 Ozone Plan discusses compliance with the emission statement requirement under CAA section 182(a)(3)(B) in terms of District Rule 1160, ''Emission Statements.'' District Rule 1160 was adopted by the District on November 18, 1992, and submitted to the EPA by CARB on January 11, 1993, as a revision to the California SIP.[17] The EPA has not yet taken action on the January 11, 1993 submittal of District Rule 1160 but is proposing to do so as part of today's proposed action.

In approving the 2016 Ozone Plan, CARB anticipated the subsequent adoption of a commitment by CARB to achieve an aggregate emission reduction of 8 tons per day (tpd) of NO_X in San Joaquin Valley by 2031. On March 23, 2017, CARB approved the 2016 State Strategy as a revision to the California SIP and submitted the 2016 State Strategy to the EPA on April 27, 2017.[18] The 2016 State Strategy, as approved and submitted by CARB, includes an 8 tpd NO_X emission reduction commitment for San Joaquin Valley. The 2016 State Strategy commits to certain regulatory initiatives (*e.g.,* new California low-NO_X standards for on-road heavy-duty engines and low-emission diesel requirements for off-road equipment) in addition to aggregate emissions reductions by certain years in specific areas, such as San Joaquin Valley.[19]

B. Clean Air Act Procedural Requirements for Adoption and Submission of SIP Revisions

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submission of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and an opportunity for a public hearing was provided consistent with the EPA's implementing regulations in 40 CFR 51.102.

Both the District and CARB have satisfied the applicable statutory and regulatory requirements for reasonable public notice and hearing prior to the adoption and submittal of the 2016 Ozone Plan, the 2016 State Strategy, and District Rule 1160. With respect to the 2016 Ozone Plan, the District conducted a public workshop on May 23, 2014, and held two additional workshops on March 22, 2016, on the Draft 2016 Ozone Plan. On May 11, 2016, the District published notices in several local newspapers of a public hearing to be held on June 16, 2016, for the adoption of the 2016 Ozone Plan.[20] On June 16, 2016, the District held the public hearing, and, through Resolution No. 16–6–20, adopted the 2016 Ozone Plan and directed the Executive Officer to forward the plan to CARB for inclusion in the California SIP.

CARB also provided the required public notice and opportunity for public comment on the 2016 Ozone Plan. On June 17, 2016, CARB released for public review its staff report for the 2016 Ozone Plan and published a notice of public meeting to be held on July 21, 2016, to consider approval of the 2016 Ozone Plan.[21] On July 21, 2016, CARB held the hearing and approved the staff report and directed its Executive Officer to submit the CARB staff report and the 2016 Ozone Plan to the EPA for approval into the California SIP.[22] On August 24, 2016, the Executive Officer of CARB submitted the 2016 Ozone Plan to the EPA and included the transcript of the hearing held on July 21, 2016.[23] On December 19, 2016, the EPA determined that the submittal was complete.[24]

With respect to the 2016 State Strategy, on May 17, 2016, CARB circulated for public review and comment the Proposed State SIP Strategy, provided a 60-day comment period, and provided notice of a public hearing by the CARB Board to be held on September 22, 2016. On March 7, 2017, in response to comments received during the public comment period and

[13] *See* Petition for Panel Rehearing of South Coast Air Quality Management District, D.C. Cir., No. 15–1115, docket item #1727571, filed April 20, 2018.

[14] The EPA also filed a petition for rehearing in the D.C. Circuit but did not request rehearing of the RFP baseline year issue.

[15] *See* letter from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX, dated August 24, 2016.

[16] *See* four enclosures to the August 24, 2016 letter from CARB to EPA Region 9: (I) District Submittal, including letter from Sheraz Gill, Director of Strategies and Incentives for the District, to Richard Corey, Executive Officer, CARB, and five appendices titled: (1) ARB SIP Completeness Checklist, (2) 2016 Ozone Plan with Appendices, (3) Governing Board Resolution Adopting the 2016 Ozone Plan, (4) Governing Board Memo, and (5) Evidence of Public Hearing; (II) CARB Evidence of Public Notice and Transcript; (III) CARB Staff Report; (IV) CARB Resolution 16–8 adopting the 2016 Ozone Plan and CARB Staff Report.

[17] *See* letter from Michael H. Scheible, Executive Officer, CARB, to Daniel W. McGovern, Regional Administrator, EPA Region 9, dated January 11, 1993.

[18] *See* letter from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX, dated April 27, 2017.

[19] *See* table 5 of the 2016 State Strategy.

[20] *See* the August 24, 2016 SIP submittal package, item I.E, ''Evidence of Public Hearing.''

[21] *See https://www.arb.ca.gov/regact/nonreg/2016/sjvsip2016.pdf.*

[22] *See* CARB Resolution 16–8.

[23] *See* transcript of the July 21, 2016 Meeting of the State of California Air Resources Board.

[24] *See* letter from Elizabeth J. Adams, EPA Region IX to Richard W. Corey, CARB, dated December 19, 2016.

later during public workshops, and based on Board direction provided to staff during the September 22, 2016 CARB Board meeting, CARB released a Revised Proposed State SIP Strategy. On March 23, 2017, through Resolution 17–7, CARB adopted the Revised Proposed State SIP Strategy (herein referred to as the ''2016 State Strategy'') after a duly-noticed public hearing. On April 27, 2017, CARB submitted the 2016 State Strategy to the EPA as a revision to the California SIP.

With respect to District Rule 1160, the District conducted four public workshops to receive comment, and published notices in several local newspapers of a public hearing to be held on November 18, 1992. The District adopted the rule on November 18, 1992, and forwarded the rule to CARB for approval and submittal to the EPA as a revision to the California SIP. CARB did so by letter dated January 11, 1993.[25]

Based on information provided in each SIP revision and summarized above, the EPA has determined that all hearings were properly noticed. Therefore, we find that the submittals of the 2016 Ozone Plan, the 2016 State Strategy, and District Rule 1160 meet the procedural requirements for public notice and hearing in CAA sections 110(a) and 110(l) and 40 CFR 51.102.

III. Evaluation of the 2016 Ozone Plan

A. Emissions Inventories

1. Statutory and Regulatory Requirements

CAA sections 172(c)(3) and 182(a)(1) require states to submit for each ozone nonattainment area a ''base year inventory'' that is a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area. In addition, the 2008 Ozone SRR requires that the inventory year be selected consistent with the baseline year for the RFP demonstration, which is usually the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA under the Air Emissions Reporting Requirements.[26] The EPA has issued guidance on the development of base year and future year emissions inventories for 8-hour ozone and other pollutants.[27] Emissions inventories for ozone must include emissions of VOC and NO_X and represent emissions for a typical ozone season weekday.[28] States should include documentation explaining how the emissions data were calculated. In estimating mobile source emissions, states should use the latest emissions models and planning assumptions available at the time the SIP is developed.[29]

2. Summary of State's Submission

The base year and future year baseline inventories for NO_X and VOC for the San Joaquin Valley 2008 ozone nonattainment area, together with additional documentation for the inventories, are found in Chapter 3 and Appendix B of the 2016 Ozone Plan. Because ozone levels in San Joaquin Valley are typically higher from May through October, these inventories represent average summer day emissions. The 2016 Ozone Plan includes a base year inventory for 2012 and future year inventories for the RFP milestone years. The inventories reflect reductions from adopted federal, state, and district measures. All inventories include emissions from point, area, on-road, and non-road sources. Both base year and projected future year inventories use the most current version of California's mobile source emissions model, EMFAC2014, for estimating on-road motor vehicle emissions.[30]

The emissions inventories in the 2016 Ozone Plan were developed jointly by CARB and the District, based on data from these two agencies, combined with data from the California Department of Transportation, the Department of Motor Vehicles, the Department of Pesticide Regulation, the California Energy Commission and regional transportation agencies. The emissions inventories reflect actual emission reports for point sources, and estimates for mobile and area-wide sources are based on the most recent models and methodologies. CARB and the District also reviewed the growth profiles for point and area-wide source categories and updated them as necessary to ensure that the emission projections are based on data that reflect historical trends, current conditions, and recent economic and demographic forecasts.

CARB developed the emissions inventory for on-road and off-road mobile sources. On-road mobile source emissions, which include passenger vehicles, buses, and trucks, were estimated using CARB's EMFAC2014 model. The on-road emissions were calculated by applying EMFAC2014 emission factors to the transportation activity data provided by the local San Joaquin Valley transportation agencies from their 2014 adopted Regional Transportation Plan. The EPA has approved this model for use in SIPs and transportation conformity analyses.[31] Non-road mobile source emissions were estimated using either newer category-specific models or, where a new model was not available, the OFFROAD2007 model.

The 2012 inventory was projected to 2015 and future years using CARB's California Emission Projection Analysis Model (CEPAM). The District identified several measures that achieve emissions reductions from stationary sources in and after 2012, including rules for open burning, boilers, flares, solid fuel boilers, and glass melting furnaces, among others.[32] Table 1 provides a summary of the emission estimates prepared for the 2016 Ozone Plan for the base year (2012) and the attainment year (2031).

TABLE 1—SAN JOAQUIN VALLEY BASE YEAR AND ATTAINMENT YEAR EMISSIONS INVENTORY SUMMARY

[Summer average tons per day]

Category	NO_X (2012)	NO_X (2031)	VOC (2012)	VOC (2031)
Stationary Sources	42.4	29.5	85.3	100.0
Area Sources	4.7	4.9	147.0	152.7

[25] *See* CARB submittal ''State of California Implementation Plan for Achieving and Maintaining the National Ambient Air Quality Standards, Exhibit A,'' January 11, 1993.

[26] *See* 2008 Ozone SRR at 40 CFR 51.1115(a) and the Air Emissions Reporting Requirements at 40 CFR part 51 subpart A.

[27] *See* ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' (''EI Guidance''), EPA–454/B–17–002, May 2017. At the time the 2016 Ozone Plan was developed, the following EPA emissions inventory guidance applied: ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations'' (''EI Guidance''), EPA–454–R–05–001, November 2005.

[28] 40 CFR 51.1115(a) and (c), and 40 CFR 51.1100(bb) and (cc).

[29] *See* 80 FR 12264, at 12290 (March 6, 2015).

[30] EMFAC is short for EMission FACtor.

[31] *See* 80 FR 77337 (December 14, 2015).

[32] *See* table 5–1 of the 2016 Ozone Plan. All the rules listed in table 5–1 have been approved as revision to the SIP.

TABLE 1—SAN JOAQUIN VALLEY BASE YEAR AND ATTAINMENT YEAR EMISSIONS INVENTORY SUMMARY—Continued

[Summer average tons per day]

Category	NO_X (2012)	NO_X (2031)	VOC (2012)	VOC (2031)
On-road Mobile	187.7	45.1	60.5	18.3
Off-road Mobile	104.7	52.4	44.5	25.7
Total	339.6	131.9	337.3	296.7

Source: 2016 Ozone Plan, Appendix B (note that because of rounding conventions, the totals may not reflect total of all categories).

3. The EPA's Review of the State's Submission

As described elsewhere, the 2008 Ozone SRR requires the base year inventory to be consistent with the RFP baseline year inventory; accordingly, the 2016 Ozone Plan uses the year 2012 for the base year inventory and the RFP baseline year inventory. The EPA has evaluated the 2012 base year inventory and the methodologies used by the District and CARB, and we find them to be comprehensive, accurate, and current. However, as discussed elsewhere, we are not taking action at this time to approve the base year emissions inventory or the emissions inventories for any of the RFP milestone years in the 2016 Ozone Plan. We intend to take action on the base year emissions inventory at a later time, together with the RFP demonstration, and other elements affected by the *South Coast* decision.

However, we note that the attainment demonstration and VMT offset demonstration rely on the 2012 base year inventory. As discussed in section III.D of this proposed action, the EPA's draft modeling guidance states that the EPA does not require a particular year to be used for the base year for modeling purposes. The most appropriate base year may be the most recent year of the National Emissions Inventory, or it may be selected in view of unusual meteorology, transport patterns, or other factors that may vary from year to year.[33] Based on our review of the emissions inventories provided in the 2016 Ozone Plan, we find that the 2012 base year emissions inventory and future year emissions inventories that are derived therefrom provide an acceptable basis for the attainment demonstration and VMT offset demonstration in the 2016 Ozone Plan.

B. Emission Statement

1. Statutory and Regulatory Requirements

Section 182(a)(3)(B)(i) of the Act requires states to submit a SIP revision requiring owners or operators of stationary sources of VOC or NO_X to provide the state with statements of actual emissions from such sources. Statements must be submitted at least every year and must contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. Section 182(a)(3)(B)(ii) of the Act allows states to waive the emission statement requirement for any class or category of stationary sources that emit less than 25 tons per year (tpy) of VOC or NO_X, if the state provides an inventory of emissions from such class or category of sources as part of the base year or periodic inventories required under CAA sections 182(a)(1) and 182(a)(3)(A), based on the use of emission factors established by the EPA or other methods acceptable to the EPA.

The preamble of the 2008 Ozone SRR states that if an area has a previously approved emission statement rule for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emission statement requirement for the 2008 ozone NAAQS.[34] The state should review the existing rule to ensure it is adequate and, if so, may rely on it to meet the emission statement requirement for the 2008 ozone NAAQS. Where an existing emission statement requirement is still adequate to meet the requirements of this rule, states can provide the rationale for that determination to the EPA in a written statement in the SIP to meet this requirement. States should identify the various requirements and how each is met by the existing emission statement program. Where an emission statement requirement is modified for any reason, states must provide the revisions to the emission statement as part of their SIP.

2. Summary of the State's Submission

The District adopted Rule 1160, ''Emission Statements,'' on November 18, 1992, to address the SIP submittal requirements for emission statements for areas such as San Joaquin Valley that were designated as nonattainment for the 1-hour ozone NAAQS under the CAA Amendments of 1990. CARB submitted District Rule 1160 to the EPA on January 11, 1993.

District Rule 1160 applies to all owners and operators of any stationary source category that emits or may emit VOC or NO_X, but allows the District to waive the requirements for any class or category of stationary sources that emit less than 25 tpy of VOC or NO_X under certain circumstances. Under District Rule 1160, owners or operators must provide the District, on an annual basis, with a written statement in such form as the District prescribes, showing actual emissions of VOC and NO_X from the source. Owners or operators may comply with the requirement by completing and returning either an Emission Statement or an Emission Data Survey Form. Both the emission statement and the data survey form are intended to provide an estimate of actual emissions from the given stationary source. Lastly, District Rule 1160 requires certification by the responsible official that the information is accurate to the best knowledge of the individual certifying the information.

The 2016 Ozone Plan concludes that District Rule 1160 continues to meet the emission statement requirements of CAA section 182(a)(3)(B) and relies on that rule to meet the emission statement requirements for the 2008 ozone standards.[35]

3. The EPA's Review of the State's Submission

As noted previously, the EPA has not taken action on CARB's January 11, 1993 submittal of District Rule 1160 but is proposing to do so herein. First, we

[33] *See* section 2.7.1 of *Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,* December 2014 Draft, EPA OAQPS; available at *https://www.epa.gov/scram/state-implementation-plan-sip-attainment-demonstration-guidance.*

[34] *See* 80 FR 12264, at 12291 (March 6, 2015).

[35] *See* section 3.11.2 (''Emission Reporting Programs'') in the 2016 Ozone Plan.

have evaluated District Rule 1160 for compliance with the specific requirements for emission statements under CAA section 182(a)(3)(B)(i). We find that District Rule 1160 applies within the entire ozone nonattainment area; applies to all permitted sources of VOC and NO_X; requires the submittal, on an annual basis, of the types of information necessary to estimate actual emissions from the subject stationary sources; and requires certification by the responsible officials representing the owners and operators of stationary sources. As such, we find that District Rule 1160 meets the requirements of CAA section 182(a)(3)(B)(i).

We also note that, while District Rule 1160 provides authority to the District to waive the requirement for any class or category of stationary sources that emit less than 25 tpy, such a waiver is allowed under CAA section 182(a)(3)(B)(ii) so long as the state includes estimates of such class or category of stationary sources in base year emissions inventories and periodic inventories submitted under CAA sections 182(a)(1) and 182(a)(3)(A), based on EPA emissions factors or other methods acceptable to the EPA. We recognize that emissions inventories developed by CARB for San Joaquin Valley routinely include actual emissions estimates for all stationary sources or classes or categories of such sources, including those less than 25 tpy, and that such inventories provide the basis for inventories submitted to meet the requirements of CAA sections 182(a)(1) and 182(a)(3)(A). By approval of emissions inventories as meeting the requirements of CAA sections 182(a)(1) and 182(a)(3)(A), the EPA is implicitly accepting the methods and factors used by CARB to develop those emissions estimates. Our most recent approval of a base year emissions inventory for San Joaquin Valley is found at 77 FR 12652 (March 1, 2012) (approval of base year emissions inventory for the 1997 ozone NAAQS).

Thus, for the reasons stated above, we propose to approve District Rule 1160, which CARB submitted on January 11, 1993, as meeting the emission statement requirements under CAA section 182(a)(3)(B). For more detailed information concerning our evaluation of District Rule 1160, please see the related technical support document.[36]

[36] EPA, Region IX, Technical Support Document for EPA's Rulemaking for the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District Rule 1160 Emission Statements.

C. Reasonably Available Control Measures Demonstration and Control Technology

1. Statutory and Regulatory Requirements

CAA section 172(c)(1) requires that each attainment plan provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through implementation of reasonably available control technology), and also provide for attainment of the NAAQS. The 2008 Ozone SRR requires that, for each nonattainment area required to submit an attainment demonstration, the state concurrently submit a SIP revision demonstrating that it has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable and to meet any RFP requirements.[37]

The EPA has previously provided guidance interpreting the RACM requirement in the General Preamble for the Implementation of the Clean Air Act Amendments of 1990 and in a memorandum entitled ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.'' [38] In summary, to address the requirement to adopt all RACM, states should consider all potentially reasonable control measures for source categories in the nonattainment area to determine whether they are reasonably available for implementation in that area and whether they would, if implemented individually or collectively, advance the area's attainment date by one year or more.[39] Any measures that are necessary to meet these requirements that are not already either federally promulgated, or part of the state's SIP, or otherwise creditable in the SIP, must be submitted in enforceable form as part of the state's attainment plan for the area.[40]

[37] *See* 40 CFR 51.1112(c).

[38] *See* General Preamble, 57 FR 13498 at 13560 (April 16, 1992) and Memorandum dated November 30, 1999, from John Seitz, Director, OAQPS, to Regional Air Directors, titled ''Guidance on the Reasonably Available Control Measure Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas.''

[39] *Ibid. See also* 44 FR 20372 (April 4, 1979), and memorandum dated December 14, 2000, from John S. Seitz, Director, OAQPS, to Regional Air Directors, titled ''Additional Submission on RACM From States with Severe One-Hour Ozone Nonattainment Area SIPs.''

[40] For ozone nonattainment areas classified as Moderate or above, CAA section 182(b)(2) also requires implementation of RACT for all major sources of VOC and for each VOC source category for which the EPA has issued a Control Techniques Guideline (CTG). CAA section 182(f) requires that RACT under section 182(b)(2) also apply to major stationary sources of NO_X. In Extreme areas, a major source is a stationary source that emits or has the potential to emit at least 10 tpy of VOC or NO_X (see CAA section 182(e) and (f)). Under the 2008 Ozone SRR, states were required to submit SIP revisions meeting the RACT requirements of CAA sections 182(b)(2) and 182(f) no later than 24 months after the effective date of designation for the 2008 Ozone NAAQS and to implement the required RACT measures as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation (*see* 40 CFR 51.1112(a)). California submitted the CAA section 182 RACT SIP for San Joaquin Valley on July 18, 2014, and the EPA fully approved this submission on July 12, 2018. *See* 83 FR 41006 (August 17, 2018). We are not addressing the section 182 RACT requirements in today's proposed rule.

CAA section 172(c)(6) requires that nonattainment area plans include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for timely attainment of the NAAQS.[41] Under the 2008 Ozone SRR, all control measures needed for attainment must be implemented no later than the beginning of the attainment year ozone season.[42] The attainment year ozone season is defined as the ozone season immediately preceding a nonattainment area's maximum attainment date.[43]

2. Summary of the State's Submission

For the 2016 Ozone Plan, the District, CARB, and the local metropolitan planning organizations (MPOs) each undertook a process to identify and evaluate potential RACM that could contribute to expeditious attainment of the 2008 Ozone NAAQS in the San Joaquin Valley. We describe each agency's efforts below.

a. District's RACM Analysis

The District's RACM demonstration and control strategy for the 2008 ozone NAAQS focuses on stationary and area source controls and is described in Chapter 5, Chapter 6 and Appendix C of the 2016 Ozone Plan. To identify potential RACM, the District reviewed 59 control measures for a number of source categories and compared its measures against federal requirements and regulations implemented by the State and other air districts. In the years prior to the adoption of the 2016 Ozone Plan, the District developed and implemented comprehensive plans to provide for attainment of the NAAQS

[41] *See also* CAA section 110(a)(2)(A).

[42] *See* 40 CFR 51.1108(d).

[43] *See* 40 CFR 51.1100(h).

for fine particulate matter ($PM_{2.5}$) (*e.g.,* the 2012 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS) and ozone (*e.g.,* the 2004 Ozone Plan for the 1-hour ozone NAAQS, the 2007 Ozone Plan for the 1997 ozone NAAQS, and the 2013 Ozone Plan for the 1-hour ozone NAAQS).[44] These plans have resulted in the District's adoption of many new rules and amendments to existing rules for stationary and area sources. In addition, although the District does not have authority to directly regulate emissions from mobile sources, the District has implemented control strategies to indirectly reduce emissions from mobile sources.[45]

Table 2 identifies the District control measures listed in table 5–1 of the 2016 Ozone Plan, which contribute toward attainment of the 2008 ozone NAAQS by 2031. The EPA has approved all of these measures into the California SIP.

TABLE 2—DISTRICT RULES ACHIEVING EMISSIONS REDUCTIONS IN OR AFTER 2012

Rule No.	Rule title	Date adopted or last amended [a]	Citation for EPA approval into SIP
4103	Open Burning	4/15/10	77 FR 214 (1/4/12)
4307	Boilers, Steam Generators, and Process Heaters 2 to 5 MMBtu per hour [b]	4/21/16	82 FR 37817 (8/14/17)
4308	Boilers, Steam Generators, and Process Heaters 0.075 to less than 2 MMBtu per hour.	11/14/13	80 FR 7803 (2/12/15)
4311	Flares	6/18/09	76 FR 68106 (11/3/11)
4306/4320	Boilers, Steam Generators, and Process Heaters greater than 5 MMBtu per hour.	10/16/08	75 FR 1715 (1/13/2010)/ 76 FR 16696 (3/25/11)
4352	Solid Fuel Boilers, Steam Generators, and Process Heaters	12/15/11	77 FR 66548 (11/6/12)
4354	Glass Melting Furnaces	5/19/11	78 FR 6740 (1/31/13)
4565	Biosolids, Animal Manure, Poultry Litter Operations	3/15/07	77 FR 2228 (1/17/12)
4566	Organic Material Composting Operations	8/18/11	77 FR 71129 (11/29/12)
4601	Architectural Coatings	12/17/09	76 FR 69135 (11/8/11)
4605	Aerospace Assembly and Component Coating Operations	6/16/11	76 FR 70886 (11/16/11)
4653	Adhesives and Sealants	9/16/10	77 FR 7536 (2/13/12)
4682	Polystyrene, Polyethylene, and Polypropylene Products Manufacturing	9/20/07	77 FR 58312 (9/20/12)
4684	Polyester Resin Operations	8/18/2011	77 FR 5709 (2/6/12)
4702	Internal Combustion Engines	11/14/13	81 FR 24029 (4/25/16)
4905	Natural Gas-Fired, Fan-Type Residential Central Furnaces	1/22/15	81 FR 17390 (3/29/16)
9610	State Implementation Plan Credit for Emission Reductions Generated Through Incentive Programs.	6/20/13	80 FR 19020 (4/9/15)

[a] Reflects more recent submittals for rules 4307, 4605, 4684 and 4702 than reflected in table 5–1 of the 2016 Ozone Plan.
[b] Million British Thermal Units (MMBtu).
Source: Table 5–1 of the 2016 Ozone Plan.

The District provides a more comprehensive evaluation of its RACM control strategy in Appendix C of the 2016 Ozone Plan, which provides the following:

- Description of the sources within the category or sources subject to the rule;
- Base year and projected baseline year emissions for the source category affected by the rule;
- Discussion of the current requirements of the rule; and
- Discussion of potential additional control measures, including, in many cases, a discussion of the technological and economic feasibility of the additional control measures. This includes comparison of each District rule to analogous control measures adopted by other agencies (including the EPA, the South Coast Air Quality Management District, and the Bay Area Air Quality Management District).

We provide more detailed information about these control measures in our technical support document.[46]

Based on its evaluation of all of these measures, the District concludes that it is implementing all RACM for sources under the District's jurisdiction.

b. CARB's RACM Analysis

Chapters 5 and 6 of the 2016 Ozone Plan contain CARB's evaluation of mobile source and other statewide control measures that reduce emissions of NO_X and VOC in the San Joaquin Valley. Source categories for which CARB has primary responsibility for reducing emissions in California include most new and existing on- and off-road engines and vehicles, motor vehicle fuels, and consumer products. The California Department of Pesticide Regulation is responsible for regulating the application of pesticides, which is a significant source of VOC emissions in the San Joaquin Valley.

Given the need for substantial emissions reductions from mobile and area sources to meet the NAAQS in California nonattainment areas, the State of California has been a leader in the development of stringent control measures for on-road and off-road mobile sources and the fuels that power them. California has unique authority under CAA section 209 (subject to a waiver by the EPA) to adopt and implement new emission standards for many categories of on-road vehicles and engines, and new and in-use off-road vehicles and engines.

Historically, the EPA has allowed California to take into account emissions reductions from CARB regulations for which the EPA has issued waiver or authorizations under CAA section 209, notwithstanding the fact that these regulations have not been approved as part of the California SIP. However, in response to the decision by

[44] *See* the EPA's approval of the 2012 $PM_{2.5}$ Plan at 81 FR 59876 (August 31, 2016), the EPA's approval of the 2004 Ozone Plan and 2013 Ozone Plan at 75 FR 10420 (March 8, 2010) and 81 FR 2140 (January 15, 2016), and the EPA's approval of the 2007 Ozone Plan at 77 FR 12652 (March 1, 2012).

[45] *See, e.g.,* Rule 9410 (Employer-Based Trip Reduction), approved into the California SIP at 81 FR 6761 (February 9, 2016); Rule 9510 (Indirect Source Review), approved into the California SIP at 89 FR 26609 (May 9, 2011); and Rule 9310 (School Bus Fleets), approved into the California SIP at 75 FR 10420 (March 8, 2010).

[46] EPA, Region IX, Technical Support Document: Proposed Approval of Portions of the San Joaquin Valley 2016 Ozone Plan: District Stationary and Area Source Control Strategy.

the United States Court of Appeals for the Ninth Circuit (''Ninth Circuit'') in *Committee for a Better Arvin* v. *EPA,* the EPA has since approved mobile source regulations for which waiver authorizations have been issued as revisions to the California SIP.[47]

CARB's mobile source program extends beyond regulations that are subject to the waiver or authorization process set forth in CAA section 209 to include standards and other requirements to control emissions from in-use heavy-duty trucks and buses, gasoline and diesel fuel specifications, and many other types of mobile sources. Generally, these regulations have been submitted and approved as revisions to the California SIP.[48]

While all of the identified State control measures contribute to some degree to attainment of the 2008 ozone standards in the San Joaquin Valley, some measures are identified in particular in the 2016 Ozone Plan as providing significant emissions reductions relied upon for attainment of the 2008 ozone standards. These measures include the On-Road Heavy-Duty Diesel In-Use Regulation, the Low Emission Vehicle III and Zero Emission Vehicle Regulation, and the Heavy-Duty Truck Idling Requirements.[49]

The 2016 Ozone Plan concludes that, in light of the comprehensiveness and stringency of CARB's mobile source program, all RACM for mobile sources under CARB's jurisdiction are being implemented, and that no additional measure would advance attainment of the 2008 ozone NAAQS by at least a year.

c. Local Jurisdictions' RACM Analysis and Transportation Control Measures (TCMs)

The local jurisdictions' RACM analysis was conducted by the eight MPOs in the San Joaquin Valley and is provided in Appendix D of the 2016 Ozone Plan.[50] This analysis focuses on the MPOs' efforts to implement Transportation Control Measures (TCMs) as part of the adopted Congestion Mitigation and Air Quality cost-effectiveness policy and in the development of each Regional Transportation Plan (RTP). The RTPs include improvements to each component of the transportation system including: Transit, passenger rail, goods movement, aviation and airport ground access, and highways; and include TCM projects that reduce vehicle use, or change traffic flow or congestion conditions. The 2016 Ozone Plan concludes that no additional local RACM measures, beyond those measures already adopted, would advance attainment of the 2008 ozone NAAQS by at least a year.

3. The EPA's Review of the State's Submission

The process followed by the District in the 2016 Ozone Plan to identify RACM is generally consistent with the EPA's recommendations in the General Preamble. The process included compiling a comprehensive list of potential control measures for sources of NO_X and VOC in the San Joaquin Valley.[51] As part of this process, the District evaluated potential controls for all relevant source categories for economic and technological feasibility and provided justifications for the rejection of certain identified measures. The District concluded in its RACM evaluation that no additional measures, individually or in combination, could advance attainment by one year.

We have reviewed the District's determination in the 2016 Ozone Plan that its stationary and area source control measures represent RACM for NO_X and VOC. In our review, we also considered our previous evaluations of the District's rules in connection with our approval of the San Joaquin Valley Reasonably Available Control Technology (RACT) SIP demonstration for the 2008 ozone NAAQS.[52] Based on this review, we believe the District's rules provide for the implementation of RACM for stationary and area sources of NO_X and VOC.

With respect to mobile sources, we recognize CARB as a leader in the development and implementation of stringent control measures for on-road and off-road mobile sources, and its current program addresses the full range of mobile sources in the San Joaquin Valley through regulatory programs for both new and in-use vehicles. With respect to transportation controls, we note that the MPOs have a program to fund cost-effective TCMs. Overall, we believe that the programs developed and administered by CARB and the MPOs provide for the implementation of RACM for NO_X and VOC in the San Joaquin Valley.

In the 2016 Ozone Plan, the District estimated that it would take a reduction of 2.7 tpd of NO_X to advance attainment by one year from 2031 to 2030.[53] Based on our review of the results of these RACM analyses, we agree with the State's and District's conclusion that there are no additional reasonably available measures that would advance attainment of the 2008 ozone standards in the San Joaquin Valley by at least one year. For the foregoing reasons, we propose to find that the 2016 Ozone Plan provides for the implementation of all RACM as required by CAA section 172(c)(1) and 40 CFR 51.1112(c).

D. Attainment Demonstration

1. Statutory and Regulatory Requirements

Section 182(c)(2)(A) of the Clean Air Act requires that a plan for an ozone nonattainment area classified Serious or above include a ''demonstration that the plan . . . will provide for attainment of the ozone [NAAQS] by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined . . . to be at least as effective.'' The attainment demonstration predicts future ambient concentrations for comparison to the NAAQS, making use of available information on measured concentrations, meteorology, and current and projected emissions inventories of ozone precursors, including the effect of control measures in the plan.

Areas classified Extreme for the 2008 ozone NAAQS must demonstrate attainment as expeditiously as practicable, but no later than 20 years after the effective date of designation as nonattainment. The San Joaquin Valley was designated nonattainment effective July 20, 2012, and the area must demonstrate attainment of the standards by July 20, 2032.[54] An attainment demonstration must show attainment of the standards for a full calendar year

[47] *See, e.g.,* 81 FR 39424 (June 16, 2016), 82 FR 14447 (March 21, 2017), and 83 FR 8404 (February 27, 2018). *See also Committee for a Better Arvin,* 786 F.3d 1169 (9th Cir. 2015).

[48] *See, e.g.,* the EPA's approval of standards and other requirements to control emissions from in-use heavy-duty diesel-powered trucks, at 77 FR 20308 (April 4, 2012), revisions to the California on-road reformulated gasoline and diesel fuel regulations at 75 FR 26653 (May 12, 2010), and revisions to the California motor vehicle I/M program at 75 FR 38023 (July 1, 2010).

[49] *See* action approving into the SIP the On-Road Heavy-Duty Diesel Regulation, the Low Emission Vehicle and Zero Emission Vehicle Regulation, and the Heavy-Duty Truck Idling Requirements at 81 FR 39424 (June 16, 2016).

[50] These eight MPOs represent the eight counties in the San Joaquin Valley nonattainment area: The San Joaquin Council of Governments, the Stanislaus Council of Governments, the Merced County Association of Governments, the Madera County Transportation Commission, The Council of Fresno County Governments, The Kings County Association of Governments, the Tulare County Association of Governments, and the Kern Council of Governments.

[51] *See* Appendix C of the 2016 Ozone Plan.

[52] *See* 83 FR 41006 (August 17, 2018).

[53] *See* 2016 Ozone Plan, Chapter 6, section 6.2.1.

[54] *See* 80 FR 12264.

before the attainment date, so in practice, Extreme nonattainment areas must demonstrate attainment in 2031.

The EPA's recommended procedures for modeling ozone as part of an attainment demonstration are contained in *Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze* (''Modeling Guidance'').[55] The Modeling Guidance includes recommendations for a modeling protocol, model input preparation, model performance evaluation, use of model output for the numerical NAAQS attainment test, and modeling documentation. Air quality modeling is performed using meteorology and emissions from a base year, and the predicted concentrations from this base case modeling are compared to air quality monitoring data from that year to evaluate model performance. At a minimum, a model performance evaluation should include an *operational* evaluation, with statistics and graphical plots assessing the ability of the model to replicate observed ozone concentrations. Where possible, performance of other chemical species participating in ozone formation chemistry, such as NO_2 and peroxyacetyl nitrate, should also be examined.

To ensure that the model achieves accurate results based on relevant atmospheric phenomena, without errors that compensate each other to give just the appearance of accuracy, and to guide refinement of model inputs, it is also recommended to assess, at least to some extent, if the model correctly represents the underlying physical and chemical processes. This can be done via *diagnostic* evaluation, such as assessing model sensitivity to changes in inputs and process analysis. It can also be done via *dynamic* evaluation, such as assessing the modeled concentration change between different historical periods. Once the model performance is determined to be acceptable, future year emissions are simulated with the model. The relative (or percent) change in modeled concentration due to future emissions reductions provides a Relative Response Factor (RRF). Each monitoring site's RRF is applied to its monitored base year design value to provide the future design value for comparison to the NAAQS. The Modeling Guidance also recommends supplemental air quality analyses, which may be used as part of a Weight of Evidence (WOE) analysis. A WOE analysis corroborates the attainment demonstration by considering evidence other than the main air quality modeling attainment test, such as trends and additional monitoring and modeling analyses.

Unlike the RFP demonstration and the emissions inventory requirements, the 2008 SRR does not specify that a specific year must be used for the modeled base year for the attainment demonstration. The Modeling Guidance also does not require a particular year to be used as the base year for 8-hour ozone plans.[56] The Modeling Guidance explains that the most recent year of the National Emissions Inventory may be appropriate for use as the base year for modeling, but that other years may be more appropriate when considering meteorology, transport patterns, exceptional events, or other factors that may vary from year to year.[57] Therefore, the base year used for the attainment demonstration need not be the same year used to meet the requirements for emissions inventories and RFP.

2. Summary of the State's Submission

CARB performed the air quality modeling for the 2016 Ozone Plan with assistance from the District. The modeling relies on a 2012 base year and demonstrates attainment in 2031. The Plan's modeling protocol is in Appendix I of the 2016 Ozone Plan and contains all the elements recommended in the Modeling Guidance. Those include: Selection of model, time period to model, modeling domain, and model boundary conditions and initialization procedures; a discussion of emissions inventory development and other model input preparation procedures; model performance evaluation procedures; selection of days and other details for calculating RRFs; and provisions for archival and access to raw model inputs and outputs.

The modeling and modeled attainment demonstration are described in Chapter 4 of the 2016 Ozone Plan and in more detail in Appendix H, which provides a description of model input preparation procedures and various model configuration options. Appendix J of the 2016 Ozone Plan provides the coordinates of the modeling domain and thoroughly describes the development of the modeling emissions inventory, including its chemical speciation, its spatial and temporal allocation, its temperature dependence, and quality assurance procedures. The modeling analysis used version 5 of the Community Multiscale Air Quality (CMAQ) photochemical model, developed by the EPA. The 2007 version of the State-wide Air Pollution Research Center chemical mechanism (SAPRC07) was used within CMAQ. SAPRC07 is an update to a mechanism that has been used for the San Joaquin Valley and other areas of the US, and it has been peer-reviewed as discussed in the protocol. To prepare meteorological input for CMAQ, the Weather and Research Forecasting model version 3.6 (WRF) from the National Center for Atmospheric Research was used. The overall WRF meteorological modeling domain covers California's neighboring states, and major portions of the next outer ring of states, with 36-kilometer (km) resolution (*i.e.,* grid cell size); it has nested domains with 12 km and 4 km resolution, with the latter, innermost covering the entire State of California; and it has 30 vertical layers extending up to 16 km. The overall CMAQ air quality modeling domain includes the entire State of California with 12 km resolution and a nested domain with finer 4 km resolution covering California's Central Valley, including the San Joaquin Valley; and it has 18 vertical layers that overlap the WRF layers. The WRF modeling uses routinely available meteorological and air quality data collected during 2012. Those data cover May through September, a period that spans the period of highest ozone concentrations in the San Joaquin Valley. Two analyses in the WOE analysis in Appendix K section 4 provide the justification for the choice of 2012 as model base year, based on ozone concentrations and various meteorological measures of the ozone forming potential of candidate years 2010–2013. CMAQ and WRF are both recognized in the Modeling Guidance as technically sound, state-of-the-art models. The areal extent and the horizontal and vertical resolution used in these models were adequate for modeling San Joaquin Valley ozone.

The WRF meteorological model results and performance statistics are described in Appendix H, section 3.2. Supplemental figures S.1–S.20 provide hourly time series graphs of wind speed, direction, and temperature for the Northern, Central, and Southern sub-

[55] *Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,* December 2014 Draft, EPA OAQPS; available at *https://www.epa.gov/scram/state-implementation-plan-sip-attainment-demonstration-guidance.* This updates, but is largely consistent with, the earlier *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze,* EPA–454/B–07–002, April 2007. Additional EPA modeling guidance can be found in 40 CFR 51 Appendix W, *Guideline on Air Quality Models,* 82 FR 5182, January 17, 2017; available at *https://www.epa.gov/scram/clean-air-act-permit-modeling-guidance.*

[56] *See* Modeling Guidance at section 2.7.1.

[57] *Ibid.*

regions of the San Joaquin Valley for each month that was modeled. The modeling shows a positive bias in wind speed, and various biases in temperature (negative in Southern & Central, positive in Northern) and in humidity (opposite direction to temperature).[58] These biases are also seen in the hourly supplemental figures. For example, peak wind speeds are often higher than observed (positive bias) but the overprediction decreases at moderate and low wind speeds and in the later months of the simulation, while the overall diurnal pattern matches consistently. At first glance the biases in wind speed and in relative humidity seem large relative to their base values.[59] However, the 2016 Ozone Plan states that the bias and error are relatively small and are comparable to those seen in previous meteorological modeling of central California and cited in the 2016 Ozone Plan. The 2016 Ozone Plan compared statistics for wind speed, relative humidity, and temperature to benchmarks from a study cited in the Modeling Guidance. The comparison shows that the mean bias in the 2016 Ozone Plan's meteorological modeling is on the high side but within the benchmarks, the mean error is lower, and the Index of Agreement[60] is quite good, especially for temperature. The Modeling Guidance cautions against using comparisons to performance benchmarks as pass/fail tests, and stresses their use in assessing general confidence and in guiding refinement of model inputs when statistics fall outside benchmark ranges.[61] In summary, the 2016 Ozone Plan's meteorological modeling performance statistics appear satisfactory.

As recommended in the Modeling Guidance, the 2016 Ozone Plan also provided a phenomenological evaluation of the meteorological modeling, assessing its ability to replicate qualitative features of the area's meteorological phenomena that could be important for ozone concentrations. The 2016 Ozone Plan's evaluation confirmed that the model was able to capture important phenomena such as up-slope and down-slope flows in the mountain ranges surrounding the Central Valley, and the split in flow toward north and south as winds enter the Central Valley through the Sacramento River delta area.

Ozone model performance statistics are described in the 2016 Ozone Plan at Appendix H, section 5.2. That section includes tables of statistics recommended in the Modeling Guidance for 8-hour and 1-hour daily maximum ozone for the three San Joaquin Valley sub-regions. Supplemental figures S.21–S.102 provide frequency distributions, scatterplots, and hourly time series graphs of ozone concentrations for each of the 25 monitors located in the San Joaquin Valley. The supplemental hourly time series show generally good performance, though many individual daily ozone peaks are underpredicted. This is confirmed by the ozone frequency distributions (*e.g.,* figure S.1), scatter plots (*e.g.,* figure S.22), and plots of bias against concentration (*e.g.,* figure S.25). The highest concentrations also have the largest negative bias. The 2016 Ozone Plan states that the performance statistics are comparable to those seen in previous modeling of ozone in central California and cited in the 2016 Ozone Plan. It also found the statistics to be within the ranges for other modeling applications discussed in a study cited by the Modeling Guidance. The 2016 Ozone Plan's corresponding graphic (figure 11) shows that for negative bias (underprediction), the 2016 Ozone Plan's modeling is among the poorer performing in the range, but for overall error it is among the best performing. Note that, because only relative changes are used from the modeling, the underprediction of absolute ozone concentrations does not mean that future concentrations will be underestimated.

As noted in the 2016 Ozone Plan's modeling protocol, the Modeling Guidance recognizes that limited time and resources can constrain the extent of the diagnostic and dynamic evaluation of model performance undertaken.[62] No diagnostic evaluation, as that term is used in the Modeling Guidance, was described in the 2016 Ozone Plan. Appendix H to the 2016 Ozone Plan includes section 5.2.1 entitled ''Diagnostic Evaluation,'' though it actually describes a *dynamic* evaluation in which model predictions of ozone concentrations for weekdays and weekends were compared to each other and to observed concentrations. Since NO_X emissions are substantially less on weekends, these comparisons provide useful information on how the model responds to emission changes. The 2016 Ozone Plan notes that for the modeled year 2012, the model-predicted relationship of weekday and weekend concentrations tends to match the observed (*i.e.,* the predicted amount of ''weekend effect,'' or increase in weekend ozone despite decrease in NO_X emissions, matches the observed concentrations). The modeled weekend response is also consistent with an independent analysis cited in the 2016 Ozone Plan of the historical response of ozone to reductions in NO_X.[63] The dynamic evaluation provides strong evidence that the model is working well at simulating ozone and how it responds to emission changes.

As for meteorological performance, the Modeling Guidance cautions against pass/fail tests, in favor of an overall confidence assessment and identification of causes of poor performance to help guide refinement of model input.[64] Confidence in the model's ability to correctly simulate emission changes would have been enhanced if the 2016 Ozone Plan had discussed any input refinement and performance improvement process that was undertaken, and if it had provided some performance assessment of non-ozone chemical species participating in ozone formation chemistry. The 2016 Ozone Plan contains a good operational evaluation showing good model performance, and also a useful dynamic evaluation. Some diagnostic evaluations as described in the Modeling Guidance would have provided additional confidence in the model. The information provided in the 2016 Ozone Plan supports the adequacy of the modeling for the attainment demonstration.

After model performance for the 2012 base case was accepted, the model was applied to develop RRFs for the attainment demonstration.[65] This entailed running the model with the same meteorological inputs as before, but with adjusted emissions inventories to reflect the expected changes between 2012 and the 2031 attainment year. These modeling inventories excluded ''emissions events which are either random and/or cannot be projected to the future . . . wildfires, . . . and the

[58] *See* Appendix H, table H–7, Figures H–3 and H–5.

[59] *See, e.g.,* table H–7 Southern San Joaquin Valley wind speed bias of 0.5 relative to base speed 2.4 meters per second, and relative humidity bias of 18 percent relative to 55 percent.

[60] The Index of Agreement is a statistical metric. *See* page 47 of the Modeling Protocol to the 2016 Ozone Plan.

[61] *See* page 30 of the Modeling Guidance.

[62] *See* page 51 of the Modeling Protocol to the 2016 Ozone Plan, and page 63 of the Modeling Guidance.

[63] *See* 2016 Ozone Plan Appendix K, Weight of Evidence, section 7 ''Weekend Effect in the San Joaquin Valley'' provides additional information on the observed concentrations and how the weekday-weekend difference has changed over the years. Section 9 ''Corroborating Studies'' provides additional information on the trend in ozone formation regime.

[64] See Modeling Guidance, pages 62–63.

[65] *See* 2016 Ozone Plan, section 4.4, and Appendix H, section 4.2.

[San Francisco Bay Area] Chevron refinery fire.'' [66] The base year or ''reference year'' modeling inventory was the same as the inventory for the modeling base case except for these exclusions. The 2031 inventory projects the base year with these exclusions into the future by including the effect of economic growth and emissions control measures.[67] To include the fires in the base year but not the future year would effectively credit the 2016 Ozone Plan's control measures with eliminating emissions from the fire; therefore, it makes more sense to treat the base year and future year consistently with respect to fire or other unpredictable emissions events. The Modeling Guidance recommends that day-specific wildfire emissions be used in modeling of both base and future years, possibly with spatial and temporal averaging to create ''average'' fire emissions that avoid acute effects from large fires, but it also notes that other approaches may be appropriate.[68] The 2016 Ozone Plan's approach of excluding wildfires altogether avoids uncertainties in fire emissions and meteorology. It has the drawback that the model response to 2012–2031 emission changes does not reflect the effect of wildfires, which occur in most years and could affect the atmospheric chemistry and its response to those emission changes. The approach used in the 2016 Ozone Plan is reasonable, but would be stronger with a more complete rationale in the modeling protocol or the Plan documentation.

The 2016 Ozone Plan carried out the attainment test procedure consistent with the Modeling Guidance. The RRFs were calculated as the ratio of future to base year concentrations. This was done for each monitor using the top 10 ozone days over 0.060 ppm,[69] using the base year concentration in the highest of the three by three modeling grid cells centered on the monitor, and the future concentration from the same day and grid cell, with some exclusions, *e.g.,* if there were too few days above 0.060 ppm. The resulting RRFs were then applied to 2012 weighted base year design values [70] for each monitor to arrive at 2031 future year design values.[71] The highest 2031 ozone design value is 0.074 ppm, which occurs at the Clovis-N Villa Avenue site; this is below the 2008 8-hr ozone NAAQS of 0.075 ppm, thus demonstrating attainment.

The 2016 Ozone Plan includes an additional attainment demonstration using ''banded'' RRFs.[72] The banded approach is described more fully in a study cited in the 2016 Ozone Plan. The underlying idea is to divide ozone concentrations into ranges or bands and compute RRFs for each band separately. This allows different ozone concentrations to respond differently to emission changes. The Modeling Guidance procedure instead assumes that the relative response is the same for all ozone concentrations. The banded RRF approach is a reasonable refinement, since higher concentrations generally are more responsive to emissions changes.[73] This approach was used in the 2013 1-hour Ozone San Joaquin Valley Plan approved by the EPA, and it is cited by the Modeling Guidance as an alternative approach.[74] In this case, the banded approach increased design values for some monitors and decreased them for others; for Clovis, the site with the highest 2031 design value, the design value decreased from 0.074 ppm to 0.072 ppm. This provides corroboration for the attainment demonstration.

Finally, the 2016 Ozone Plan modeling includes an ''Unmonitored Area Analysis'' to assess the attainment status of locations other than monitoring sites.[75] The Modeling Guidance describes a ''gradient adjusted spatial fields'' procedure along with the EPA software (''Modeled Attainment Test Software'' or MATS) used to carry it out.[76] This procedure uses a form of interpolation, combining monitored concentrations and modeled gradients (modeled changes in concentration with distance from a monitor) to estimate future concentrations at locations without a monitor. The 2016 Ozone Plan states that an Unmonitored Area Analysis was carried out using software developed by CARB. The procedure was described to be the same as that outlined in the Modeling Guidance, with the exception that it was restricted to locations spanned by monitors (*i.e.,* within a convex shape enclosing the monitors) rather than extrapolating beyond to the full rectangular modeling domain as in the EPA procedure. The stated reason for this restriction is that it avoids the inherent uncertainty associated with extrapolation outside the monitoring network. Most of the nonattainment area is nevertheless covered in the analysis, since there are monitors outside the San Joaquin Valley nonattainment area. However, a strip along the eastern edge, from the foothills to the crest of the Sierra Nevada mountains, is not included in the analysis.[77] The method used is an improvement over the simpler interpolation used in some previous plans. The 2016 Ozone Plan states that the results showed concentrations below the NAAQS for all locations, with concentrations under 70 ppb except for small regions near Tracy and Fresno. This Unmonitored Area Analysis supports the demonstration that all locations in the San Joaquin Valley will attain the NAAQS by 2031.

In addition to the formal attainment demonstration, the Plan also contains a WOE analysis in Appendix K. Some of the contents of Appendix K have already been discussed above, *e.g.,* section 4 ''Suitability of 2012 as a Base Year for Modeling'', section 7 ''Weekend Effect in the San Joaquin Valley,'' section 8 ''Modeled Attainment Projections'' with a comparison of the standard attainment demonstration RRFs and the band RRFs emissions reductions. These all add support and corroboration for the modeling used in the attainment demonstration and the credibility of attainment in 2031. Other sections also add support to the attainment demonstration, mainly by showing long term downward trends that continue through 2014, the latest year available prior to 2016 Ozone Plan development. Downward trends are demonstrated for measured ozone concentrations, number of days above the ozone NAAQS, measured concentrations of the ozone precursors NO_X and VOC, and emissions of NO_X and VOC. The downward measured ozone trends are seen even when they are adjusted for meteorology (using Classification and Regression Trees to identify the meteorological variables that affect ozone, followed by multiple

[66] *See* 2016 Ozone Plan, Appendix H, page H–11.

[67] In general, the ''reference year'' could be a different calendar year than the modeling base case. The base case modeling replicates a particular year's measured concentrations using that same year's meteorology and emissions. Modeling of *e.g.,* a regulatorily required year used as the reference year would still use the same meteorology, but emissions from the required year.

[68] *See* Modeling Guidance, page 53.

[69] The Modeling Guidance and the 2016 Ozone Plan state concentrations in terms of parts per billion.

[70] The Modeling Guidance recommends that RRFs be applied to the average of three three-year design values centered on the base year, in this case the design values for 2010–2012, 2011–2013, and 2012–2015. This amounts to a 5-year weighted average of individual year 4th high concentrations, centered on the base year of 2012, and so is referred to as a weighted design value.

[71] *See* 2016 Ozone Plan, tables 4–4 and H–13.

[72] *Id.* Appendix H, section 5.5 and Appendix K, section 8.2

[73] *See* Modeling Guidance, page 100.

[74] 81 FR 19492, April 5, 2016; see also proposal 81 FR 2140, January 15, 2016 at 2151. *See also* Modeling Guidance section 4.1.2, page 99.

[75] *See* 2016 Ozone Plan, Appendix H, section 5.4.

[76] *See* section 4.7 of the Modeling Guidance.

[77] *See* 2016 Ozone Plan, figure J–14.

regression of ozone on those variables). These all show the substantial air quality progress made in the San Joaquin Valley and add support to the attainment demonstration for 2031.

3. The EPA's Review of the State's Submission

The modeling shows that existing CARB and District control measures are sufficient to attain the 2008 8-hour Ozone NAAQS by 2031 at all monitoring sites in the San Joaquin Valley. Given the extensive discussion of modeling procedures, tests, and performance analyses called for in the Modeling Protocol and the good model performance, the EPA finds that the modeling is adequate for purposes of supporting the attainment demonstration. The EPA finds that the State has demonstrated attainment of the NAAQS by the applicable attainment date, and we propose to approve the attainment demonstration provided in the 2016 Ozone Plan.

E. Rate of Progress Plan and Reasonable Further Progress Demonstration

1. Statutory and Regulatory Requirements

Requirements for RFP are specified in CAA sections 172(c)(2), 182(b)(1), and 182(c)(2)(B). CAA section 172(c)(2) requires that plans for nonattainment areas provide for RFP, which is defined as such annual incremental reductions in emissions of the relevant air pollutant as are required under part D (''Plan Requirements for Nonattainment Areas'') or may reasonably be required by the EPA for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. CAA section 182(b)(1) specifically requires that ozone nonattainment areas that are classified as Moderate or above demonstrate a 15 percent reduction in VOC between the years of 1990 and 1996. The EPA has typically referred to section 182(b)(1) as the Rate of Progress (ROP) requirement. For ozone nonattainment areas classified as Serious or higher, section 182(c)(2)(B) requires reductions averaged over each consecutive 3-year period beginning 6 years after the baseline year until the attainment date of at least 3 percent of baseline emissions per year. The provisions in CAA section 182(c)(2)(B)(ii) allow an amount less than 3 percent of such baseline emissions each year if the state demonstrates to the EPA that the plan includes all measures that can feasibly be implemented in the area in light of technological achievability.

The 2008 Ozone SRR considers areas classified Moderate or higher to have met the ROP requirements of CAA section 182(b)(1) if the area has a fully approved 15 percent ROP plan for the 1-hour or 1997 8-hour ozone standards, provided the boundaries of the ozone nonattainment areas are the same.[78] For such areas, the RFP requirements of CAA section 172(c)(2) require areas classified as Moderate to provide a 15 percent emission reduction of ozone precursors within 6 years of the baseline year. Areas classified as Serious or higher must meet the RFP requirements of CAA section 182(c)(2)(B) by providing an 18 percent reduction of ozone precursors in the first 6-year period, and an average ozone precursor emission reduction of 3 percent per year for all remaining 3-year periods thereafter.[79] Under the CAA 172(c)(2) and CAA 182(c)(2)(B) RFP requirements, NO_X emissions reductions may be substituted for VOC reductions.[80]

Except as specifically provided in CAA section 182(b)(1)(C), emissions reductions from all SIP-approved, federally promulgated, or otherwise SIP-creditable measures that occur after the baseline are creditable for purposes of demonstrating that the RFP targets are met. Because the EPA has determined that the passage of time has caused the effect of certain exclusions to be *de minimis,* the RFP demonstration is no longer required to calculate and specifically exclude reductions from measures related to motor vehicle exhaust or evaporative emissions promulgated by January 1, 1990; regulations concerning Reid vapor pressure promulgated by November 15, 1990; measures to correct previous RACT requirements; and, measures required to correct previous inspection and maintenance (I/M) programs.[81]

The 2008 Ozone SRR requires the RFP baseline year to be the most recent calendar year for which a complete triennial inventory is required to be submitted to the EPA (*i.e.,* 2011), but it also allows states to use an alternative baseline year between 2008 and 2012 if the state demonstrates why the alternative baseline year is appropriate.[82] As discussed previously, in the *South Coast* decision issued on February 16, 2018, the D.C. Circuit upheld the EPA's RFP baseline year based on the year of the most recent triennial emissions inventory (*i.e.,* 2011), but it vacated the provisions of the 2008 Ozone SRR that allowed states to justify and use an alternative baseline year between 2008 and 2012 for demonstrating RFP because the EPA had not provided a statutory basis for allowing use of alternative baseline years. On April 20, 2018, the South Coast Air Quality Management District submitted a petition for rehearing on the RFP baseline year issue, arguing that 2012 has a valid statutory basis because it was the year of designation for the 2008 Ozone NAAQS.[83]

2. Summary of the State's Submission

The 2016 Ozone Plan addresses the 15 percent ROP requirement by noting that the EPA approved a 15 percent ROP plan for the 1-hour ozone NAAQS for the San Joaquin Valley in 1997, and that the 1-hour ozone nonattainment area covers the entire nonattainment area for the 2008 ozone standards.[84]

To address the RFP requirements, the 2016 Ozone Plan selected 2012 as the RFP baseline year and provided emissions inventories for the RFP baseline, milestone and attainment years.[85] The RFP demonstration in the 2016 Ozone Plan uses NO_X substitution beginning in milestone year 2018 to meet VOC emission targets and concluded that the RFP demonstration meets the applicable requirements for each milestone year and the attainment year.

3. The EPA's Review of the State's Submission

We have reviewed the 2016 Ozone Plan and agree that the EPA has approved a 15 percent ROP demonstration for the 1-hour ozone NAAQS, fulfilling the requirements of CAA section 182(b)(1).[86]

For the RFP requirements under CAA sections 172(c)(2) and 182(c)(2)(B), the Ozone SRR established 2011 as the RFP baseline year. As discussed previously, the D.C. Circuit vacated provisions of the 2008 Ozone SRR allowing states to use an alternative RPF baseline year between 2008 and 2012 in lieu of 2011. Because the 2016 Ozone Plan used 2012 as the RFP baseline year, we are not taking action at this time on the RFP demonstration in the 2016 Ozone Plan.

[78] *See* 70 FR 12264 at 12271 (March 6, 2015).

[79] *Ibid.*

[80] *See* 40 CFR 51.1110(a)(2)(i)(C) and 40 CFR 51.1110(a)(2)(ii)(B); and 70 FR 12264 at 12271 (March 6, 2015).

[81] *See* 40 CFR 51.1110(a)(7).

[82] *See* 40 CFR 51.1110(b).

[83] *See* Petition for Panel Rehearing of South Coast Air Quality Management District, D.C. Cir., No. 15–1115, docket item #1727571, filed April 20, 2018.

[84] *See* Chapter 6 of the 2016 Ozone Plan. *See also* 62 FR 1150 (January 8, 1997).

[85] *See* the discussion beginning on page 6–10 and table 6–3.

[86] *See* 62 FR 1150, at 1183 (January 8, 1997).

F. Transportation Control Strategies and Measures To Offset Emissions Increases From Vehicle Miles Traveled

1. Statutory and Regulatory Requirements

Section 182(d)(1)(A) of the Act requires the state, if subject to its requirements for a given area, to submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips in such area.[87]

In *Association of Irritated Residents* v. *EPA,* the Ninth Circuit ruled that additional transportation control measures are required whenever vehicle emissions are projected to be higher than they would have been had VMT not increased, even when aggregate vehicle emissions are actually decreasing.[88] In response to the Ninth Circuit's decision, the EPA issued a memorandum titled ''Guidance on Implementing Clean Air Act Section 182(d)(1)(A): Transportation Control Measures and Transportation Control Strategies to Offset Growth in Emissions Due to Growth in Vehicle Miles Travelled'' (herein referred to as the ''August 2012 guidance'').[89]

The August 2012 guidance discusses the meaning of Transportation Control Strategies (TCSs) and Transportation Control Measures (TCMs) and recommends that both TCSs and TCMs be included in the calculations made for the purpose of determining the degree to which any hypothetical growth in emissions due to growth in VMT should be offset. Generally, TCSs encompass many types of controls including, for example, motor vehicle emissions limitations, I/M programs, alternative fuel programs, other technology-based measures, and TCMs, that would fit within the regulatory definition of ''control strategy.''[90] Such measures include, but are not limited to, those listed in CAA section 108(f). TCMs generally refer to programs intended to reduce VMT, the number of vehicle trips, or traffic congestion, including, *e.g.,* programs for improved public transit, designation of certain lanes for passenger buses and high-occupancy vehicles, and trip reduction ordinances.

The August 2012 guidance explains how states may demonstrate that the VMT emissions offset requirement is satisfied in conformance with the Ninth Circuit's ruling. The August 2012 guidance recommends that states estimate emissions for the nonattainment area's base year and attainment year. One emissions inventory is developed for the base year, and three different emissions inventory scenarios are developed for the attainment year. For the attainment year, the state would present three emissions estimates, two of which would represent hypothetical emissions scenarios that would provide the basis to identify the growth in emissions due solely to the growth in VMT, and one that would represent projected actual motor vehicle emissions after fully accounting for projected VMT growth and offsetting emissions reductions obtained by all creditable TCSs and TCMs. See the August 2012 guidance for specific details on how states might conduct the calculations.

The base year on-road VOC emissions should be calculated using VMT in that year, and should reflect all enforceable TCSs and TCMs in place in the base year. This would include vehicle emissions standards, state and local control programs, such as I/M programs or fuel rules, and any additional implemented TCSs and TCMs that were already required by or credited in the SIP as of that base year.

The first of the emissions calculations for the attainment year would be based on the projected VMT and trips for that year and assume that no new TCSs or TCMs beyond those already credited in the base year inventory have been put in place since the base year. This calculation demonstrates how emissions would hypothetically change if no new TCSs or TCMs were implemented, and VMT and trips were allowed to grow at the projected rate from the base year. This estimate would show the potential for an increase in emissions due solely to growth in VMT and trips. This represents a ''no action'' scenario. Emissions in the attainment year in this scenario may be lower than those in the base year due to fleet turnover; however, if VMT and/or numbers of vehicle trips are projected to increase in the attainment year, emissions would still likely be higher than if VMT had held constant.

The second of the attainment year's emissions calculations would assume that no new TCSs or TCMs beyond those already credited have been put in place since the base year, but it would also assume that there was no growth in VMT and trips between the base year and attainment year. This estimate reflects the hypothetical emissions level that would have occurred if no further TCMs or TCSs had been put in place and if VMT and trip levels had held constant since the base year. Like the ''no action'' attainment year estimate described above, emissions in the attainment year may be lower than those in the base year due to fleet turnover, but in this case emissions would not be influenced by any growth in VMT or trips. This emissions estimate would reflect a ceiling on the attainment emissions that should be allowed to occur under the statute as interpreted by the Ninth Circuit because it shows what would happen under a scenario in which no offsetting TCSs or TCMs have yet been put in place and VMT and trips are held constant during the period from the area's base year to its attainment year. This represents a ''VMT offset ceiling'' scenario. These two hypothetical status quo estimates are necessary steps in identifying the target level of emissions from which states determine whether further TCMs or TCSs, beyond those that have been adopted and implemented in reality, would need to be adopted and implemented in order to fully offset any increase in emissions due solely to VMT and trips identified in the ''no action'' scenario.

Finally, the state would present the emissions that are actually expected to occur in the area's attainment year after taking into account reductions from all enforceable TCSs and TCMs that in reality were put in place after the baseline year. This estimate would be based on the VMT and trip levels expected to occur in the attainment year (*i.e.,* the VMT and trip levels from the first estimate) and all of the TCSs and TCMs expected to be in place and for which the SIP will take credit in the area's attainment year, including any TCMs and TCSs put in place since the base year. This represents the ''projected

[87] CAA section 182(d)(1)(A) includes three separate elements. In short, under section 182(d)(1)(A), states are required to adopt transportation control strategies and measures (1) to offset growth in emissions from growth in VMT, and, (2) in combination with other emission reduction requirements, to demonstrate RFP, and (3) to demonstrate attainment. For more information on the EPA's interpretation of the three elements of section 182(d)(1)(A), please see 77 FR 58067, at 58068 (September 19, 2012) (proposed withdrawal of approval of South Coast VMT emissions offset demonstrations).

[88] *See Association of Irritated Residents* v. *EPA,* 632 F.3d. 584, at 596–597 (9th Cir. 2011), reprinted as amended on January 27, 2012, 686 F.3d 668, further amended February 13, 2012 (''*Association of Irritated Residents*'').

[89] Memorandum from Karl Simon, Director, Transportation and Climate Division, Office of Transportation and Air Quality, to Carl Edlund, Director, Multimedia Planning and Permitting Division, EPA Region VI, and Deborah Jordan, Director, Air Division, EPA Region IX, August 30, 2012.

[90] *See, e.g.,* 40 CFR 51.100(n). TCMs are defined at 40 CFR 51.100(r) as meaning any measure that is directed toward reducing emissions of air pollutants from transportation sources.

actual'' attainment year scenario. If this emissions estimate is less than or equal to the emissions ceiling that was established in the second of the attainment year calculations, the TCSs or TCMs for the attainment year would be sufficient to fully offset the identified hypothetical growth in emissions.

If, instead, the estimated projected actual attainment year emissions are still greater than the ceiling that was established in the second of the attainment year emissions calculations, even after accounting for post-baseline year TCSs and TCMs, the state would need to adopt and implement additional TCSs or TCMs to further offset the growth in emissions. The additional TCSs or TCMs would need to bring the actual emissions down to at least the ''had VMT and trips held constant'' ceiling estimated in the second of the attainment year calculations, in order to meet the VMT offset requirement of section 182(d)(1)(A) as interpreted by the Ninth Circuit.

2. Summary of the State's Submission

CARB prepared the San Joaquin Valley VMT emissions offset demonstration, which is included as section D.3 (''VMT Offsets'') of Appendix D (''Mobile Source Control Strategy'') of the 2016 Ozone Plan. For the demonstration, CARB used EMFAC2014, the latest EPA-approved motor vehicle emissions model for California. The EMFAC2014 model estimates the on-road emissions from two combustion processes (*i.e.,* running exhaust and start exhaust) and four evaporative processes (*i.e.,* hot soak, running losses, diurnal losses, and resting losses). The EMFAC2014 model combines trip-based VMT data from the eight San Joaquin Valley MPOs (*e.g.,* Council of Fresno County Governments), starts data based on household travel surveys, and vehicle population data from the California Department of Motor Vehicles. These sets of data are combined with corresponding emission rates to calculate emissions.

Emissions from running exhaust, start exhaust, hot soak, and running losses are a function of how much a vehicle is driven. As such, emissions from these processes are directly related to VMT and vehicle trips, and CARB included emissions from them in the calculations that provide the basis for the San Joaquin Valley VMT emissions offset demonstration. CARB did not include emissions from resting loss and diurnal loss processes in the analysis because such emissions are related to vehicle population, not to VMT or vehicle trips, and thus are not part of ''any growth in emissions from growth in *vehicle miles traveled or numbers of vehicle trips* in such area'' (emphasis added) under CAA section 182(d)(1)(A).

The San Joaquin Valley VMT emissions offset demonstration uses 2012 as the base year and also includes the previously described three different attainment year scenarios (*i.e.,* no action, VMT offset ceiling, and projected actual). The San Joaquin Valley 2016 Ozone Plan provides a demonstration of attainment of the 2008 8-hour ozone standards in the San Joaquin Valley by December 31, 2031, based on emissions projections for year 2031 reflecting adopted controls. As described in section III.D of this notice, the EPA is proposing to approve this attainment demonstration. Accordingly, we find CARB's selection of year 2031 as the attainment year for the VMT emissions offset demonstration for the 8-hour ozone NAAQS to be appropriate.

Table 3 summarizes the relevant distinguishing parameters for each of the emissions scenarios and shows CARB's corresponding VOC emissions estimates for the demonstration for the 2008 8-hour ozone NAAQS.

TABLE 3—VMT EMISSIONS OFFSET INVENTORY SCENARIOS AND RESULTS FOR THE 2008 OZONE STANDARD

Scenario	VMT		Starts		Controls	VOC emissions
	Year	1000/day	Year	1000/day	Year	tpd
Base Year	2012	96,934	2012	16,624	2012	50
No Action	2031	131,835	2031	20,572	2012	22
VMT Offset Ceiling	2031	96,934	2012	16,624	2012	17
Projected Actual	2031	131,835	2031	20,572	2031	14

Source: 2016 Ozone Plan for 2008 8-Hour Ozone Standard, Appendix D, pages D–22 and D–24. Year 2031 VMT is based on 2015 Federal Transportation Improvement Plans from the eight San Joaquin Valley MPOs.

For the base year scenario, CARB ran the EMFAC2014 model for the applicable base year (*i.e.,* 2012 for the 2008 8-hour ozone standards) using VMT and starts data corresponding to that year. As shown in table 3, CARB estimates the San Joaquin Valley VOC emissions at 50 tpd in 2012.

For the ''no action'' scenario, CARB first identified the on-road motor vehicle control programs (*i.e.,* TCSs or TCMs) put in place since the base year and incorporated into EMFAC2014 and then ran EMFAC2014 with the VMT and starts data corresponding to the applicable attainment year (*i.e.,* 2031 for the 2008 8-hour ozone standards) without the emissions reductions from the on-road motor vehicle control programs put in place after the base year. Thus, the no action scenario reflects the hypothetical VOC emissions that would occur in the attainment year in the San Joaquin Valley if CARB had not put in place any additional TCSs or TCMs after 2012. As shown in table 3, CARB estimates the no action San Joaquin Valley VOC emissions at 22 tpd in 2031.

For the ''VMT offset ceiling'' scenario, CARB ran the EMFAC2014 model for the attainment years but with VMT and starts data corresponding to base year values. Like the no action scenarios, the EMFAC2014 model was adjusted to reflect the VOC emissions levels in the attainment years without the benefits of the post-base-year on-road motor vehicle control programs. Thus, the VMT offset ceiling scenario reflects hypothetical VOC emissions in the San Joaquin Valley if CARB had not put in place any TCSs or TCMs after the base year and if there had been no growth in VMT or vehicle trips between the base year and the attainment year.

The hypothetical growth in emissions due to growth in VMT and trips can be determined from the difference between the VOC emissions estimates under the no action scenario and the corresponding estimates under the VMT offset ceiling scenario. Based on the values in table 3, the hypothetical growth in emissions due to growth in VMT and trips in the San Joaquin Valley would have been 5 tpd (*i.e.,* 22 tpd minus 17 tpd) for purposes of the revised VMT emissions offset demonstration for the 8-hour ozone

standards. This hypothetical difference establishes the level of VMT growth-caused emissions that need to be offset by the combination of post-baseline year TCMs and TCSs and any necessary additional TCMs and TCSs.

For the ''projected actual'' scenario calculation, CARB ran the EMFAC2014 model for the attainment year with VMT and starts data at attainment year values and with the full benefits of the relevant post-baseline year motor vehicle control programs. For this scenario, CARB included the emissions benefits from TCSs and TCMs put in place since the base year. The most significant measures reducing VOC emissions during the 2012 to 2031 timeframe include the Advanced Clean Cars program, Low Emission Vehicles II and III standards, Zero Emissions Vehicle standards, On-Board Diagnostics, Smog Check Improvements, and California Reformulated Gasoline Phase 3.[91]

As shown in table 3, the calculation of the projected actual attainment-year VOC emissions resulted in 14 tpd for the 2008 8-hour ozone NAAQS demonstration. CARB then compared this value against the corresponding VMT offset ceiling value to determine whether additional TCMs or TCSs would need to be adopted and implemented in order to offset any increase in emissions due solely to VMT and trips. Because the projected actual emissions are less than the corresponding VMT offset ceiling emissions, CARB concluded that the demonstration shows compliance with the VMT emissions offset requirement and that there are sufficient adopted TCSs and TCMs to offset the growth in emissions from the growth in VMT and vehicle trips in the San Joaquin Valley for the 2008 8-hour standards. In fact, taking into account the creditable post-baseline year TCMs and TCSs, CARB showed that they offset the hypothetical difference by 8 tpd for the 2008 8-hour standards, rather than the required 5 tpd, respectively.[92]

3. The EPA's Review of the State's Submission

Based on our review of the San Joaquin Valley VMT emissions offset demonstration in Appendix D of the 2016 Ozone Plan, we find CARB's analysis to be acceptable and agree that CARB has adopted sufficient TCSs and TCMs to offset the growth in emissions from growth in VMT and vehicle trips in the San Joaquin Valley for the purposes of the 2008 8-hour ozone standards. As such, we find that the San Joaquin Valley VMT emissions offset demonstration complies with the VMT emissions offset requirement in CAA section 182(d)(1)(A). Therefore, we propose approval of the San Joaquin Valley VMT emissions offset demonstration portion of the 2016 Ozone Plan.

G. Contingency Measures To Provide for RFP and Attainment

1. Statutory and Regulatory Requirements

Under the CAA, 8-hour ozone nonattainment areas classified under subpart 2 as Moderate or above must include in their SIPs contingency measures consistent with sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event the area fails to make reasonable further progress or to attain the NAAQS by the attainment date. The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure will be implemented without significant further action by the state or the EPA.[93]

Neither the CAA nor the EPA's implementing regulations establish a specific level of emissions reductions that implementation of contingency measures must achieve, but the EPA's 2008 Ozone SRR reiterates the EPA's policy that contingency measures should provide for emissions reductions approximately equivalent to one year's worth progress, amounting to reductions of 3 percent of the baseline emissions inventory for the nonattainment area.[94]

It has been the EPA's longstanding interpretation of section 172(c)(9) that states may rely on federal measures (*e.g.,* federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) and local measures already scheduled for implementation that provide emissions reductions in excess of those needed to provide for RFP or expeditious attainment. The key is that the statute requires that contingency measures provide for additional emissions reductions that are not relied on for RFP or attainment and that are not included in the RFP or attainment demonstrations as meeting part or all of the contingency measure requirements. The purpose of contingency measures is to provide continued emissions reductions while the plan is being revised to meet the missed milestone.

The EPA has approved numerous SIPs under this interpretation—*i.e.,* SIPs that use as contingency measures one or more federal or local measures that are in place and provide reductions that are in excess of the reductions required by the attainment demonstration or RFP plan,[95] and there is case law supporting the EPA's interpretation in this regard.[96] However, in *Bahr* v. *EPA,* the Ninth Circuit rejected the EPA's interpretation of CAA section 172(c)(9) as allowing for early implementation of contingency measures.[97] The Ninth Circuit concluded that contingency measures must take effect at the time the area fails to make RFP or attain by the applicable attainment date, not before.[98] Thus, within the geographic jurisdiction of the Ninth Circuit, states cannot rely on early-implemented measures to comply with the contingency measure requirements under CAA section 172(c)(9).

2. Summary of the State's Submission

In its 2016 Ozone Plan, the District set aside NO_X emissions reductions from the attainment demonstration and reserves those reductions to meet the contingency measure requirement for a failure to attain the 2008 ozone standards.[99] Similarly, to satisfy the requirement for RFP contingency measures, the 2016 Ozone Plan sets aside 3 percent excess emissions reductions in the first RFP milestone year and reserves those reductions for

[91] *See* attachment A of Appendix D to the 2016 Ozone Plan includes a list of transportation control strategies. See *also* EPA final action on CARB mobile source SIP submittals at 81 FR 39424 (June 16, 2016), 82 FR 14446 (March 21, 2017), and 83 FR 23232 (May 18, 2018).

[92] The offsetting VOC emissions reductions from the TCSs and TCMs put in place after the respective base year can be determined by subtracting the projected actual emissions estimates from the no action emissions estimates in table 3. For the purposes of the 2008 8-hour ozone demonstration, the offsetting emissions reductions (*i.e.,* 8 tpd based on 22 tpd minus 14 tpd) exceed the growth in emissions from growth in VMT and vehicle trips (*i.e.,* 5 tpd based on 22 tpd minus 17 tpd).

[93] *See* 70 FR 71612 (November 29, 2005). *See also* 2008 Ozone SRR, 80 FR 12264 at 12285 (March 6, 2015).

[94] 80 FR 12264 at 12285 (March 6, 2015).

[95] *See, e.g.,* 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (January 3, 2001) (final rule approving a Connecticut ozone SIP revision).

[96] *See, e.g., LEAN* v. *EPA,* 382 F.3d 575 (5th Cir. 2004) (upholding contingency measures that were previously required and implemented where they were in excess of the attainment demonstration and RFP SIP).

[97] *Bahr* v. *EPA,* 836 F.3d 1218, at 1235–1237 (9th Cir. 2016).

[98] *Id.* at 1235–1237.

[99] *See* 2016 Ozone Plan, Chapter 6, section 6.4.

contingency measures for failure to make RFP.[100]

3. The EPA's Review of the State's Submission

The magnitude of contingency measure reductions in the 2016 Ozone Plan is affected by the *South Coast* decision (regarding the appropriate baseline year for RFP) because, for ozone purposes, the required emission reductions are generally calculated as a portion of the baseline emissions inventory. For this reason, we are not taking action at this time on the contingency measures in the 2016 Ozone Plan.

H. Clean Fuels or Advanced Control Technology for Boilers

1. Statutory and Regulatory Requirements

CAA section 182(e)(3) provides that SIPs for Extreme nonattainment areas require each new, modified, and existing electric utility and industrial and commercial boiler that emits more than 25 tpy of NO_X to either burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low-polluting fuel), or use advanced control technology, such as catalytic control technologies or other comparably effective control methods.

Additional guidance on this requirement is provided in the General Preamble at 13523. According to the General Preamble, a boiler should generally be considered as any combustion equipment used to produce steam and generally does not include a process heater that transfers heat from combustion gases to process streams.[101] In addition, boilers with rated heat inputs less than 15 million British Thermal Units (MMBtu) per hour that are oil- or gas-fired may generally be considered *de minimus* and exempt from these requirements because it is unlikely that they will exceed the 25 tpy NO_X emission limit.[102]

2. Summary of the State's Submission

The 2016 Ozone Plan addresses the requirements of CAA section 182(e)(3) in section 3.17 (''Clean Fuels'') of Chapter 3, and states that District Rules 4305, 4306, and 4352 address NO_X emission limits for boilers and that these rules meet the requirements of the CAA. Additional information on these rules is also provided in Appendix C of the 2016 Ozone Plan. Specifically, the 2016 Ozone Plan indicates that most of the boilers under District Rules 4305 and 4306 are fired on natural gas and, as such, meet the requirements of CAA section 182(e)(3) for those boilers subject to those rules. Liquid fuel-fired boilers are also addressed by Rule 4305 and 4306, and the 2016 Ozone Plan concludes that the applicable NO_X emissions in the rules necessitate use of advanced technology. The 2016 Ozone Plan concludes likewise for solid fuel-fired boilers addressed by Rule 4352.

3. The EPA's Review of the State's Submission

Rule 4305 (now titled ''Boilers, Steam Generators, and Process Heaters—Phase 2'') was adopted by the District in 1993 and was superseded by Rule 4306 (''Boilers, Steam Generators, and Process Heaters—Phase 3''). Both Rules 4305 and 4306 apply to any gaseous fuel- or liquid fuel-fired boiler, steam generator, or process heater with a rated heat input greater than 5 MMBtu per hour. Rule 4305, as amended on August 21, 2003, was approved by the EPA in 2004, and Rule 4306, as revised on October 16, 2008, was approved by the EPA in 2010.[103] The emission limits in Rule 4306 (5 ppm to 30 ppm for gaseous fuels and 40 ppm for liquid fuels) cannot be achieved without the use of advanced control technologies.[104] All units subject to Rule 4306 were required to comply with the limits in the rule no later than December 1, 2008.

Rule 4352, titled ''Solid Fuel-Fired Boilers, Steam Generators, and Process Heaters'' was last approved by the EPA on November 6, 2012.[105] Rule 4352 applies to any boiler, steam generator, or process heater fired on solid fuel at a source that has the potential to emit more than 10 tpy of NO_X or VOC. All units subject to Rule 4352 were required to comply with the rule's most stringent limits no later than January 1, 2013. In an EPA action on an earlier version of Rule 4352, we determined that all of the NO_X emission limits in Rule 4352 effectively require operation of selective noncatalytic reduction control technology, which, for the affected sources, is comparably effective to selective catalytic reduction, and comparable to the combustion of clean fuels at these types of boilers. Therefore, we concluded that Rule 4352 satisfied the requirements of section 182(e)(3) for solid fuel-fired boilers in the San Joaquin Valley.[106]

In addition, new and modified boilers that will emit or have the potential to emit 25 tpy or more of NO_X are subject to the District's new source permitting rule, Rule 2201, titled ''New and Modified Stationary Source Review.'' This rule requires new and modified sources to install and operate lowest achievable emission rate (LAER) technology. The EPA last approved Rule 2201 in 2014.[107] In previous actions on the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS, the EPA reviewed Rules 4306, 4352, and 2201, and concluded that the rules satisfy the requirements for clean fuel or advanced control technology for boilers in CAA section 182(e)(3). We find that the emission limitations in the District's rules continue to meet the clean fuel or advanced control technology for boilers requirement in CAA section 182(e)(3), and thus, we propose to approve the Clean Fuels for Boilers portion of the 2016 Ozone Plan.

I. Motor Vehicle Emissions Budgets for Transportation Conformity

1. Statutory and Regulatory Requirements

Section 176(c) of the CAA requires federal actions in nonattainment and maintenance areas to conform to the SIP's goals of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the standards. Conformity to the SIP's goals means that such actions will not: (1) Cause or contribute to violations of a NAAQS, (2) worsen the severity of an existing violation, or (3) delay timely attainment of any NAAQS or any interim milestone.

Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the EPA's transportation conformity rule, codified at 40 CFR part 93, subpart A. Under this rule, MPOs in nonattainment and maintenance areas coordinate with state and local air quality and transportation agencies, the EPA, the FHWA, and the FTA to demonstrate that an area's regional transportation plans and transportation improvement programs conform to the applicable SIP. This demonstration is typically done by showing that estimated emissions from

[100] *Id.* at section 6.3.

[101] *See* General Preamble, 57 FR 13498 at 13523 (April 16, 1992).

[102] *Id* at 13524.

[103] *See* 69 FR 28061 (May 18, 2004) (approval of Rule 4305) and 75 FR 1715 (January 13, 2010) (approval of Rule 4306).

[104] *See* ''Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional Boilers,'' EPA, March 1994. *See also* 76 FR 57846 at 57864–57865 (September 11, 2011) and 77 FR 12652 at 12670 (March 1, 2012).

[105] 77 FR 66548 (November 6, 2012).

[106] *See* 74 FR 65042 (December 9, 2009) (proposed limited approval and limited disapproval of Rule 4352) and 75 FR 60623 (October 1, 2010) (final limited approval and limited disapproval of Rule 4352).

[107] 79 FR 55637 (September 17, 2014).

existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets (MVEBs or ''budgets'') contained in all control strategy SIPs. Budgets are generally established for specific years and specific pollutants or precursors. Ozone plans should identify budgets for on-road emissions of ozone precursors (NO_X and VOC) in the area for each RFP milestone year and the attainment year, if the plan demonstrates attainment.[108]

For motor vehicle emissions budgets to be approvable, they must meet, at a minimum, the EPA's adequacy criteria (40 CFR 93.118(e)(4) and (5)) and be approvable under all pertinent SIP requirements. To meet these requirements, the MVEBs must be consistent with the approvable attainment and RFP demonstrations and reflect all of the motor vehicle control measures contained in the attainment and RFP demonstrations.[109]

The EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) making a finding of adequacy or inadequacy.[110]

2. Summary of the State's Submission

The 2016 Ozone Plan includes budgets for the 2018, 2021, 2024, 2027, and 2030 RFP milestone years, and the 2031 attainment year. The budgets were calculated using EMFAC2014, CARB's latest approved version of the EMFAC model for estimating emissions from on-road vehicles operating in California, and reflect average summer weekday emissions consistent with the RFP milestone years and the 2031 attainment year for the 2008 8-hour ozone NAAQS.[111] The conformity budgets for NO_X and VOC for each county in the nonattainment area are provided in table 4 below.

TABLE 4—BUDGETS IN THE 2016 OZONE PLAN

County	Motor vehicle emissions budgets (average summer weekday, tons per day)											
	2018		2021		2024		2027		2030		2031	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Fresno	8.0	27.7	6.4	22.2	5.4	14.1	4.9	13.2	4.5	12.6	4.3	12.5
Kern (SJV)	6.6	25.4	5.5	20.4	4.8	12.6	4.5	11.7	4.2	10.9	4.1	10.8
Kings	1.3	5.1	1.1	4.2	0.9	2.6	0.9	2.5	0.8	2.3	0.8	2.3
Madera	1.9	5.1	1.5	4.1	1.2	2.6	1.1	2.3	0.9	2.0	0.9	2.0
Merced	2.5	9.4	2.0	7.8	1.6	4.8	1.5	4.4	1.3	4.2	1.3	4.1
San Joaquin	5.9	13.0	4.9	10.3	4.2	6.9	3.8	6.2	3.5	5.7	3.3	5.5
Stanislaus	3.8	10.5	3.0	8.3	2.6	5.6	2.3	5.1	2.1	4.7	2.0	4.7
Tulare	3.7	9.5	2.9	7.2	2.4	4.7	2.2	4.1	1.9	3.8	1.9	3.7

Source: Tables D–4 through D–9 of Appendix D to the 2016 Ozone Plan.

3. The EPA's Review of the State's Submission

As discussed above, the MVEBs for 2018, 2021, 2024, 2027 and 2030 derive from the RFP baseline year and the associated RFP milestone years. As such, the budgets are affected by the *South Coast* decision, and therefore, the EPA is not taking action at this time on the budgets for these years. We plan to propose action for these MVEBs in a future rulemaking. However, in today's notice we are proposing to approve the budgets for the 2031 attainment year for transportation conformity purposes.

The EPA has previously determined that the 2031 budgets in 2016 Ozone Plan are adequate for use for transportation conformity purposes. On February 23, 2017, the EPA announced the availability of the 2016 Ozone Plan and budgets, which were available for a 30-day public comment period that ended on March 27, 2017.[112] The EPA received no comments from the public. On June 13, 2017, the EPA determined the 2018, 2021, 2024, 2027, 2030 and 2031 MVEBs were adequate.[113] On June 29, 2017, the notice of adequacy was published in the **Federal Register**.[114] The new budgets became effective on July 14, 2017. After the effective date of the adequacy finding, the new budgets must be used in future transportation conformity determinations in the San Joaquin Valley area. The EPA is not required under its transportation conformity rule to find budgets adequate prior to proposing approval of them, but in this instance, we have completed the adequacy review of these budgets prior to our final action on the 2016 Ozone Plan.

In today's notice, the EPA is proposing to approve only the 2031 budgets in the 2016 Ozone Plan for transportation conformity purposes. The EPA has determined through its review of the submitted 2016 Ozone Plan that the 2031 budgets are consistent with emission control measures in the SIP and attainment in 2031 for the 2008 8-hour ozone NAAQS. For the reasons discussed in section III.D of this proposed rule, we are proposing to approve the attainment demonstration in the 2016 Ozone Plan. The 2031 budgets, as given in table 5, are consistent with the attainment demonstration, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements, including the adequacy criteria in 93.118(e)(4) and (5). For these reasons, the EPA proposes to approve the budgets in table 5.

[108] See 40 CFR 93.12(b)(2)(i).

[109] See 40 CFR 93.118(e)(4)(iii), (iv) and (v). For more information on the transportation conformity requirements and applicable policies on MVEBs, please visit our transportation conformity website at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

[110] *See* 40 CFR 93.118.

[111] The EPA announced the availability of the EMFAC2014 model for use in SIP development and transportation conformity in California on December 14, 2015 (80 FR 77337). The EPA's approval of the EMFAC2014 emissions model for SIP and conformity purposes was effective on the date of publication of the notice in the **Federal Register**.

[112] *See http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.*

[113] *See* June 13, 2017 letter from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Richard W. Corey, Executive Officer, CARB.

[114] *See* 82 FR 29547.

TABLE 5—2031 MOTOR VEHICLE EMISSIONS BUDGETS IN THE 2016 OZONE PLAN FOR 2031

Motor vehicle emissions budgets (average summer weekday, tons per day)		
County	VOC	NO_X
Fresno	4.3	12.5
Kern (SJV)	4.1	10.8
Kings	0.8	2.3
Madera	0.9	2.0
Merced	1.3	4.1
San Joaquin	3.3	5.5
Stanislaus	2.0	4.7
Tulare	1.9	3.7

Source: Table D–9 of Appendix D to the 2016 Ozone Plan.

CARB has requested that we limit the duration of our approval of the budgets only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets.[115] The transportation conformity rule allows us to limit the approval of budgets.[116] However, we will consider a state's request to limit an approval of its MVEB only if the request includes the following elements:[117]

- An acknowledgement and explanation as to why the budgets under consideration have become outdated or deficient;
- A commitment to update the budgets as part of a comprehensive SIP update; and
- A request that the EPA limit the duration of its approval to the time when new budgets have been found to be adequate for transportation conformity purposes.

Because CARB's request does not include a commitment to update the budgets or an explanation of why the budgets have become outdated or deficient, we cannot at this time propose to limit the duration of our approval of the submitted budgets until new budgets have been found adequate. In order to limit the approval, we would need the information described above to determine whether such limitation is reasonable and appropriate in this case. Once CARB has adequately addressed that information, we intend to review it and take appropriate action. If we propose to limit the duration of our approval of the MVEB in the 2016 Ozone Plan, we will provide the public an opportunity to comment. The duration of the approval of the budgets, however, would not be limited until we complete such a rulemaking.

J. Other Clean Air Act Requirements Applicable to Extreme Ozone Nonattainment Areas

In addition to the requirements discussed above, title 1, subpart D of the CAA includes other provisions applicable to Extreme ozone nonattainment areas, such as the San Joaquin Valley. We describe these provisions and their current status below for informational purposes only.

1. Enhanced Vehicle Inspection and Maintenance Programs

Section 182(c)(3) of the CAA requires states with ozone nonattainment areas classified under subpart 2 as Serious or above to implement an enhanced motor vehicle I/M program in those areas. The requirements for those programs are provided in CAA section 182(c)(3) and 40 CFR part 51, subpart S.

Consistent with the 2008 Ozone SRR, the 2016 Ozone Plan states that no new I/M programs are currently required for nonattainment areas for the 2008 ozone standards.[118] The EPA has previously approved California's I/M program in the San Joaquin Valley as meeting the requirements of the CAA and applicable EPA regulations for enhanced I/M programs.[119]

2. Reformulated Gasoline Program

In accordance with CAA section 211, the federal reformulated gasoline (RFG) program requires certain areas to use gasoline that has been reformulated to reduce emissions of ozone precursors. As an Extreme ozone nonattainment area for the 1-hour ozone NAAQS, the San Joaquin Valley was included in the federal RFG program.[120] As a nonattainment area for the 1997 and 2008 ozone standards, the San Joaquin Valley continues to be included in the program.[121] California also has its own RFG program (*i.e.,* California Phase III RFG, or CaRFG3), which applies within the San Joaquin Valley. The EPA approved CaRFG3 into the SIP on May 12, 2010.[122] In our action proposing approval of CaRFG3, we noted that the EPA had previously determined that emissions reductions from CaRFG3 would be equal to or greater than the emissions reductions from the corresponding federal RFG program.[123]

3. New Source Review Rules

Section 182(a)(2)(C) of the CAA requires states to develop SIP revisions containing permit programs for each of its ozone nonattainment areas. The SIP revisions are to include requirements for permits in accordance with CAA sections 172(c)(5) and 173 for the construction and operation of each new or modified major stationary source for VOC and NO_X anywhere in the nonattainment area.[124] The 2008 Ozone SRR includes provisions and guidance for nonattainment new source review (NSR) programs.[125] The EPA has previously approved the District's NSR rules into the SIP based in part on a conclusion that the rules adequately addressed the NSR requirements specific to extreme areas.[126] On June 19, 2018, CARB submitted on behalf of the District a certification that the NSR program previously approved into the SIP is adequate to meet the requirements for the 2008 ozone standards.[127] The EPA is proposing to approve the District's NSR certification in a separate rulemaking.[128]

4. Clean Fuels Fleet Program

Sections 182(c)(4)(A) and 246 of the CAA require California to submit to the EPA for approval into the SIP measures to implement a Clean Fuels Fleet Program. Section 182(c)(4)(B) of the CAA allows states to opt-out of the federal clean-fuel vehicle fleet program by submitting a SIP revision consisting of a program or programs that will result in at least equivalent long-term reductions in ozone precursors and toxic air emissions.

In 1994, CARB submitted a SIP revision to the EPA to opt-out of the federal clean-fuel fleet program, and included a demonstration that California's low-emissions vehicle program achieved emissions reductions at least as large as would be achieved by the federal program. The EPA approved the SIP revision to opt-out of the federal

[115] Letter, Richard W. Corey, Executive Officer, California Air Resources Board, to Alexis Strauss, Acting Regional Administrator, EPA Region IX, August 24, 2016.

[116] 40 CFR 93.118(e)(1).

[117] 67 FR 69141 (November 15, 2002), limiting our prior approval of MVEB in certain California SIPs.

[118] *See* 2008 Ozone SRR, 80 FR 12264 at 12283 (March 6, 2015), and section 3.6 of Chapter 3 of the 2016 Ozone Plan.

[119] *See* 75 FR 38023 (July 1, 2010).

[120] *See* CAA section 211(k)(10)(D).

[121] *See* 40 CFR 80.70(m)(1)(i) and 70 FR 71685 (November 29, 2005).

[122] *See* 75 FR 26653 (May 12, 2010).

[123] *See* 74 FR 33196, at 33198 (July 10, 2009).

[124] *See* also CAA sections 182(e).

[125] *See* 80 FR 12264 (March 6, 2015).

[126] *See* 75 FR 26102 (May 11, 2010).

[127] *See* letter from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX, dated June 19, 2018.

[128] *See* EPA, ''Revisions to California State Implementation Plan; South Coast Air Quality Management District, San Joaquin Valley Air Pollution Control District and Yolo-Solano Air Quality Management; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard,'' pre-publication final rule signed August 8, 2018.

program on August 27, 1999.[129] There have been no changes to the federal Clean Fuels Fleet program since the EPA approved the California SIP revision to opt-out of the federal program, and thus, no corresponding changes to the SIP are required. Thus, we find that the California SIP revision to opt-out of the federal program, as approved in 1999, meets the requirements of CAA sections 182(c)(4)(A) and 246 for San Joaquin Valley for the 2008 ozone standards.

5. Gasoline Vapor Recovery

Section 182(b)(3) of the CAA requires states to submit a SIP revision by November 15, 1992, that requires owners or operators of gasoline dispensing systems to install and operate gasoline vehicle refueling vapor recovery (''Stage II'') systems in ozone nonattainment areas classified as Moderate and above. California's ozone nonattainment areas implemented Stage II vapor recovery well before the passage of the CAA Amendments of 1990.[130]

Section 202(a)(6) requires the EPA to promulgate standards requiring motor vehicles to be equipped with onboard refueling vapor recovery (ORVR) systems. The EPA promulgated the first set of ORVR system regulations in 1994 for phased implementation on vehicle manufacturers, and since the end of 2006, essentially all new gasoline-powered light and medium-duty vehicles are ORVR-equipped.[131] Section 202(a)(6) also authorizes the EPA to waive the SIP requirement under CAA section 182(b)(3) for installation of Stage II vapor recovery systems after such time as the EPA determines that ORVR systems are in widespread use throughout the motor vehicle fleet. Effective May 16, 2012, the EPA waived the requirement of CAA section 182(b)(3) for Stage II vapor recovery systems in ozone nonattainment areas regardless of classification. See 40 CFR 51.126(b). Thus, a SIP submittal meeting CAA section 182(b)(3) is not required for the 2008 ozone standards.

While a SIP submittal meeting CAA section 182(b)(3) is not required for the 2008 ozone standards, under California State law (*i.e.,* Health and Safety Code section 41954), CARB is required to adopt procedures and performance standards for controlling gasoline emissions from gasoline marketing operations, including transfer and storage operations. State law also authorizes CARB, in cooperation with local air districts, to certify vapor recovery systems, to identify defective equipment and to develop test methods. CARB has adopted numerous revisions to its vapor recovery program regulations and continues to rely on its vapor recovery program to achieve emissions reductions in ozone nonattainment areas in California.[132]

In the San Joaquin Valley, the installation and operation of CARB-certified vapor recovery equipment is required and enforced by District Rules 4621 (''Gasoline Transfer into Stationary Storage Containers, Delivery Vessels and Bulk Plants'') and 4622 (''Gasoline Transfer into Motor Vehicle Fuel Tanks''). The most recent versions of Rules 4621 and 4622, amended on December 19, 2013, have been approved into the California SIP.[133]

6. Enhanced Ambient Air Monitoring

Section 182(c)(1) of the CAA requires that all ozone nonattainment areas classified as Serious or above implement measures to enhance and improve monitoring for ambient concentrations of ozone, NO_X, and VOC, and to improve monitoring of emissions of NO_X and VOC. The enhanced monitoring network for ozone is referred to as the Photochemical Assessment Monitoring Station (PAMS) network. The EPA promulgated final PAMS regulations on February 12, 1993.[134]

On November 10, 1993, CARB submitted to the EPA a SIP revision addressing the PAMS network for six ozone nonattainment areas in California, including the San Joaquin Valley, to meet the enhanced monitoring requirements of CAA section 182(c)(1). The EPA determined that the PAMS SIP revision met all applicable requirements for enhanced monitoring and the EPA PAMS regulations and approved the PAMS submittal into the California SIP.[135]

The 2016 Ozone Plan discusses compliance with the EPA's enhanced monitoring requirements in 40 CFR part 58, and concludes that, based on the EPA's approval of the District's air monitoring network plan, the San Joaquin Valley meets all federal ambient monitoring requirements.[136] Chapter 4 (section 4.2.2) of the 2016 Ozone Plan describes the San Joaquin Valley's PAMS network. The District's PAMS network is composed of two smaller networks located in the Fresno and Bakersfield Metropolitan Statistical Areas (MSAs). Each network in the MSA consists of three PAMS sites. The District's July 2017 Annual Air Quality Monitoring Network Plan (ANP) also provides more detail about the PAMS network.[137] The EPA has approved the District's PAMS network as part of our annual approval of the District's ANP.[138]

The 2016 Ozone Plan reports that the Arvin-Bear Mountain PAMS monitoring site in the Bakersfield MSA was closed in 2010, and would resume once a permanent air monitoring site in the area was established. The closed monitoring site at Arvin-Bear Mountain was relocated to a new site at the Arvin-Di Giorgio elementary school. CARB's staff report for the 2016 Ozone Plan includes, for approval by the EPA, provisions to address ambient ozone monitoring in the Bakersfield MSA.[139] The EPA approved the relocation of the monitoring site and approved into the SIP these provisions of the 2016 Ozone Plan for ozone monitoring in Bakersfield.[140]

Prior to 2006, the EPA's ambient air monitoring regulations in 40 CFR part 58 (''Ambient Air Quality Surveillance'') set forth specific SIP requirements (*see* former 40 CFR 52.20). In 2006, the EPA significantly revised and reorganized 40 CFR part 58.[141] Under revised 40 CFR part 58 SIP revisions are no longer required; rather, compliance with EPA monitoring regulations is established through review of required annual monitoring network plans.[142] The 2008 Ozone SRR made no changes to these requirements.[143] As such, based on our review and approval of the most recent ANP for San Joaquin Valley, we find that the 2016 Ozone Plan adequately addresses the enhanced monitoring requirements under CAA section 182(c)(1), and we propose to approve that portion of the Plan.

[129] *See* 64 FR 46849 (August 27, 1999).

[130] *See* General Preamble, 57 FR 13498 at 13514 (April 16, 1992).

[131] *See* 77 FR 28772, at 28774 (May 16, 2012).

[132] *See e.g.,* Chapter 5, table 5–4 of the 2016 Ozone Plan.

[133] *See* 80 FR 7345 (February 10, 2015).

[134] *See* 58 FR 8452 (February 12, 1993).

[135] *See* 82 FR 45191 (September 28, 2017).

[136] *See* section 3.12 (Ambient Monitoring Requirements) of the 2016 Ozone Plan.

[137] *See* San Joaquin Valley Air Pollution Control District 2017 Air Monitoring Network Plan (June 28, 2017).

[138] *See* letter from Gwen Yoshimura, EPA Region IX to Sheraz Gill, SJVAPCD, dated October 30, 2017.

[139] *See* section V–H of the *ARB Review of the San Joaquin Valley 2016 Plan for the 2008 8-Hour Ozone Standard,* July 21, 2016.

[140] *See* 82 FR 47145 (October 11, 2017).

[141] *See* 71 FR 61236 (October 17, 2006).

[142] 40 CFR 58.2(b) now provides: The requirements pertaining to provisions for an air quality surveillance system in the SIP are contained in this part.

[143] The 2008 ozone SRR addresses PAMS-related requirements at 80 FR 12264, at 12291, (March 6, 2015).

7. CAA Section 185 Fee Program

Section 185 of the CAA requires that the SIP for each Severe and Extreme ozone nonattainment area provide that, if the area fails to attain by its applicable attainment date, each major stationary source of VOC and NO_X located in the area shall pay a fee to the state as a penalty for such failure for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. States are not yet required to submit a SIP revision that meets the requirements of CAA section 185 for the 2008 ozone NAAQS.[144]

IV. Other Commitments To Reduce Emissions

The 2016 Ozone Plan relies on control measures, such as state and district rules and regulations, that have been adopted and are being implemented to demonstrate attainment of the 2008 ozone NAAQS by 2031. However, in the 2016 Ozone Plan, the District also notes that newer NAAQS, *e.g.,* the ozone NAAQS established in 2015, would require the development and submission of new plans with additional emissions reductions. In anticipation of these future requirements, the District included in the 2016 Ozone Plan commitments to amend two existing measures for flares and wine fermentation and storage tanks.[145] As summarized in table 6, the District committed to implement emission reduction technologies to the extent those controls are technologically achievable and economically feasible; therefore, any emissions reductions resulting from these evaluations, to the extent those evaluations have not yet been completed, are uncertain. Because of this uncertainty, and because these amended measures are not required to meet RACM or other plan requirements, the District did not project emissions reductions or implementation dates for these amended measures.

TABLE 6—DISTRICT COMMITTAL MEASURES IN 2016 OZONE PLAN

Rule	Rule title	District commitment	Schedule
4311	Flares	1. Amend Rule 4311 to include additional ultra-low NO_X flare emissions limitations for existing and new flaring activities to the extent that such controls are technologically achievable and economically feasible. 2. Amend Rule 4311 to include additional flare minimization requirements to the extent such controls are technologically achievable and economically feasible.	By December 31, 2017.
4694	Wine Fermentation and Storage Tanks.	1. Evaluate the technological achievability and economic feasibility of implementing emissions control technologies to reduce VOC emissions and potential benefits to help reduce ozone concentrations. 2. Upon completion of (1), amend Rule 4694 to include additional requirements to further reduce emissions from wine fermentation as appropriate.	By December 31, 2018.

Source: Table 5–3 and sections 5.2.1 and 5.2.2 of the 2016 Ozone Plan.

The District has committed to amend Rule 4311 for flares and Rule 4694 for wine fermentation and storage tanks to include additional requirements to reduce emissions to the extent those controls are technologically achievable or economically feasible; however, these commitments were made in the context of attainment of future ozone and $PM_{2.5}$ standards. Although these commitments are not needed to meet any requirements for the 2008 ozone standards, the EPA is proposing to approve the commitments described in table 6 above, to further strengthen the San Joaquin Valley's portion of the California SIP.

The 2016 Ozone Plan references additional reductions anticipated from CARB's mobile source state strategy, a draft of which was released in October 2015.[146] The State Strategy was adopted by CARB in 2017, and in its resolution adopting the 2016 State Strategy, CARB adopted a commitment to bring to the Board for consideration a list of regulatory measures included as Attachment A to the resolution of adoption (*i.e.,* Resolution 17–7), according to the schedule set forth in Attachment A, and a commitment to achieve an aggregate emission reduction of 8 tpd of NO_X in the San Joaquin Valley by 2031 to accelerate progress toward the 2008 ozone standards.[147] The 2016 State Strategy anticipates reducing emissions to meet the aggregate commitment through such measures as new California low-NO_X standards for on-road heavy-duty engines and more stringent diesel fuel requirements for off-road equipment.[148]

As noted above, the attainment demonstration in the 2016 Ozone Plan relies on adopted measures, rather than committal measures. Thus, CARB's regulatory initiative commitment and aggregate emission reduction commitment for San Joaquin Valley are not needed as part of the control strategy for the 2008 ozone NAAQS in San Joaquin Valley. However, the commitments by CARB for San Joaquin Valley in the 2016 State Strategy will strengthen the SIP by providing emissions reductions that supplement the reductions from the adopted controls; therefore, we are proposing to approve the San Joaquin Valley portions of the 2016 State Strategy into the SIP.

V. Proposed Action

For the reasons discussed above, under CAA section 110(k)(3), the EPA is proposing to approve as a revision to the California SIP the following portions of the San Joaquin Valley 2016 Ozone Plan[149] submitted by CARB on August 24, 2016:

- RACM demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c);
- ROP demonstration as meeting the requirements of CAA section 182(b)(1);
- Attainment demonstration as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108;
- Enhanced monitoring as meeting the requirements of CAA section 182(c)(1) and 40 CFR 51.1102;
- Enhanced vehicle inspection and maintenance programs as meeting the

[144] *See* 40 CFR 51.1117. For San Joaquin Valley, a section 185 SIP revision for the 2008 ozone standards will be due on July 20, 2022.

[145] *See* Chapter 5, sections 5.2.1 and 5.2.2 of the 2016 Ozone Plan.

[146] *See* 2016 Ozone Plan, Chapter 5, section 5.4.2.

[147] *See* page 7, CARB Resolution 17–7, March 23, 2017.

[148] *See* table 5 (on page 34) of the 2016 State Strategy.

[149] As noted previously, the EPA has already approved the portions of the 2016 Ozone Plan (section 3.4 (''Reasonably Available Control Technology (RACT) Demonstration'') and Appendix C (''Stationary and Area Source Control Strategy Evaluations'')) that relate to the RACT requirements under CAA section 182(b)(2) and 40 CFR 51.1112.

requirements of CAA section 182(c)(3) and 40 CFR 51.1102;

• Provisions for clean fuels or advanced control technology for boilers as meeting the requirements of CAA section 182(e)(3) and 40 CFR 51.1102;

• VMT emissions offset demonstration as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1102; and

• Motor vehicle emissions budgets for the attainment year of 2031 (see table 5, above) because they are consistent with the attainment demonstration proposed for approval herein and meet the other criteria in 40 CFR 93.118(e).

In addition, we are proposing to approve District Rule 1160 titled ''Emission Statements'' submitted by CARB on January 11, 1993, as a revision to the California SIP because it meets all the applicable requirements for emission statements and to approve the Emission Statement section of the 2016 Ozone Plan as meeting the requirements of CAA section 182(a)(3)(B) and 40 CFR 51.1102.

Finally, we are proposing to approve, as additional measures that strengthen the SIP, the San Joaquin Valley portions of the 2016 State Strategy and CARB's aggregate emission reduction commitment of 8 tpd of NO_X by 2031 submitted on April 27, 2017, as a revision to the California SIP and the two commitments by the District in the 2016 Ozone Plan to amend Rules 4311 (Flares) and 4694 (Wine Fermentation and Storage).

We are not taking action at this time on the base year emissions inventory, the RFP demonstration, the motor vehicle emissions budgets for RFP milestone years, and contingency measures portions of the 2016 Ozone Plan. We intend to propose action on these elements at a later time.

The EPA is soliciting public comments on the issues discussed in this document. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

VI. Incorporation by Reference

In this action, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference District Rule 1160 as described in section III.B of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

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

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 20, 2018.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2018–19017 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170828816–8714–01]

RIN 0648–BH16

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish; Amendment 20

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Amendment 20 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan and corrections to existing regulations. This action is necessary to prevent the reactivation of latent effort in the longfin squid fishery, preserve economic opportunities for more recently active participants in the longfin squid fishery, avoid overharvest during Trimester II (May–August) of the longfin squid fishery, and reduce potential negative impacts on inshore spawning longfin squid aggregations and squid egg masses. The Mid-Atlantic Fishery Management Council intends that these proposed measures would

promote the sustainable utilization and conservation of the squid and butterfish resources, while promoting the sustained participation of fishing communities and minimizing adverse economic impacts on such communities.

DATES: Public comments must be received by October 1, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0110, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0110,*
2. Click the ''Comment Now!'' icon, complete the required fields, and
3. Enter or attach your comments.

—OR—

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on the Proposed Rule for Squid Amendment 20.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives and the potential impacts of such measures and alternatives. Copies of the specifications document, including the EA and the Initial Regulatory Flexibility Analysis, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674–2331. The EA/Regulatory Impact Review (RIR)/Regulatory Flexibility Act (RFA) analysis is also accessible via the internet at *http://www.mafmc.org/s/Squid-Amendment-Draft-EA.pdf.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Greater Atlantic Regional Fisheries Office and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Douglas Christel, Fishery Policy Analyst, (978) 281–9141, *douglas.christel@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1995, the Mid-Atlantic Fishery Management Council (Council) adopted and NMFS approved a limited access permit system for longfin squid and butterfish as part of Amendment 5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) (April 2, 1996; 61 FR 14465). Under Amendment 5, NMFS issued longfin squid/butterfish moratorium permits to vessels that landed a minimum amount of either species during a specified qualification period. Since then, the number of vessels landing longfin squid has decreased, with a relatively small portion of vessels issued longfin squid/butterfish moratorium permits landing the majority of longfin squid in recent years. The Council is concerned that unused longfin squid/butterfish moratorium permits could be activated, which could lead to excessive fishing effort and bycatch of both longfin squid and non-target species. This could cause negative biological impacts to these species. In addition, this increased effort could increase the race to fish and reduce access to available longfin squid quota by vessels with a continuous history of landings in recent years. Therefore, the Council developed Amendment 20 to consider adjusting the number of vessels qualified to fish in the directed and incidental longfin squid fishery and design appropriate measures to prevent unanticipated increases in fishing effort. The proposed measures described below could help prevent a race to fish, frequent and disruptive fishery closures, and reduced fishing opportunities for vessels that are more recently dependent upon longfin squid.

Longfin squid spawning occurs year round but is most frequently observed inshore during the late spring through early fall. Spawning aggregations and associated egg masses (mops) that are attached to the bottom are vulnerable to bottom fishing activities during the summer months when longfin squid are easily accessible to the fishery in large concentrations. In 2007, the Council implemented reduced quotas during summer months (May through August, or Trimester II) as part of the trimester quota system (January 30, 2007; 71 FR 4211). The Council developed the trimester quota system to improve the monitoring and management of the longfin squid fishery and prevent allowable quotas from being exceeded. Once a trimester quota has been landed, possession limits are reduced to incidental levels for all longfin squid permits. The FMP currently includes a 2,500 lb (1,134 kg) possession limit per trip for incidental permits and for all longfin squid permits when the directed fishery has closed once a quota has been landed. However, this incidental limit has allowed vessels to continue to land large amounts of longfin squid even after the directed fishery is closed, and has contributed to the Trimester II quota being exceeded by large amounts in several years. The Council is concerned that excessive fishing effort inshore during Trimester II could negatively impact the stock, interrupting spawning activity, increasing the mortality of squid eggs, and reducing future recruitment. Measures developed by the Council under this action are intended to adjust the management of longfin squid during Trimester II primarily to reduce impacts to spawning squid and egg mops.

From March through May 2015, the Council held scoping meetings from Rhode Island through New Jersey to discuss these issues and develop responsive measures. After further development and analysis, the Council conducted public hearings in April and May 2017 to solicit input on the range of alternatives under consideration by the Council. The Council accepted public comments through May 18, 2017. On June 7, 2017, the Council adopted final measures as part of Amendment 20 to the Atlantic Mackerel, Squid, and Butterfish FMP. On March 21, 2018, the Council submitted the amendment and draft EA to NMFS for preliminary review, with submission of the final draft amendment on June 6, 2018. NMFS drafted the proposed regulations to implement these measures for Council review. The Council deemed the proposed regulations to be necessary and appropriate to implement Amendment 20 on April 27, 2018, as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The purpose of Amendment 20 is to reduce latent (unused) effort in the longfin squid fishery and adjust the management of the longfin squid fishery during Trimester II (May through

August). These measures are intended to avoid overharvesting the longfin squid resource and harming squid egg masses. Although the Council considered reducing the number of *Illex* squid moratorium permits in the fishery, the Council decided a reduction in the number of *Illex* moratorium permits was not appropriate at this time given low *Illex* landings and limited vessel participation in the fishery in most years. Measures proposed under this action would promote the sustainable utilization and conservation of the longfin squid and butterfish resources, while promoting the sustained participation of fishing communities and minimizing adverse economic impacts on such communities.

Proposed Measures

Under the Magnuson-Stevens Act, we are required to publish proposed rules for comment after preliminarily determining whether they are consistent with applicable law. The Magnuson-Stevens Act allows us to approve, partially approve, or disapprove measures that the Council proposes based only on whether the measures are consistent with the fishery management plan, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. Otherwise, we must defer to the Council's policy choices. We are seeking comments on the Council's proposed measures in Amendment 20 described below and whether they are consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law.

This proposed rule includes changes to existing FMP measures adopted by the Council under Amendment 20, but also several revisions to regulations that are not specifically identified in Amendment 20. These revisions are necessary to effectively implement the provisions in Amendment 20, or to correct errors in, or clarify, existing provisions. NMFS is proposing these latter changes under the authority of section 305(d) of the Magnuson-Stevens Act.

1. Separate Butterfish Moratorium Permit

Amendment 5 created a joint longfin squid/butterfish moratorium permit based on the historic overlap between the directed longfin squid and butterfish fisheries. NMFS issued moratorium permits to qualified vessels based on a minimum landings amount of either species during the qualification period. To reduce capacity in the longfin squid fishery without unintentionally reducing domestic fishing capacity for butterfish, Amendment 20 proposes to separate the longfin squid/butterfish moratorium permit into two moratorium permits, one for each species. Amendment 20 would create a new butterfish moratorium permit and a separate, revised longfin squid moratorium permit, as described further below.

Under Amendment 20, all entities currently issued a longfin squid/butterfish moratorium permit would be automatically issued a new and separate butterfish moratorium permit. The existing permit restrictions and vessel trip report (VTR), observer, slippage, and transfers at sea requirements currently applicable to the existing longfin squid/butterfish moratorium permit would apply to the proposed new butterfish moratorium permit. These permits would maintain the existing vessel permit baseline characteristics, vessel replacement and upgrade provisions, and the restriction on permit splitting; be required to submit vessel trip reports on a weekly basis; and be subject to measures to address slippage and transfers at sea specified at 50 CFR 648.11(n)(3) and 648.13, respectively. Vessels issued a new butterfish moratorium permit would not be required to submit a specific butterfish trip declaration using the vessel monitoring system (VMS) or submit daily VMS catch reports of butterfish but would be required to maintain an operational VMS unit to provide NMFS with automatic position reports. Finally, the existing butterfish possession limits specified at § 648.26(d)(1) and (2) (unlimited when fishing with a mesh size of three inches (76 mm) or greater, and 5,000 lb (2,268 kg) per trip when fishing with less than three-inch (76-mm) mesh) would remain the same for this new permit.

2. Tier 1 Longfin Squid Moratorium Permit

Amendment 20 proposes to re-qualify current longfin squid moratorium permits based on recent landings history to reduce the potential for the reactivation of latent fishing permits. Under this measure, NMFS would issue a new Tier 1 longfin squid moratorium permit only to 2018 longfin squid/butterfish moratorium permits that landed at least 10,000 lb (4,536 kg) of longfin squid in any year from 1997–2013. The Regional Administrator would use fishing history, as documented through dealer reports, to re-qualify permits, including permits currently held in confirmation of permit history (CPH), and automatically issue Tier 1 longfin squid moratorium permits to qualified entities.

Any vessel owner could apply for a Tier 1 longfin squid permit within one year of the effectiveness of this permit, if approved under Amendment 20. A vessel owner that does not qualify to be issued a new Tier 1 longfin squid moratorium permit would be notified by the Regional Administrator and could appeal that decision within 30 days of the denial notice. An appeal would require a written request to the Regional Admininstrator, and the appeal would be reviewed by the NOAA Fisheries National Appeals Office. Appeals could be based upon evidence that the information used in the original denial was incorrect. During an appeal, a vessel owner could request the Regional Administrator to authorize its vessel to continue fishing for longfin squid under the measures for a Tier 1 permit until that appeal is completed.

A vessel issued a Tier 1 longfin squid moratorium permit would be subject to all measures applicable to the existing longfin squid/butterfish moratorium permit, including, but not limited to, the vessel baseline and upgrade, VTR and VMS reporting, observer, slippage, and transfers at sea requirements. A Tier 1 longfin squid moratorium permit would be able to land an unlimited amount of longfin squid per trip, unless the directed longfin squid fishery is closed and incidental limits are implemented, as described further below. As currently allowed for longfin squid/butterfish moratorium permits, Tier 1 permits could also possess up to 15,000 lb (6,804 kg) of longfin squid per trip after the longfin squid fishery is closed in Trimester II, provided the vessel is declared into the *Illex* squid fishery, possesses at least 10,000 lb (4,536 kg) of *Illex* squid, and is fishing offshore.

3. Tier 2 Longfin Squid Moratorium Permit

Although the Council chose to reduce latent longfin squid permits, it also wanted to recognize the historic participation of permits that originally qualified for a longfin squid/butterfish moratorium permit. To do so, Amendment 20 would create a separate longfin squid moratorium permit with a moderate possession allowance. The Regional Administrator would automatically issue a Tier 2 longfin squid moratorium permit to any vessel currently issued a 2018 longfin squid/butterfish moratorium permit or an entity issued such a permit in CPH that does not qualify for a Tier 1 longfin squid moratorium permit described above. A Tier 2 permit would be subject to all measures applicable to the

existing longfin squid/butterfish moratorium permit, including, but not limited to, the permit, VTR and VMS reporting, observer, slippage, and transfers at sea requirements. However, a Tier 2 permit would only be allowed to land up to 5,000 lb (2,268 kg) of longfin squid per trip, unless the directed longfin squid fishery is closed and incidental limits are implemented, as described further below. Similar to Tier 1 permits, a vessel issued a longfin squid Tier 2 moratorium permit could continue to possess up to 5,000 lb (6,804 kg) of longfin squid per trip after the longfin squid fishery is closed in Trimester II. To do so, a Tier 2 moratorium permitwould have to declare into the *Illex* squid fishery, possess at least 10,000 lb (4,536 kg) of *Illex* squid, and fish offshore in the area specified at § 548.23(a)(5).

4. Tier 3 Longfin Squid Incidental Permit

Under Amendment 20, the Council wanted to reduce incentives to target longfin squid under an incidental permit, while still preserving more recent fishing patterns and minimizing discards of squid caught while targeting other species. Under this measure, NMFS would issue a new Tier 3 longfin squid moratorium permit to vessels previously issued an open access squid/butterfish incidental catch permit in any year that landed more than 5,000 lb (2,268 kg) of longfin squid in at least one calendar year from 1997–2013 based on dealer landings data. By limiting access to this incidental permit such that it could not be dropped and re-issued at any time, this measure would prevent a vessel owner from canceling his/her Federal permit to fish for longfin squid in state waters above Federal limits during the fishing year. This would better control longfin squid landings, particularly after a closure of the fishery in Trimester II.

A vessel owner must apply for a Tier 3 longfin squid moratorium permit by submitting an application to the Regional Administrator within one year of the effectiveness of these permits, if approved under Amendment 20. The owner of a vessel permit that does not qualify for a new Tier 3 longfin squid moratorium permit would be notified by the Regional Administrator and could appeal that decision within 30 days of the denial notice. An appeal would require a written request to the Regional Admininstrator, and the appeal would be reviewed by the NOAA Fisheries National Appeals Office. Appeals could be based upon evidence that the information used in the original denial was incorrect. During an appeal, a vessel owner could request the Regional Administrator to authorize its vessel to continue fishing for longfin squid under the measures for a Tier 3 longfin squid permit until that appeal is completed.

A vessel issued a Tier 3 longfin squid permit would be subject to all measures applicable to the existing squid/butterfish incidental catch permit. Unlike Tier 1 or 2 longfin squid moratorium permits, Tier 3 permits would not be issued a vessel baseline, and would not be subject to the vessel upgrade provisions. A Tier 3 longfin squid moratorium permit would be able to land up to 2,500 lb (1,134 kg) of longfin squid per trip, unless the directed longfin squid fishery is closed during Trimester II and incidental limits are implemented, as described further below.

5. Longfin Squid Moratorium Permit Swap

Amendment 20 would allow an owner of more than one longfin squid/butterfish moratorium permit as of May 26, 2017, a one-time opportunity to move longfin squid moratorium permits onto a different vessel that they own to optimize their fishing operations. Under this measure, a vessel owner could move a qualified Tier 1 longfin squid moratorium permit from one of his/her vessels and place it on another vessel that is owned by that same entity and also issued a Tier 2 longfin squid moratorium permit. In this exchange, the Tier 2 longfin squid moratorium permit would be moved onto the vessel originally issued the Tier 1 longfin squid moratorium permit. This allows a vessel owner to ''swap'' Tier 1 and Tier 2 longfin squid moratorium permits among vessels owned by that entity such that the Tier 1 longfin squid moratorium permit is placed on a vessel that is better able to capitalize on the longfin squid fishing opportunities available to such a permit than the other vessel. This measure is intended to help maximize potential fishing opportunities and associated revenue for entities that have been issued multiple longfin squid moratorium permits on separate vessels and mitigate the loss of revenue potential associated with a permit that does not re-qualify for a Tier 1 longfin squid moratorium permit.

Only permits issued to vessels owned by the same business entity as of May 26, 2017, would be able to participate in the permit swap; a permit held in CPH as of May 26, 2017, would not be eligible to participate. May 26, 2017, is the day that June 2017 Council meeting materials, including the description of proposed measures, were made available to the public. The Council chose this date to limit eligibility for permit swaps to reduce the potential that business entities would change permit ownership to take advantage of this measure and circumvent the purpose of this measure.

Vessels involved in the swap would also need to be within 10 percent of the baseline length overall and 20 percent of the baseline horsepower of the permit to be placed on that vessel. Only Tier 1 and Tier 2 longfin squid moratorium permits could be transferred as part of this permit swap; no other fishery permits could be swapped as part of this transaction. An owner interested in swapping permits would need to apply for the permit swap within one year of the issuance of the Tier 1 or Tier 2 longfin squid moratorium permits. If approved, the Regional Administrator would distribute a permit swap application form to permit holders.

6. Incidental Longfin Squid Possession Limit

Amendment 20 would reduce the longfin squid possession limit from 2,500 lb (1,134 kg) per trip to 250 lb (113 kg) per trip for vessels issued an open access squid/butterfish incidental permit. A lower incidental possession limit would reduce incentives to target longfin squid and more effectively control fishing effort and landings in the fishery. This could reduce overall fishing effort and bycatch and associated mortality on longfin squid and other species.

This action would also reduce the longfin squid incidental limit for all longfin squid permits from 2,500 lb (1,134 kg) per trip to 250 lb (113 kg) per trip once the Trimester II quota has been landed. The longfin squid incidental limit would remain 2,500 lb (1,134 kg) per trip for any closure implemented during Trimesters I or III. In recent years, excessive landings under the current incidental trip limit (2,500 lb (1,134 kg)) following the closure of the directed fishery in Trimester II has resulted in substantial overages of the Trimester II quota. This measure would reduce incentives to target longfin squid after such a closure, reducing bycatch of longfin squid and other species and impacts to spawning squid and egg mops during Trimester II.

7. Corrections and Clarifications to Existing Regulations

In § 648.2, the term ''Northeast Regional Office'' in the definition of ''Atlantic Mackerel, Squid, and Butterfish Monitoring Committee'' would be revised to ''Greater Atlantic Regional Fisheries Office'' to accurately

reflect the current name of the facility. Definitions for ''Calendar day,'' ''Directed fishery,'' and ''Incidental catch'' would be added to clarify the application of these terms in the Atlantic Mackerel, Squid, and Butterfish FMP regulations, and to eliminate repeated definition of these terms in the regulations.

In § 648.4(a)(5)(iii), paragraph (B) would be revised to reflect the mackerel landing limit in kg instead of mt, and paragraphs (C), (D), (E), (H) would be revised and paragraph (M) would be deleted to eliminate outdated and unnecessary permit eligibility, application, qualification, baseline, and appeal regulations, respectively, related to the 2011 qualification of limited access mackerel permits.

In § 648.7, text at (a)(1)(i) and (ii) that was inadvertently deleted in the final rule implementing the Mid-Atlantic Unmanaged Forage Omnibus Amendment (August 28, 2017; 82 FR 40721) would be reinserted.

In § 648.10(e)(5)(i), the phrase ''. . . or monkfish fishery'' would be replaced with ''monkfish, or any other fishery'' to maintain consistency with other language in this paragraph and related text in paragraph (e)(5)(ii). This revision is necessary to ensure that a vessel that is subject to VMS requirements in any fishery accurately declares its intended fishing operations before leaving port.

In § 648.13, paragraph (a) would be revised to clarify that longfin squid, *Illex* squid, and butterfish moratorium permits and squid/butterfish incidental catch permits must be issued a letter of authorization (LOA) by the Regional Administrator to transfer longfin squid, butterfish, or *Illex* squid at sea. This would make the regulations consistent with the LOA language and historic practice.

In § 648.14, five corrections are proposed, as follows:

1. The introductory text to paragraph (g)(1)(i) would be revised to insert reference to the fishery closure and accountability measure regulations at § 648.24(d) and to replace ''Take, retain . . .'' with ''Take and retain . . .'' The first correction is to ensure that this prohibition can be effectively administered and enforced and accurately reflects notifications associated with the implementation of specifications, closures, and accountability measures. The second correction restores the original language of this prohibition to accurately reflect its intent to allow vessels that may encounter these species during normal operations to interact with and discard these species, as appropriate.

2. Paragraph (g)(1)(ii)(B) would be revised to use the term ''*Illex* squid'' consistent with the use of this term in other regulations and reflect the corrections to § 648.13(a) described above.

3. Paragraph (g)(2)(i) would be revised to reference Subpart B instead of § 648.22 to ensure that the general prohibition applies to all Atlantic Mackerel, Squid, and Butterfish FMP measures, not just those implemented via the specifications process because FMP measures are implemented via framework adjustments, amendments, and specifications actions.

4. Paragraphs (g)(2)(ii)(D) and (F) would be revised to read that it is unlawful for any person owning or operating a vessel issued a valid mackerel, squid, and butterfish fishery permit, or issued an operator's permit to ''Take and retain, possess, or land'' these species instead of ''Take, retain, possess, or land'' these species. This distinction is necessary to allow vessels that may encounter these species during normal operations to interact with and discard these species, as appropriate, consistent with Council intent.

5. Paragraph (g)(2)(v) would be revised to replace ''limited access'' with ''directed'' to reference the Atlantic mackerel, longfin squid, and *Illex* squid fisheries. This is intentended to maintain consistency with the way in which these fisheries are referenced in other applicable regulations.

In § 648.22, several corrections are proposed. In paragraph (a), species headings would be added to clarify which elements are to be specified for each species during the specifications process and to spell out terms used for the first time in the regulations. The term ''*Illex* squid'' would replace the term ''*Illex*'' for clarity in several paragraphs. Finally, in paragraph (c)(3), the reference to § 648.4(1)(5)(ii) would be replaced with reference to § 648.4(a)(5)(vi) to accurately reflect the correct regulation for the squid/butterfish incidental catch permit.

In § 648.25(a)(4)(i), the reference to paragraph (a)(2) would be replaced with the accurate reference to paragraph (a)(3) of that section.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 20 to the Atlantic Mackerel, Squid, and Butterfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

This proposed rule does not contain policies with Federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Council prepared a draft EA for this action that analyzes the impact of measures contained in this proposed rule. The EA includes an IRFA, as required by section 603 of the RFA, which is supplemented by information contained in the preamble of this proposed rule. The IRFA, as summarized below, describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. A copy of the RFA analysis is available from the Mid-Atlantic Council (see **ADDRESSES**).

Description of the Reasons Why Action by the Agency Is Being Considered

The purpose of this action is to optimize management measures in the squid fisheries by reducing latent (unused) effort in the longfin squid fishery and adjusting the management of the longfin squid fishery during Trimester II (May through August) to avoid overharvesting the longfin squid resource. Section 4.0 of the EA prepared for this action (see **ADDRESSES**) contains a more thorough description of the purpose and need for this action.

Statement of the Objectives of, and Legal Basis for, This Proposed Rule

The legal basis and objectives for this action are contained in the preamble to this proposed rule, and are not repeated here. Sections 4.0 and 5.0 of the EA prepared for this action (see **ADDRESSES**) contains a more thorough description of the purpose and need for this action and the rational for each measure considered.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

For the purposes of the RFA analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Ownership entities are defined as those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with Federal longfin squid/butterfish permits may be considered to be part of the same firm because they may have the same owners. The North American Industry Classification

System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. For purposes of the RFA, a business primarily engaged in commercial fishing activity is classified as a small business if it has combined annual gross receipts not in excess of $11 million (NAICS 11411) for all its affiliated operations worldwide. A business primarily engaged in for-hire (charter/party) operations is characterized as annual gross receipts not in excess of $7.5 million. To identify these small and large firms, vessel ownership data from the permit database were grouped according to common owners and sorted by size. The current ownership data set used for this analysis is based on calendar year 2016 (the most recent complete year available).

The proposed action would affect any vessel issued a valid Federal longfin squid/butterfish moratorium permit or an open access squid/butterfish incidental permit. According to the commercial database, 295 separate vessels were issued a longfin squid/butterfish moratorium permit in 2016. These vessels were owned by 222 entities, of which 214 were categorized as small business entities using the definition specified above. In 2016, 1,528 vessels were issued an open access squid/butterfish incidental permit. These vessels were owned by 1,114 entities, of which 1,105 were small business entities. In total, 1,319 small business entities may be affected by this rule out of a potential 1,336 entities (large and small) that may be affected by this action. Therefore, 99 percent of affected entities are categorized as small businesses.

Not all entities potentially affected by this action landed fish for commercial sale in 2016. Nine small business entities issued a longfin squid/butterfish moratorium permit did not have any fishing revenue in 2016, while 274 small business entities issued an open access squid/butterfish incidental catch permit did not have any fishing revenue in 2016. Only 1,036 small business entities had fishing revenue in 2016, representing 79 percent of the small entities potentially affected by this action.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Proposed Rule

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden and costs associated with these information collections, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, are estimated to average, as follows:

1. Application for a longfin squid moratorium permit, OMB #0648–0679 (60 min/response and an annual cost of $254.80 for postage);

2. Appeal of the denial of a longfin squid moratorium permit, OMB #0648–0679 (120 min/response and an annual cost of $226.87 for postage); and

3. Application for a longfin squid moratorium permit swap, OMB #0648–0679 (5 min/response and an annual cost of $1.63 for postage).

Public comment is sought regarding: Whether this 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 burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Greater Atlantic Regional Fisheries Office at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule

This proposed rule does not duplicate, overlap, or conflict with any other Federal rule.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact on Small Entities

Section 7.5 of the EA estimates the number of vessel permits that would qualify under each alternative and the associated economic impacts to affected entities based on recent landings, with additional analysis provided in Section 12 of the EA. The text below summarizes the economic impacts for significant non-selected alternatives.

1. Longfin Squid Moratorium Permit Qualification

Under Amendment 20, the Council considered five alternatives, including the no-action alternative, to reduce latent permits in the longfin squid fishery through the creation of a tiered permit system based on historical participation in the fishery. The alternatives included different combinations of qualifying years (1997–2013 or 1997–2015) and minimum landings thresholds (10,000 lb (4,536 kg), 25,000 lb (11,340 kg), or 50,000 lb (22,680 kg)). Of these five alternatives, only Alternative 1B is considered a significant alternative because it meets the objectives of this action and minimizes adverse economic impacts compared to the proposed action (Alternative 1C); the no action alternative (Alternative 1A) would not meet the objectives of this action.

Unlike the proposed action which is based on landings through 2013, Alternative 1B would re-qualify a vessel for a longfin squid moratorium permit if it landed more than 10,000 lb (4,536 kg) of longfin squid in any year during 1997–2015. Based on these criteria, 224 vessel permits currently issued a longfin squid/butterfish moratorium permit would qualify for and be issued a Tier 1 longfin squid moratorium permit under Amendment 20. The 159 vessels that would not qualify would be issued a Tier 2 longfin squid moratorium permit and be restricted to 5,000 lb (2,268 kg) of longfin squid per trip. From 2014–2016, 80 percent of these vessels (127) did not land any longfin squid. Of the 32 vessels that landed some longfin squid during 2014 and 2016, 6 vessels took 32 trips that landed more than 5,000 lb (2,268 kg) of longfin squid, all during 2016. If such trips would have been limited to 5,000 lb (2,268 kg) of longfin squid, foregone revenues would have totaled $438,835, or $73,139 annually per vessel. This amount represents 7 percent of their total average annual fishing revenues of $1,042,770 during 2014–2016. Given the increased availability of longfin squid during 2016, this is likely an upper bound estimate of the likely impacts to affected vessels, as availability fluctuates yearly and these vessels did not land more than 5,000 lb (2,268 kg) of longfin squid from any trip during 2014 or 2015.

Alternative 1B was not selected by the Council for several reasons. The year range used to requalify permits under this alternative (1997–2015) is not consistent with the May 16, 2013, control date specified by the Council for this action. This control date served as

public notice that the Council intended to further reduce capacity in the longfin squid fishery and that any fishing activity after this date may not qualify for future access to this fishery. The preferred alternative incorporates the control date and would only re-qualify permits based on landings through 2013. Alternative 1B would also re-qualify ten more longfin squid moratorium permits than the preferred alternative. These additional permits have not been regular participants in the squid fishery. Considering the sum of their individual best years from 1994–2016, these vessels have the capacity to land an additional 500,000 lb (227 mt) of longfin squid compared to vesssels qualifying under the preferred alternative based on the highest landings of qualifying vessels under each alternative. This additional fishing capacity has the potential to exacerbate seasonal closures implemented in the longfin squid fishery in 2014 and 2016, and could lead to a race to fish; excess longfin squid catch and landings, particularly during the spawning season; and reduced fishing opportunities for permits that have been more dependent on longfin squid based on past operations. As noted above, the Council attempted to mitigate economic impacts by creating a Tier 2 longfin squid moratorium permit that allows for moderate possession limits to vessels that do not re-qualify. Therefore, the Council concluded that the preferred alternative represented the best balance of avoiding excessive landings and a race to fish by not allowing too many vessels to target longfin squid, while ensuring that enough vessels remain in the fishery to achieve optimum yield and minimizing economic impacts to vessels that do not re-qualify.

2. Longfin Squid Incidental Permit Qualification and Incidental Possession Limit

Under Amendment 20, the Council considered three alternatives to reduce incidental catch permits in the longfin squid fishery, including the no-action alternative. Of these three alternatives, only Alternative 3B is considered a significant alternative because it meets the objectives of this action and minimizes adverse economic impacts compared to the preferred alternative (Alternative 3C); the no action alternative (Alternative 3A) would not meet the objectives of this action. Both Alternatives 3B and 3C used the same qualifying years (1997–2013), but different minimum landings thresholds (2,500 lb (1,134 kg) for Alternative 3B and 5,000 lb (2,268 kg) for Alternative 3C). Under each alternative, the Council considered two options for incidental longfin squid possession limits—250 lb (113 kg) or 500 lb (227 kg) per trip.

Under Alternative 3B, 385 vessels would qualify and be issued a Tier 3 longfin squid moratorium permit, allowing such vessels to continue landing up to 2,500 lb (1,134 kg) of longfin squid per trip. Out of the 1,143 vessels that would not qualify for a Tier 3 permit under Alternative 3B, 755 (66 percent) did not have any longfin squid landings during the qualifying period, while 388 (34 percent) landed less than 2,500 lb (1,134 kg) of longfin squid during the qualification period. Of these 388 permits with minimal longfin squid landings, 32 permits took 101 trips during 2014–2016 that landed 250–2,500 lb (113–1,134 kg) of longfin squid, resulting in nearly $270,000 in longfin squid revenue that averaged $1,120 per year for each permit. Twenty-one of these vessels took 52 trips during 2014–2016 that landed between 500–2,500 lb (226–1,134 kg) of longfin squid, averaging $1,437 per permit per year. Under either trip limit option, each non-qualified vessel would lose, on average, $1,134–$1,437 per year under Alternative 3B. These vessels earned an average of $683,723 from the landings of all species during 2014–2016. Therefore, longfin squid landings from trips affected by Alternative 3B represented only a small fraction (less than one quarter of one percent) of total fishing revenue for these vessels.

The Council selected Alternative 3C over Alternative 3B because the preferred alternative would more effectively create a system where vessels with incidental permits that had substantial longfin squid landings would keep their current possession limit and not be forced to discard longfin squid. It would also limit vessels without a history of substantial landings to a smaller possession limit. The higher minimum landing threshold under Alternative 3C would only require vessels to have made two trips maximizing the current incidental catch limit to qualify compared to one trip under Alternative 3B. This very low qualification threshold minimizes the number of non-qualified vessels to those that were landing minimal amounts of longfin squid in the past, consistent with the Council's rationale for selecting a low, but not the lowest, landings threshold to retain the longfin squid moratorium permit described above. Input from the Council's Mackerel, Squid, and Butterfish Advisory Panel indicated that a low possession limit of 250–500 lb (226–452 kg) would strongly reduce incentives to target longfin squid. Consistent with the objectives of this action, the Council preferred the lowest possession limit for incidental permits to eliminate incentives to target longfin squid and to minimize discards of squid caught as bycatch in other fisheries.

3. Longfin Squid Incidental Posession Limit Following Trimester II Closure

Under Amendment 20, the Council considered three alternatives to reduce the longfin squid incidental possession limit for all longfin squid permits once the available Trimester II quota was landed, including the no-action alternative. The no action alternative (Alternative 5A) would allow all permitted longfin squid vessels to continue to possess up to 2,500 lb (1,134 kg) of longfin squid after the Trimester II quota is caught and the directed fishery is closed, while Alternative 5B (the Council's preferred alternative) and 5C would allow vessels to retain up to 250 lb (113 kg) or 500 lb (226 kg) per trip, respectively, after such a closure. Alternatives 5A and 5C are both considered significant alternatives because they meet the objectives of this action and minimize adverse economic impacts compared to the preferred alternative.

Longfin squid landings and revenue from 2016 provide a good indication of potential maximum economic impacts to vessels under Alternatives 5A, 5B, and 5C, as longfin squid landings continued after the Trimester II directed fishery was closed from June 29–August 31, 2016. Assuming squid are similarly available in the future, 2016 landings data indicate that Alternative 5A could allow the fishery to land up to 5.6 million lb (2,540 mt) of longfin squid under the current 2,500 lb (1,134 kg) incidental possession limit following the closure of the directed fishery in Trimester II. Nearly all of these landings were from trips that landed more than 250 lb (113 kg), although not all landings occurred in Federal waters. Using 2016 prices, these landings were valued at $6.4 million, and represent an upper bound estimate of potential revenue under Alternative 5A that potentially would be lost under this action. Trips landing between 250–2,500 lb (113–1,134 kg) of longfin squid after the closure accounted for 3.4 million lb (1,542 mt) of longfin squid landings valued at $4.1 million. Average vessel revenue for the 129 vessels that took these trips was $31,444, representing just 4.8 percent of their total average longfin squid landing revenue ($649,473) during 2016. This approximates potential revenue losses under Alternative 5B. For a majority of these vessels, longfin squid was not a

substantial portion of total fishery revenue in 2016, with only 14 percent of affected vessels relying on longfin squid for more than 20 percent of total fishery revenue. Potential revenue lost under Alternative 5C is reflected by trips landing between 500–2,500 lb (226–1,134 kg), which accounted for 3.4 million lb (1,542 mt) of landings valued at $4.0 million during 2016. Average vessel revenue for the 123 vessels that took these trips was $32,303, representing 5.2 percent of their total average longfin squid landing revenue ($620,887) during 2016.

The Council preferred Alternative 5B because it would better achieve the objectives of this action. Alternative 5B would provide additional control over longfin squid catch following the closure of the directed fishery during Trimester II and reduce negative impacts to longfin squid and egg mops during the spawning season. Landings after the 2016 Trimester II closure accounted for 30 percent of overall landings during that period. Excessive landings during Trimester II could negatively affect squid productivity and have been shown to reduce longfin squid catch rates in subsequent seasons. Unlike the no action alternative (Alternative 5A) and Alternative 5C, the preferred alternative would help prevent excessive longfin catch by reducing incentives to target longfin squid under a very low incidental possession limit based on input from the Council's Advisory Panel. During 2016, only one percent of longfin squid landings after the Trimester II closure occurred on trips landing 250 lb (113 kg) or less, suggesting that the proposed action would essentially eliminate excessive catch and more effectively ensure that landings do not exceed allowable limits during Trimester II. Although Alternative 5B would result in the highest potential foregone revenues among alternatives considered, if longfin squid remain available into Trimester III or future longfin squid productivity increases due to reduced effort during the spawning season, the preferred alternative may produce higher future economic returns than other alternatives.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 27, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, revise the definition of ''Atlantic Mackerel, Squid, and Butterfish Monitoring Committee'' and add definitions for ''Calendar day,'' ''Directed fishery,'' and ''Incidental catch'' in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic Mackerel, Squid, and Butterfish Monitoring Committee means the committee made up of staff representatives of the MAFMC and the NEFMC, and the Greater Atlantic Regional Fisheries Office and NEFSC of NMFS. The MAFMC Executive Director or a designee chairs the Committee.

* * * * *

Calendar day, with respect to the squid and butterfish fisheries, means the 24-hr period beginning at 0001 hours and ending at 2400 hours,

* * * * *

Directed fishery, with respect to the longfin squid, *Illex* squid, and butterfish fisheries, means commercial fishery operations in which more than an incidental catch of each species, as defined in this section, is retained by a vessel.

* * * * *

Incidental catch, with respect to the longfin squid, *Illex* squid, and butterfish fisheries, means less than 250 lb (113 kg) of longfin squid, 10,000 lb (4,536 kg) of *Illex* squid, or 600 lb (272 kg) of butterfish retained on board the vessel.

* * * * *

■ 3. In § 648.4, revise paragraph (a)(5) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) *Mackerel, squid, and butterfish vessels.* Any vessel of the United States, including party and charter vessels, must have been issued and carry on board a valid vessel permit to fish for, possess, or land Atlantic mackerel, squid, or butterfish in or from the EEZ.

(i) *Longfin squid moratorium permits.*

(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain longfin squid in excess of the incidental catch allowance in paragraph (a)(5)(vi) of this section in the EEZ, a vessel must have been issued a longfin squid moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history. Beginning in fishing year 2018, a vessel may be eligible for and could be issued a Tier 1, Tier 2, or Tier 3 longfin squid moratorium permit if the vessel and associated fishing history meet the criteria described under paragraphs (a)(5)(i)(A)(*1*) through (*3*) of this section.

(*1*) *Tier 1 longfin squid moratorium permit.* Beginning on [*date 90 days after the date of publication of the final rule in the* ***Federal Register***], the Regional Administer shall automatically issue a Tier 1 longfin squid moratorium permit to any vessel that is issued a longfin squid/butterfish moratorium permit or eligible to be issued such a permit held in confirmation of permit history (CPH) during calendar year 2018 that meets the eligibility criteria in this paragraph (a)(5)(i)(A)(*1*). To be eligible for a Tier 1 permit, a vessel must have been issued a valid longfin squid/butterfish moratorium permit and landed more than 10,000 lb (4,536 kg) of longfin squid in at least one calendar year between January 1, 1997, and December 31, 2013. Fishing history, including for a permit held in confirmation of permit history, can be used by a vessel to qualify for and be issued a Tier 1 longfin squid moratorium permit, provided the Regional Administrator has determined that the fishing and permit history of such vessel has been lawfully retained by the applicant. Landings data used in this qualification must be verified by dealer reports submitted to NMFS. A vessel that was not automatically issued a Tier 1 longfin squid moratorium permit may apply for such a permit in accordance with paragraph (a)(5)(i)(B) of this section.

(*2*) *Tier 2 longfin squid moratorium permit.* Beginning on [*date 90 days after the date of publication of the final rule in the* ***Federal Register***], the Regional Administer shall automatically issue a Tier 2 longfin squid moratorium permit to any vessel that is issued a longfin squid/butterfish moratorium permit or eligible to be issued such a permit held in CPH during fishing year 2018 that does not qualify for a Tier 1 longfin squid moratorium permit, as described in paragraph (a)(5)(i)(A)(*1*) of this section.

(*3*) *Tier 3 longfin squid moratorium permit.* To be issued a Tier 3 permit, a vessel must have been issued an open access squid/butterfish permit and landed more than 5,000 lb (2,268 kg) of longfin squid in at least one calendar year between January 1, 1997, and December 31, 2013. Landings data used in this qualification must be verified by dealer reports submitted to NMFS.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section. Unless automatically issued a Tier 1 or 2 longfin squid moratorium permit in accordance with paragraphs (a)(5)(i)(A)(*1*) or (*2*) of this section, beginning on [*date 90 days after the date of publication of the final rule in the* ***Federal Register***], a vessel owner may submit an initial application for a longfin squid moratorium permit described in paragraph (a)(5)(i)(A)(*1*) through (*3*) of this section. The initial application must be received by NMFS or postmarked no later than [*date 455 days after the date of publication of the final rule in the* ***Federal Register***]. An initial application for a longfin squid moratorium permit that is not postmarked before [*date 455 days after the date of publication of the final rule in the* ***Federal Register***], will not be processed because of this regulatory restriction, and will be returned to the sender with a letter explaining the reason for its return.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section. Longfin squid landings history generated by separate owners of a single vessel at different times during the qualification period for a longfin squid moratorium permit may be used to qualify more than one vessel, provided that each owner applying for such a permit demonstrates that he/she created distinct fishing histories, that such histories have been retained, and if the vessel was sold, that each applicant's eligibility and fishing history is distinct.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, to be eligible for a longfin squid moratorium permit, a replacement vessel must meet the criteria specified in paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, the upgrade provisions in paragraph (a)(1)(i)(F) of this section apply to a vessel issued a longfin squid moratorium permit.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* With the exception of a vessel issued a longfin squid Tier 3 moratorium permit, the vessel baseline specification measures specified in paragraph (a)(3)(i)(H) of this section apply to a vessel issued a longfin squid moratorium permit.

(I) *One-time longfin squid moratorium permit swap.* An entity that owns multiple vessels issued longfin squid/butterfish moratorium permits as of May 26, 2017, has a one-time opportunity to swap one Tier 1 longfin squid moratorium permit issued to one of its vessels with a longfin squid Tier 2 moratorium permit issued to another of its vessels. No other fishery permits issued under this section may be transferred pursuant to this paragraph (a)(5)(i)(I). To be eligible for the one-time longfin squid moratorium permit swap, the following conditions must be met:

(*1*) An application to swap longfin squid moratorium permits must be received by the Regional Administrator within one year of the Regional Administrator's final decision on the issuance of the longfin squid Tier 1 or Tier 2 moratorium permits to be exchanged;

(*2*) At the time of the application, the owner of record for both vessels and permits involved in the permit swap must be identical to the owner of record of the same two vessels issued the associated longfin squid/butterfish moratorium permits as of May 26, 2017;

(*3*) The length overall of the vessel upon which a longfin squid moratorium permit would be placed may not exceed the length overall associated with that individual permit's vessel baseline specifications by more than 10 percent; and

(*4*) The horsepower of the vessel upon which a longfin squid moratorium permit would be placed may not exceed the horsepower associated with that individual permit's vessel baseline specifications by more than 20 percent.

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Appeal of permit denial.*

(*1*) *Eligibility.* Any applicant eligible to apply for a longfin squid moratorium permit who is denied such permit by the Regional Administrator may appeal the denial to the Regional Administrator within 30 days of the notice of denial.

(*2*) *Appeal review.* Review of the Regional Administrator's decisions on longfin squid moratorium permit issuance will be conducted by the NOAA Fisheries National Appeals Office pursuant to the procedures set forth in 15 CFR part 906, unless otherwise modified by the procedures described here. The National Appeals Office shall make findings and submit its decision to the Regional Administrator and the applicant. The Regional Administrator will review the National Appeals Office decision and make a final decision regarding any appeal in accordance with 15 CFR 906.17. The Regional Administrator's decision is the final decision of the Department of Commerce.

(*i*) *Appeal request.* An appeal of the denial of an initial permit application must be made in writing and submitted to and received by the Regional Administrator or postmarked no later than 30 days after the denial of an initial longfin squid moratorium permit application. Upon receipt, the Regional Administrator shall forward each appeal request to the National Appeals Office. Appeals must be based on the grounds that the information used by the Regional Administrator in denying the original permit application was incorrect. Items subject to appeal include, but are not limited to, the accuracy of the amount of landings, the correct assignment of landings to a vessel and/or permit holder, and the issuance of a permit to a particular entity. The appeal request must state the specific grounds for the appeal, and include information to support the appeal. An appellant may request a hearing by including a concise statement raising genuine and substantial issues of a material fact or law that cannot be resolved based on the documentary evidence alone. An appellant may also request a letter of authorization (LOA), as described in paragraph (a)(5)(i)(M)(*3*) of this section, to continue to fish during an appeal. If the appeal of the denial of the permit application is not made within 30 days, the denial of the permit application shall constitute the final decision of the Department of Commerce. The appeal will not be reviewed without submission of information in support of the appeal.

(*ii*) *Reconsideration.* Should the National Appeals Office deny an appeal request submitted according to paragraph (a)(5)(i)(M)(*2*)(*i*) of this section, the applicant may request a reconsideration of the appeal by the National Appeals Office. A reconsideration request must be made in writing and submitted to the National Appeals Office within 10 days of that office's decision on the appeal, as

instructed by the National Appeals Office.

(*3*) *Status of vessels pending appeal.* A vessel denied a longfin squid moratorium permit may fish for longfin squid while the decision on the appeal is pending within NMFS, provided that the denial has been appealed, the appeal is pending, and the vessel has on board an LOA from the Regional Administrator authorizing the vessel to fish under the longfin squid moratorium permit category for which the applicant has submitted an appeal. A request for an LOA must be made when submitting an appeal of the denial of the permit application. The Regional Administrator will issue such a letter for the pending period of any appeal. The LOA must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after the receipt of the notice of denial, but no later than 10 days from the date of the letter of denial.

(ii) *Illex squid and butterfish moratorium permits.*

(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain *Illex* squid or butterfish in excess of the incidental catch allowance in paragraph (a)(5)(iv) of this section in the EEZ, a vessel must have been issued an *Illex* squid or butterfish moratorium permit for the preceding year, be replacing a vessel that was issued a moratorium permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history. Beginning on [*date 90 days after the date of publication of the final rule in the* ***Federal Register***], a vessel that was previously issued a longfin squid/butterfish moratorium permit during fishing year 2018 shall be automatically issued a separate butterfish moratorium permit.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(iii) *Limited access Atlantic mackerel permits.* (A) *Vessel size restriction.* A vessel of the United States is eligible for and may be issued an Atlantic mackerel permit to fish for, possess, or land Atlantic mackerel in or from the EEZ, except for any vessel that is greater than or equal to 165 ft (50.3 m) in length overall (LOA), or greater than 750 gross registered tons (680.4 mt), or the vessel's total main propulsion machinery is greater than 3,000 horsepower. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified in § 648.6(a)(2)(i).

(B) *Limited access mackerel permits.* A vessel of the United States that fishes for, possesses, or lands more than 20,000 lb (9,072 kg) of mackerel per trip, except vessels that fish exclusively in state waters for mackerel, must have been issued and carry on board one of the limited access mackerel permits described in paragraphs (a)(5)(iii)(B)(*1*) through (*3*) of this section, including both vessels engaged in pair trawl operations.

(*1*) *Tier 1 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land mackerel not subject to a trip limit, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*2*) *Tier 2 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land up to 135,000 lb (50 mt) of mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(*3*) *Tier 3 Limited Access Mackerel Permit.* A vessel may fish for, possess, and land up to 100,000 lb (37.3 mt) of mackerel per trip, provided the vessel qualifies for and has been issued this permit, subject to all other regulations of this part.

(C) *Eligibility criteria for mackerel permits.* To be eligible to apply for a Tier 1, Tier 2, or Tier 3 limited access mackerel permit to fish for and retain Atlantic mackerel in excess of the incidental catch allowance in paragraph (a)(5)(vi) of this section in the EEZ, a vessel must have been issued a Tier 1, Tier 2, or Tier 3 limited access mackerel permit, as applicable, for the preceding year, be replacing a vessel that was issued a limited access permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history.

(D) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

(E) *Qualification restrictions.* (*1*) See paragraph (a)(1)(i)(C) of this section.

(F) *Change of ownership.* See paragraph (a)(1)(i)(D) of this section.

(G) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(H) *Vessel baseline specification.* (*1*) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be certified by one of the following qualified individuals or entities: an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS); employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c); the Maine State Sealer of Weights and Measures; a professionally-licensed and/or registered Marine Engineer; or a Naval Architect with a professional engineer license. The fish hold capacity measurement submitted to NMFS as required in this paragraph (a)(5)(iii)(H)(*1*) must include a signed certification by the individual or entity that completed the measurement, specifying how they meet the definition of a qualified individual or entity.

(*2*) If a mackerel CPH is initially issued, the vessel that provided the CPH eligibility establishes the size baseline against which future vessel size limitations shall be evaluated, unless the applicant has a vessel under contract prior to the submission of the mackerel limited access application. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, then the baseline specifications associated with other limited access permits in the CPH suite will be used to establish the mackerel baseline specifications. If the vessel that established the CPH is less than 20 ft (6.09 m) in length overall, the limited access mackerel eligibility was established on another vessel, and there are no other limited access permits in the CPH suite, then the applicant must submit valid documentation of the baseline specifications of the vessel that established the eligibility. The hold capacity baseline for such vessels will be the hold capacity of the first replacement vessel after the permits are removed from CPH. Hold capacity for the replacement vessel must be measured pursuant to paragraph (a)(5)(iii)(H)(*1*) of this section.

(I) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section. In addition, for Tier 1 and Tier 2 limited access mackerel permits, the replacement vessel's volumetric fish hold capacity may not exceed by more than 10 percent the volumetric fish hold capacity of the vessel's baseline specifications. The modified fish hold, or the fish hold of the replacement vessel, must be resurveyed by a surveyor (accredited as in paragraph (a)(5)(iii)(H) of this section) unless the replacement vessel already had an appropriate certification.

(J) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(K) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(L) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(iv) *Atlantic mackerel incidental catch permits.* Any vessel of the United States may obtain a permit to fish for or retain up to 20,000 lb (9,072 kg) of Atlantic mackerel as an incidental catch in another directed fishery, provided that the vessel does not exceed the size restrictions specified in paragraph (a)(5)(iii)(A) of this section. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.21.

(v) *Party and charter boat permits.* The owner of any party or charter boat must obtain a permit to fish for, possess, or retain in or from the EEZ mackerel, squid, or butterfish while carrying passengers for hire.

(vi) *Squid/butterfish incidental catch permit.* Any vessel of the United States may obtain a permit to fish for or retain up to 250 lb (113 kg) of longfin squid, 600 lb (272 kg) of butterfish, or up to 10,000 lb (4,536 kg) of *Illex* squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator based upon a recommendation by the Council following the procedure set forth in § 648.22.

* * * * *

■ 4. In § 648.7, revise paragraphs (a)(1), (b)(3)(iii), and (f)(2)(i) to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) Federally permitted dealers, and any individual acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time period specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The dealer reporting requirements specified in this paragraph (a)(1) for dealers purchasing or receiving for a commercial purpose Atlantic chub mackerel are effective through December 31, 2020. The following information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information.* All dealers issued a dealer permit under this part must provide: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under this part; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) *Exceptions.* The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in § 648.2, are not required to be reported under this part;

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Greater Atlantic Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Greater Atlantic Region under this part, and American lobster, managed under part 697 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by this provision; and

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in § 635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

* * * * *

(b) * * *

(3) * * *

(iii) *Longfin squid moratorium permit owners or operators.* The owner or operator of a vessel issued a longfin squid moratorium permit must report catch (retained and discarded) of longfin squid daily via VMS, unless exempted by the Regional Administrator. The report must include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month, day, and year longfin squid was caught; total pounds longfin squid retained and total pounds of all fish retained. Daily longfin squid VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr on the following day. Reports are required even if longfin squid caught that day have not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

(f) * * *

(2) * * *

(i) For any vessel not issued a NE multispecies; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit; fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS within 15 days after the end of the reporting month. For any vessel issued a NE multispecies permit; Atlantic herring permit; or any Atlantic mackerel, longfin squid, *Illex* squid, or butterfish permit; fishing vessel log reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month the VTR must be submitted to NMFS, as appropriate.

* * * * *

■ 5. In § 648.10, revise paragraphs (b)(9) through (11), (e)(5)(i), (o), and (p); and add paragraph (b)(12) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(9) A vessel issued a Tier 1, Tier 2, or Tier 3 limited access Atlantic mackerel permit;

(10) A vessel issued a Tier 1 or Tier 2 longfin squid moratorium permit;

(11) A vessel issued an *Illex* squid moratorium permit; or

(12) A vessel issued a butterfish moratorium permit.

* * * * *

(e) * * *

(5) * * *

(i) A vessel subject to the VMS requirements of § 648.9 and paragraphs (b) through (d) of this section that has crossed the VMS Demarcation Line under paragraph (a) of this section is deemed to be fishing under the DAS program, the Access Area Program, the LAGC IFQ or NGOM scallop fishery, or other fishery requiring the operation of VMS as applicable, unless prior to leaving port, the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, monkfish, or any other fishery, as applicable, for a specific time period. NMFS must be notified by transmitting the appropriate VMS code through the VMS, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

* * * * *

(o) *Longfin squid VMS notification requirement.* A vessel issued a Tier 1 or Tier 2 longfin squid moratorium permit intending to harvest, possess, or land more than 2,500 lb (1.13 mt) of longfin squid on that trip must notify NMFS by declaring a longfin squid trip before leaving port at the start of each trip.

(p) *Illex squid VMS notification requirement.* A vessel issued an *Illex* squid moratorium permit intending to harvest, possess, or land 10,000 lb (4,536 kg) or more of *Illex* squid on that trip must notify NMFS by declaring an *Illex* squid trip before leaving port at the start of each trip.

* * * * *

■ 6. In § 648.11, revise the introductory text in paragraph (n)(2) and paragraphs (n)(3)(i) and (ii) to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(n) * * *

(2) *Sampling requirements for limited access Atlantic mackerel or Tier 1 or 2 longfin squid, or butterfish moratorium permit holders.* In addition to the requirements in paragraphs (d)(1) through (7) of this section, an owner or operator of a vessel issued a limited access Atlantic mackerel or a longfin squid or butterfish moratorium permit on which a NMFS-approved observer is embarked must provide observers:

* * * * *

(3) * * *

(i) No vessel issued a limited access Atlantic mackerel permit or a longfin squid or butterfish moratorium permit may slip catch, as defined at § 648.2, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for sampling and inspection; or

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish that can be pumped from the net prior to release.

(ii) If a vessel issued any limited access Atlantic mackerel permit slips catch, the vessel operator must report the slippage event on the Atlantic mackerel and longfin squid daily VMS catch report and indicate the reason for slipping catch. Additionally, for a vessel issued a limited Atlantic mackerel permit or a longfin squid or butterfish moratorium permit, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

* * * * *

■ 7. In § 648.13, revise paragraph (a) to read as follows:

§ 648.13 Transfers at sea.

(a) Vessels issued a longfin squid, butterfish, or *Illex* squid moratorium permit and vessels issued a squid/butterfish incidental catch permit may transfer or attempt to transfer or receive longfin squid, *Illex* squid, or butterfish only if authorized in writing by the Regional Administrator through the issuance of a letter of authorization (LOA).

* * * * *

■ 8. In § 648.14, revise paragraphs (g)(1)(i), (g)(1)(ii)(B), (g)(2)(i), (g)(2)(ii)(A), (g)(2)(ii)(D) and (F), (g)(2)(iii)(A), introductory text for (g)(2)(v), (g)(2)(v)(A), and (g)(2)(vi); and add paragraph (g)(2)(ii)(H) to read as follows:

§ 648.14 Prohibitions.

(g) * * *

(1) * * *

(i) *Possession and landing.* Take and retain, possess, or land more Atlantic mackerel, squid or butterfish than specified under, or after the effective date of, a notification issued under §§ 648.22 or 648.24(d).

(ii) * * *

(B) Transfer longfin squid, *Illex* squid, or butterfish within the EEZ, unless the vessels participating in the transfer have been issued the appropriate LOA from the Regional Administrator along with a valid longfin squid, butterfish, or *Illex* squid moratorium permit and are transferring species for which the vessels are permitted, or a valid squid/butterfish incidental catch permit.

* * * * *

(2) * * *

(i) *General requirement.* Fail to comply with any measures implemented pursuant to Subpart B.

(ii) * * *

(A) Possess more than the incidental catch allowance of longfin squid, unless issued a longfin squid moratorium permit.

* * * * *

(D) Take and retain, possess, or land mackerel, squid, or butterfish in excess of a possession limit specified in § 648.26.

* * * * *

(F) Take and retain, possess, or land mackerel after a total closure specified under § 648.24(b)(1).

* * * * *

(H) Possess more than the incidental catch allowance of butterfish, unless issued a butterfish moratorium permit.

(iii) * * *

(A) Fish with or possess nets or netting that do not meet the gear requirements for Atlantic mackerel, longfin squid, *Illex* squid, or butterfish specified in § 648.23(a); or that are modified, obstructed, or constricted, if subject to the minimum mesh requirements, unless the nets or netting are stowed and not available for immediate use as defined in § 648.2 or the vessel is fishing under an exemption specified in § 648.23(a)(5).

* * * * *

(v) VMS r*eporting requirements in the directed Atlantic mackerel longfin squid, and Illex squid fisheries.*

(A) Fail to declare via VMS into the directed mackerel, longfin squid,, or *Illex* squid fisheries by entering the fishery code prior to leaving port at the start of each trip if the vessel will harvest, possess, or land more than an incidental catch of Atlantic mackerel, longfin squid, or *Illex* squid and is issued a Limited Access Atlantic mackerel permit, Tier 1 or Tier 2 longfin squid moratorium permit, or *Illex* squid moratorium permit.

* * * * *

(vi) Slip catch, as defined at § 648.2, unless for one of the reasons specified

at § 648.11(n)(3)(i) if issued a limited access Atlantic mackerel permit, or a longfin squid or a butterfish moratorium permit.

* * * * *

■ 9. In § 648.22, revise paragraphs (a),(b)(1)(i)(B), (c)(3), and (c)(6) to read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

(a) *Initial recommended annual specifications.* The Atlantic Mackerel, Squid, and Butterfish Monitoring Committee (Monitoring Committee) shall meet annually to develop and recommend the following specifications for consideration by the Squid, Mackerel, and Butterfish Committee of the MAFMC:

(1) *Illex squid*—Initial OY (IOY), including Research Set-Aside (RSA), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(2) *Butterfish*—ACL; ACT including RSA, DAH, DAP; bycatch level of the total allowable level of foreign fishing (TALFF), if any; and butterfish mortality cap for the longfin squid fishery for butterfish; which, subject to annual review, may be specified for a period of up to 3 years;

(3) *Atlantic mackerel*—ACL; commercial ACT, including RSA, DAH, mackerel Tier 3 allocation (up to 7 percent of the DAH), DAP; joint venture processing (JVP) if any; TALFF, if any; and recreational ACT, including RSA for mackerel; which, subject to annual review, may be specified for a period of up to 3 years. The Monitoring Committee may also recommend that certain ratios of TALFF, if any, for mackerel to purchases of domestic harvested fish and/or domestic processed fish be established in relation to the initial annual amounts.

(4) *Longfin squid* –

(i) IOY, including RSA, DAH, and DAP for longfin squid, which, subject to annual review, may be specified for a period of up to 3 years; and

(ii) Inseason adjustment, upward or downward, to the specifications for longfin squid, as specified in paragraph (e) of this section.

(b) * * *

(1) * * *

(i) * * *

(B) *Illex* squid—Catch associated with a fishing mortality rate of F_{MSY}.

* * * * *

(c) * * *

(3) The amount of longfin squid, *Illex* squid, and butterfish that may be retained and landed by vessels issued the incidental catch permit specified in § 648.4(a)(5)(vi), and the amount of mackerel that may be retained, possessed and landed by any of the limited access mackerel permits described at § 648.4(a)(5)(iii) and the incidental mackerel permit at § 648.4(a)(5)(iv).

* * * * *

(6) Commercial seasonal quotas/closures for longfin squid and *Illex* squid, and allocation for the Tier 3 Limited Access Mackerel permit.

* * * * *

■ 10. In § 648.24, revise paragraph (c)(1) to read as follows:

§ 648.24 Fishery closures and accountability measures.

* * * * *

(c) * * *

(1) *Directed butterfish fishery closure.* When the butterfish catch reaches the butterfish closure threshold as determined in the annual specifications, NMFS shall implement a 5,000 lb (2,268 kg) possession limit for vessels issued a butterfish moratorium permit that are fishing with a minimum mesh size of 3 inches (76 mm). When NMFS projects that the butterfish catch has reached the butterfish DAH, as determined in the annual specifications, NMFS shall implement a 600 lb (272 kg) possession limit for all vessels issued a longfin squid or butterfish moratorium permit, or a squid/butterfish incidental catch permit.

* * * * *

■ 11. In § 648.25, revise paragraph (a)(4)(i) to read as follows:

§ 648.25 Atlantic Mackerel, squid, and butterfish framework adjustments to management measures.

(a) * * *

(4) * * *

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(3) of this section, the measures will be issued as a final rule in the **Federal Register**.

* * * * *

■ 12. In § 648.26, revise paragraphs (b) through (d) to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

* * * * *

(b) *Longfin squid.*

(1) *Directed fishery.* A vessel must be issued a valid longfin squid moratorium permit to fish for, possess, or land more than 250 lb (113 kg) of longfin squid from or in the EEZ per trip. Unless the directed fishery is closed pursuant to paragraph § 648.24(a)(1), the following longfin squid possession limits apply:

(i) *Tier 1 moratorium permits.* A vessel issued a Tier 1 longfin squid moratorium permit may possess an unlimited amount of longfin squid per trip.

(ii) *Tier 2 moratorium permits.* A vessel issued a Tier 2 longfin squid moratorium permit may not fish for, possess, or land more than 5,000 lb (2,268 kg) of longfin squid per trip, and may only land longfin squid once on any calendar day.

(iii) Tier 3 moratorium permits. A vessel issued a Tier 3 longfin squid moratorium permit may not fish for, possess, or land more than 2,500 lb (1,134 kg) of longfin squid per trip, and may only land longfin squid once on any calendar day.

(2) *Incidental fishery.*

(i) A vessel issued an open access squid/butterfish incidental catch permit may not fish for, possess, or land more than 250 lb (113 kg) of longfin squid from or in the EEZ per trip, and may only land longfin squid once on any calendar day.

(ii) During a closure of the directed longfin squid fishery in either Trimester I or III pursuant to paragraph § 648.24(a)(1), a vessel may not fish for, possess, or land more than 2,500 lb (1,134 kg) of longfin squid at any time per trip, and may only land longfin squid once on any calendar day.

(iii) Unless otherwise specified in paragraph (b)(2)(iv) of this section, during a closure of the directed longfin squid fishery in Trimester II pursuant to § 648.24(a)(1), a vessel may not fish for, possess, or land more than 250 lb (113 kg) of longfin squid at any time per trip, and may only land longfin squid once on any calendar day.

(iv) During a closure of the directed longfin squid fishery in Trimester II, a vessel issued either a Tier 1 or Tier 2 longfin squid moratorium permit may possess more than 250 lb (113 kg) of longfin squid per trip, provided the following conditions are met:

(A) The vessel operator has declared into the directed *Illex* squid fishery via VMS, as specified in § 648.10;

(B) The vessel is seaward of the coordinates specified at § 648.23(a)(5);

(C) The vessel possesses more than 10,000 lb (4,536 kg) of *Illex* squid on board;

(D) The vessel possesses less than 15,000 lb (6,803 kg) of longfin squid if issued a Tier 1 longfin squid moratorium permit or 5,000 lb (2,268 kg) of longfin squid if issued a Tier 2 longfin squid moratorium permit; and

(E) All fishing gear is stowed and rendered not available for immediate use, as defined in § 648.2, once the vessel is landward of the coordinates specified at § 648.23(a)(5).

(c) *Illex squid.*

(1) *Directed fishery.* A vessel must be issued a valid *Illex* squid moratorium permit to fish for, possess, or land more than 10,000 lb (4,536 kg) of *Illex* squid from or in the EEZ per trip. Unless the directed fishery is closed pursuant to paragraph § 648.24(a)(2), a vessel issued an *Illex* moratorium permit may possess an unlimited amount of *Illex* squid per trip.

(2) *Incidental fishery.* A vessel may not fish for, possess, or land more than 10,000 lb (4,536 kg) of *Illex* squid per trip at any time, and may only land *Illex* squid once on any calendar day if:

(i) A vessel is issued an open access squid/butterfish incidental catch permit; or

(ii) A vessel is issued an *Illex* moratorium permit and the directed fishery is closed pursuant to paragraph § 648.24(a)(2).

(d) *Butterfish.* Any vessel issued a butterfish permit under this part may only land butterfish once on any calendar day.

(1) *Directed fishery.* A vessel must be issued a butterfish moratorium permit to fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip.

(i) *Vessels fishing with larger mesh.* A vessel issued a butterfish moratorium permit fishing with a minimum mesh size of 3 inches (76 mm) is authorized to fish for, possess, or land butterfish with no possession restriction in the EEZ per trip, provided that directed butterfish fishery has not been closed and the reduced possession limit has not been implemented, as specified in § 648.24(c)(1). When butterfish harvest is projected to reach the threshold for the butterfish fishery, as specified in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 5,000 lb (2,268 kg) of butterfish per trip at any time. When butterfish harvest is projected to reach the DAH limit, as specified in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip at any time.

(ii) *Vessels fishing with smaller mesh.* A vessel issued a butterfish moratorium permit fishing with mesh less than 3 inches (76 mm) may not fish for, possess, or land more than 5,000 lb (2,268 kg) of butterfish per trip at any time, provided that butterfish harvest has not reached the DAH limit and the reduced possession limit has not been implemented, as described in § 648.24(c)(1). When butterfish harvest is projected to reach the DAH limit, as described in § 648.24(c)(1), these vessels may not fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip at any time.

(2) *Incidental fishery.* A vessel issued a squid/butterfish incidental catch permit, regardless of mesh size used, may not fish for, possess, or land more than 600 lb (272 kg) of butterfish per trip at any.

* * * * *

[FR Doc. 2018–18934 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 170

Friday, August 31, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0012]

Concurrence With OIE Risk Designations for Bovine Spongiform Encephalopathy

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to concur with the World Organization for Animal Health's (OIE) bovine spongiform encephalopathy (BSE) risk designations for four regions. The OIE recognizes these regions as being of negligible risk for BSE. We are taking this action based on our review of information supporting the OIE's risk designations for these regions.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Gordon, Senior Staff Veterinarian, Regionalization Evaluation Services, National Import Export Services, VS, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7741.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92 subpart B, ''Importation of Animals and Animal Products; Procedures for Requesting BSE Risk Status Classification With Regard To Bovines'' (referred to below as the regulations), set forth the process by which the Animal and Plant Health Inspection Service (APHIS) classifies regions for bovine spongiform encephalopathy (BSE) risk. Section 92.5 of the regulations provides that all countries of the world are considered by APHIS to be in one of three BSE risk categories: Negligible risk, controlled risk, or undetermined risk. These risk categories are defined in § 92.1. Any region that is not classified by APHIS as presenting either negligible risk or controlled risk for BSE is considered to present an undetermined risk. The list of those regions classified by APHIS as having either negligible risk or controlled risk can be accessed on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions.* The list can also be obtained by writing to APHIS at National Import Export Services, 4700 River Road Unit 38, Riverdale, MD 20737.

Under the regulations, APHIS may classify a region for BSE in one of two ways. One way is for regions that have not received a risk classification from the World Organization for Animal Health (OIE) to request classification by APHIS. The other way is for APHIS to concur with the classification given to a country or region by the OIE.

If the OIE has recognized a country as either BSE negligible risk or BSE controlled risk, APHIS will seek information to support our concurrence with the OIE classification. This information may be publicly available information, or APHIS may request that countries supply the same information given to the OIE. APHIS will announce in the **Federal Register**, subject to public comment, its intent to concur with an OIE classification.

In accordance with that process, we published a notice [1] in the **Federal Register** on April 24, 2018 (83 FR 17789, Docket No. APHIS–2018–0012), in which we announced our intent to concur with the OIE recognition of Croatia, Poland, Northern Ireland, and Scotland as being regions of negligible risk for BSE. We solicited comments on the notice for 60 days ending on June 25, 2018. We received one comment by that date, from a private citizen.

The commenter voiced doubts about the efficacy of the BSE minimal risk region policy, concerns about other prion diseases such as chronic wasting disease circulating in the United States and the world, and skepticism that the ruminant-to-ruminant feed ban has been effectively enforced. The commenter did not, however, address our preliminary concurrence with the OIE's risk designations for the four regions or the documentation made available to support that action.

[1] To view the notice and the comment we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0012.*

Therefore, in accordance with the regulations in § 92.5, we are announcing our decision to concur with the OIE risk classifications of the following countries:

- *Regions of negligible risk for BSE:* Croatia, Poland, Northern Ireland (region of United Kingdom), and Scotland (region of United Kingdom).

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 27th day of August 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2018–18962 Filed 8–30–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Stocks Reports. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by October 30, 2018 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0007, by any of the following methods:

- *Email: OMBofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

• *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Stocks Reports.

OMB Control Number: 0535–0007.

Expiration Date of Approval: January 31, 2019.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, stocks, disposition, and prices. The *Stocks Report* surveys, provide estimates of stocks of grains, hops, oilseeds, peanuts, potatoes, and rice that are stored off-farm. These off-farm stocks are combined with on-farm stocks to estimate stocks in all positions. The grain *Stocks Reports* are a principle economic indicator as defined by OMB. Stocks statistics are used by the U.S. Department of Agriculture to help administer programs; by State agencies to develop, research, and promote the marketing of products; and by producers and buyers to find their best market opportunity(s). The *Stocks Reports* are instrumental in providing timely, accurate data to help grain market participants. Since the previous approval, NASS has made several adjustments to the number of respondents contacted and the overall respondent burden. The largest adjustment to sample size is for the off-farm grain and oilseed operations that has been decreased by approximately 600 operations (quarterly), due to numerous mergers of operations over the last three years.

The current expiration date for this docket is January 31, 2019. NASS intends to request that the survey be approved for another 3 years.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: This information collection comprises 14 individual surveys that are conducted either 1, 4, 5, or 12 times a year for an estimated total of 24,700 responses. Average reporting burden for this collection of information ranges from 10 to 25 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 6,300.

Estimated Total Annual Burden on Respondents: 5,300 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, August 23, 2018.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2018–18958 Filed 8–30–18; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Egg, Chicken, and Turkey Surveys. A revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by October 30, 2018 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0004, by any of the following methods:

• *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.

• *E-fax:* (855) 838–6382.

• *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

• *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Egg, Chicken, and Turkey Surveys.

OMB Number: 0535–0004.

Expiration Date of Approval: January 31, 2019.

Type of Request: Intent to seek approval to revise and extend an information collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service

is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Egg, Chicken, and Turkey Surveys obtain basic poultry statistics from voluntary cooperators throughout the Nation. Statistics are published on placement of pullet chicks for hatchery supply flocks; hatching reports for broiler-type, egg-type, and turkey eggs; number of layers on hand; total table egg production; and production and value estimates for eggs, chickens, and turkeys. The frequencies of the surveys being conducted include weekly, monthly, and annually. This information is used by producers, processors, feed dealers, and others in marketing and supply channels as a basis for production and marketing decisions. Government agencies use these estimates to evaluate poultry product supplies. The information is an important consideration in government purchases for the National School Lunch Program and in formulation of export-import policy. The current expiration date for this docket is January 31, 2019. NASS intends to request that the surveys be approved for another 3 years.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated between 8 and 35 minutes per respondent per survey. Additional burden is allowed for the inclusion of publicity materials and instructions on how to respond to the surveys via the internet.

Respondents: Farmers, ranchers, farm managers, and farm contractors.

Estimated Number of Respondents: 2,500.

Estimated Total Annual Burden on Respondents: 2,900 hours. This will include burden for both the initial mailing and phone follow-up to non-respondents, as well as publicity and instruction materials mailed out with questionnaires.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, August 23, 2018.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2018–18959 Filed 8–30–18; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Publication of Depreciation Rates

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Depreciation Rates for Telecommunications Plant.

SUMMARY: The United States Department of Agriculture (USDA) Rural Utilities Service (RUS) administers rural utilities programs, including the Telecommunications Program. RUS announces the depreciation rates for telecommunications plant for the period ending December 31, 2017.

DATES: These rates are applicable immediately and will remain in effect until rates are available for the period ending December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Chad Parker, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590—Room 5151, 1400 Independence Avenue SW, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION: In 7 CFR part 1737, Pre-Loan Policies and Procedures Common to Insured and Guaranteed Telecommunications Loans, § 1737.70(e) explains the depreciation rates that are used by RUS in its feasibility studies. § 1737.70(e)(2) refers to median depreciation rates published by RUS for all borrowers. The following chart provides those rates, compiled by RUS, for the reporting period ending December 31, 2017:

MEDIAN DEPRECIATION RATES OF RURAL UTILITIES SERVICE BORROWERS BY EQUIPMENT CATEGORY FOR PERIOD ENDING DECEMBER 31, 2017

Telecommunications plant category	Depreciation rate
1. Land and Support Assets:	
a. Motor vehicles	16.50
b. Aircraft	10.05
c. Special purpose vehicles	12.00
d. Garage and other work equipment	10.00
e. Buildings	3.30
f. Furniture and office equipment	10.00
g. General purpose computers	20.00
2. Central Office Switching:	
a. Digital	9.37
b. Analog & Electro-mechanical	10.00
c. Operator Systems	9.30
3. Central Office Transmission:	
a. Radio Systems	10.00
b. Circuit equipment	10.00
4. Information origination/termination:	
a. Station apparatus	12.00
b. Customer premises wiring	10.00
c. Large private branch exchanges	11.40
d. Public telephone terminal equipment	11.95
e. Other terminal equipment	10.00
5. Cable and wire facilities:	
a. Aerial cable—poles	6.19
b. Aerial cable—metal	6.00
c. Aerial cable—fiber	5.10
d. Underground cable—metal	5.00
e. Underground cable—fiber	5.00
f. Buried cable—metal	5.15
g. Buried cable—fiber	5.00
h. Conduit systems	4.00
i. Other	5.00

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2018–18921 Filed 8–30–18; 8:45 am]

BILLING CODE P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meetings

TIME AND DATE: Wednesday, September 5, 2018, 10:30 a.m. ET.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW, Washington, DC 20237.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Broadcasting Board of Governors (Board) will be meeting at the time and location listed above. The Board will vote on a consent agenda consisting of the minutes of its June 6, 2018 meeting and a resolution honoring the 55th anniversary of Voice of America's English to Africa Service. The Board will receive a report from the Chief Executive Officer and Director of BBG.

This meeting will be available for public observation via streamed webcast, both live and on-demand, on the agency's public website at *www.bbg.gov.* Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the agency's public website.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Members of the public seeking to attend the meeting in person must register at *https://bbgboardmeetingsept 2018.eventbrite.com* by 12:00 p.m. (ET) on September 4. For more information, please contact BBG Public Affairs at (202) 203–4400 or by email at *pubaff@ bbg.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Oanh Tran at (202) 203–4545.

Oanh Tran,

Managing Director.

[FR Doc. 2018–19085 Filed 8–29–18; 11:15 am]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Membership of the Departmental Performance Review Board

AGENCY: Department of Commerce.

ACTION: Notice of membership on the Departmental Performance Review Board.

SUMMARY: The Department of Commerce (DOC) announces the appointment of those individuals who have been selected to serve as members of the Departmental Performance Review Board. The Performance Review Board is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

DATES: The period of appointment for those individuals selected for the Departmental Performance Review Board begins on August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Christi Casiano, U.S. Department of Commerce, Office of Human Resources Management, Office of Executive Resources, 14th and Constitution Avenue NW, Room 51010, Washington, DC 20230, at (202) 482–0124.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the Department of Commerce (DOC), announces the appointment of those individuals who have been selected to serve as members of the Departmental Performance Review Board. The Performance Review Board is responsible for (1) reviewing performance appraisals and ratings of Senior Executive Service (SES) members and (2) making recommendations to the appointing authority on other performance management issues, such as pay adjustments, bonuses and Presidential Rank Awards. The appointment of these members to the Performance Review Board will be for a period of twenty-four (24) months.

The name, position title, and type of appointment of each member of the Performance Review Board are set forth below:

1. Jon Alexander, Deputy Director, Financial Management Systems, Career SES
2. Lisa Blumerman, Chief, Office of Survey and Census Analytics, Career SES
3. Gregory Brown, Chief Financial Officer and Chief Administration Officer, Career SES
4. Renee Macklin, Director of Information Technology for Enterprise Services, Career SES
5. Jeremy Pelter, Chief Financial Officer and Director of Administration, Career SES
6. Stephen Renna, Director, Advocacy Center, Noncareer SES
7. Joseph Semsar, Senior Advisor, Noncareer SES

Christi Casiano,

HR Specialist, Office of Executive Resources, Office of Human Resources Management, Office of the Secretary/Office of the CFO/ ASA, Department of Commerce.

[FR Doc. 2018–18969 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–134–2018]

Foreign-Trade Zone 259—Koochiching County, Minnesota; Application for Subzone; Digi-Key Corporation; Thief River Falls, Minnesota

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Koochiching Economic Development Authority, grantee of FTZ 259, requesting subzone status for the facilities of Digi-Key Corporation, located in Thief River Falls, Minnesota. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 24, 2018.

The proposed subzone would consist of the following sites: *Site 1* (130.7 acres) 701 Brooks Avenue, Thief River Falls, Pennington County; and *Site 2* (4.19 acres) 121 Arnold Avenue, Thief River Falls, Pennington County. A notification of proposed production activity has been submitted and will be published separately for public comment under 15 CFR 400.37. The proposed subzone would be subject to the existing activation limit of FTZ 259.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is October 10, 2018. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 25, 2018.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: August 27, 2018.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2018–18967 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on September 26, 2018, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than September 19, 2018.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on August 24, 2018, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2018–18939 Filed 8–30–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–063]

Cast Iron Soil Pipe Fittings From the People's Republic of China: Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing a countervailing duty order on cast iron soil pipe fittings (soil pipe fittings) from the People's Republic of China (China).

DATES: Applicable August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Jinny Ahn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–5973 or (202) 482–0339, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2018, Commerce published its final determination in the countervailing duty investigation of soil pipe fittings from China.[1] On August 22, 2018, the ITC notified Commerce of its final determination, pursuant to section 705(d) of the Act, that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act, by reason of subsidized imports of soil pipe fittings from China.[2]

Scope of the Order

The merchandise covered by the scope of this order is cast iron soil pipe fittings, finished and unfinished, regardless of industry or proprietary specifications, and regardless of size. Cast iron soil pipe fittings are nonmalleable iron castings of various designs and sizes, including, but not limited to, bends, tees, wyes, traps, drains (other than drain bodies), and other common or special fittings, with or without side inlets.

Cast iron soil pipe fittings are classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe fittings are manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888. Hub and spigot pipe fittings have hubs into which the spigot (plain end) of the pipe or fitting is inserted. Cast iron soil pipe fittings are generally distinguished from other types of nonmalleable cast iron fittings by the manner in which they are connected to cast iron soil pipe and other fittings.

Excluded from this scope are all drain bodies. Drain bodies are normally classified in subheading 7326.90.86.88 of the Harmonized Tariff Schedule of the United States (HTSUS).

The cast iron soil pipe fittings subject to the scope of this order are normally classified in subheading 7307.11.0045 of the HTSUS: Cast fittings of nonmalleable cast iron for cast iron soil pipe. They may also be entered under HTSUS 7324.29.0000 and 7307.92.3010. The HTSUS subheadings and specifications are provided for convenience and customs purposes only; the written description of the scope of this order is dispositive.

Countervailing Duty Order

On August 22, 2018, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that imports of cast iron soil pipe fittings are materially injuring a U.S. industry. Therefore, in accordance with section 705(c)(2) of the Act, we are publishing this countervailing duty order. In its determination, the ITC found two domestic like products covered by the scope of the investigation: Drain bodies and all other soil pipe fittings. The ITC made a negative determination with respect to drain bodies and an

[1] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 83 FR 32075 (July 11, 2018) (*Final Determination*).

[2] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation Nos. 701–TA–583 and 731–TA–1381, dated August 22, 2018.

affirmative determination with respect to all other soil pipe fittings. Because the ITC made different injury determinations for separate domestic like products, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on entries of all cast iron soil pipe fittings (subject merchandise) other than drain bodies (excluded merchandise).

Drain Bodies

The ITC found that drain bodies are a separate domestic like product. The Final ITC Report describes typical drain bodies as having only one side that connects to a pipe or fitting.[3] Further, drain bodies are not classified as either hubless or hub and spigot.[4] Drain bodies may be painted in a different manner than other cast iron soil pipe fittings, which are coated in asphaltic material, black paint, or epoxy.[5] Drain bodies often require assembly with attachments (cast iron and non-cast iron) such as stainless steel strainers, grates, and bolts to be a drain fixture ready for use.[6] In addition, the purpose of a drain body is to collect and carry away liquid or water, including wastewater, while the purpose of other cast iron soil pipe fittings is to connect pipe and fittings.[7]

Because the ITC made a negative determination of material injury with respect to drain bodies, Commerce will direct CBP to terminate the suspension of liquidation for entries of drain bodies from China entered, or withdrawn from warehouse, and refund any cash deposits with respect to these entries.

All Soil Pipe Fittings Other Than Drain Bodies

Because the ITC determined that imports of all cast iron soil pipe fittings other than drain bodies from China are materially injuring a U.S. industry, all unliquidated entries of subject merchandise from China, entered or withdrawn from warehouse, are subject to the assessment of countervailing duties.

As a result of the ITC's final determination, in accordance with section 706(a) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties on unliquidated entries of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after December 19, 2017, the date on which Commerce published its preliminary countervailing duty determination in the **Federal Register**,[8] and before April 18, 2018, the effective date on which Commerce instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of subject merchandise from China made on or after April 18, 2018, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties due to Commerce's discontinuation of the suspension of liquidation.

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will direct CBP to reinstitute the suspension of liquidation of subject merchandise (*i.e.,* all soil pipe fittings other than drain bodies) from China, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, we will instruct CBP to require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for each entry of subject merchandise equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice. The all others rate applies to all producers or exporters not specifically listed, as appropriate.

Company	Subsidy rate (percent)
Shanxi Xuanshi Industrial Group Co., Ltd	34.87
Wor-Biz International Trading Co., Ltd. (Anhui)	7.37
Shijiazhuang Chengmei Import & Export Co., Ltd	133.94
All-Others	23.28

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to soil pipe fittings from China pursuant to section 706(a) of the Act. Interested parties may visit *https://enforcement.trade.gov/stats/iastats1.html* or contact Commerce's Central Records Unit, Room B8024 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: August 28, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–19095 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–079]

Cast Iron Soil Pipe From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that cast iron soil pipe from the People's Republic of China (China) was sold to the United States at less than fair value (LTFV) during the period of investigation (POI), July 1, 2017, through December 31, 2017.

DATES: Applicable August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2243.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on February 23, 2018.[1] On June 22,

[3] *See* Cast Iron Soil Pipe Fittings from China, Investigation Nos. 701–TA–583 and 731–TA–1381 (Final), Publication 4812, August 2018 (Final ITC Report) at I–14 and I–15.

[4] *Id.* at I–15.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 82 FR 60178 (December 19, 2017) (*Preliminary Determination*).

[1] *See Cast Iron Soil Pipe from the People's Republic of China: Initiation of Less-Than-Fair Value Investigation,* 83 FR 8053 (February 23, 2018) (*Initiation Notice*).

2018, Commerce postponed the preliminary determination of this investigation and the revised deadline is now August 24, 2018.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is cast iron soil pipe from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (scope).[5] For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Memorandum.[6] Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Export price was calculated in accordance with sections 772(a) of the Act. Because China is a non-market economy within the meaning of section 771(18) of the Act, normal value was calculated in accordance with section 773(c) of the Act. Furthermore, pursuant to section 776(a) and (b) of the Act, we have preliminarily relied upon facts otherwise available, with adverse inferences, for Sibo International Ltd., and the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, *see* the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice,*[7] Commerce stated that it would calculate producer/exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[8]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin & cash deposit rate (percent)[9]
HengTong Casting	HengTong Casting	302.61
Wu'An Yongtian Casting Co., Ltd	Dalian Lino F.T.Z. Co., Ltd	302.61
Yangcheng County Huawang Universal Spun Cast Pipe Foundry.	Dalian Lino F.T.Z. Co., Ltd	302.61
Qinshui Shunshida Casting Co., Ltd	Dalian Metal I/E Co., Ltd	302.61
Wu'an Yongtian Casting Co., Ltd	Dalian Metal I/E Co., Ltd	302.61
Zezhou Golden Autumn Foundry Co., Ltd	Dalian Metal I/E Co., Ltd	302.61
Qinshui Shunshida Casting Co., Ltd	Dinggin Hardware (Dalian) Co., Ltd	302.61
Wu'an Kerui xin Machinery Manufacturing Co., Ltd	Dinggin Hardware (Dalian) Co., Ltd	302.61
Wu'an Yongtian Casting Co., Ltd	Dinggin Hardware (Dalian) Co., Ltd	302.61
Wuan City Feixiang Metal Product Co., Ltd	Dinggin Hardware (Dalian) Co., Ltd	302.61
DingXiang County YuTai Casting-Forging Co., Ltd	Hebei Metals & Engineering Products Trading Co., Ltd	302.61
Qinshui Shunshida Casting Co., Ltd	Hebei Metals & Engineering Products Trading Co., Ltd	302.61
Qinshui Shunshida Casting Co., Ltd	Kingway Pipe Co., Ltd	302.61
Zezhou Golden Autumn Foundry Co., Ltd	Kingway Pipe Co., Ltd	302.61
Qinshui Shunshida Casting Co., Ltd	Qinshui Shunshida Casting Co., Ltd	302.61
Qinshui Shunshida Casting Co., Ltd	Shanxi Chen Xin Da Castings & Forgings Co., Ltd	302.61
Shanxi Xuanshi Industrial Group Co., Ltd	Shanxi Xuanshi Industrial Group Co., Ltd	302.61
Qinshui Shunshida Casting Co., Ltd	Shanxi Zhongrui Tianyue Trading Co., Ltd	302.61
Qinshui Shunshida Casting Co., Ltd	Terrifour (Dalian) Trading Co., Ltd	302.61
Shanxi Chengda Special Forging Co., Ltd	Terrifour (Dalian) Trading Co., Ltd	302.61
Wuan City Feixiang Metal Product Co., Ltd	Wuan City Feixiang Metal Product Co., Ltd	302.61
Zezhou Golden Autumn Foundry Co., Ltd	Zezhou Golden Autumn Foundry Co., Ltd	302.61
CHINA–WIDE ENTITY		302.61

[2] *See Cast Iron Soil Pipe from People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 83 FR 29098 (June 22, 2018).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Cast Iron Soil Pipe from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notic*e, 83 FR at 8054.

[6] *See* Commerce Memorandum, ''Cast Iron Soil Pipe from People's Republic of China: Preliminary Scope Comment Decision Memorandum,'' dated concurrently with this memorandum (Preliminary Scope Memorandum).

[7] *See Initiation Notice,* 83 FR at 8056–8057.

[8] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-county exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rate(s). In this case, we have not made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies. Therefore, we are not adjusting the estimated weighted-average dumping margin for these subsidies.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last final verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On August 2, 2018, pursuant to 19 CFR 351.210 (e), HengTong requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[11] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce's final determination will publish no later than 135 days after the publication of this preliminary determination notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

[9] For cash deposit purposes, we normally adjust for export subsidies found in companion CVD proceedings. However, we preliminary found no export subsidies in the companion CVD proceeding. *See* PDM at X.

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See* HengTong Letter, ''Postponement of Final Determination and Extension of Provisional Measures Request,'' dated August 2, 2018.

Dated: August 24, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is cast iron soil pipe, whether finished or unfinished, regardless of industry or proprietary specifications, and regardless of wall thickness, length, diameter, surface finish, end finish, or stenciling. The scope of this investigation includes, but is not limited to, both hubless and hub and spigot cast iron soil pipe. Cast iron soil pipe is nonmalleable iron pipe of various designs and sizes. Cast iron soil pipe is generally distinguished from other types of nonmalleable cast iron pipe by the manner in which it is connected to cast iron soil pipe fittings.

Cast iron soil pipe is classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe is manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888, including any revisions to those specifications. Hub and spigot pipe has one or more hubs into which the spigot (plain end) of a fitting is inserted. All pipe meeting the physical description set forth above is covered by the scope of this investigation, whether or not produced according to a particular standard.

The subject imports are currently classified in subheading 7303.00.0030 of the Harmonized Tariff Schedule of the United States (HTSUS): Cast iron soil pipe. The HTSUS subheading and specifications are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope Comments
VI. Scope of the Investigation
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[FR Doc. 2018–18968 Filed 8–30–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–062]

Cast Iron Soil Pipe Fittings From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is amending its final determination of sales at less than fair value (LTFV) as a result of ministerial errors. In addition, based on affirmative final determinations by Commerce and the International Trade Commission (the ITC), Commerce is issuing an antidumping duty order on cast iron soil pipe fittings (soil pipe fittings) from the People's Republic of China (China).

DATES: Applicable August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin at (202) 482–4474 or Michael Bowen at (202) 482–0768, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 2018, Commerce published its affirmative final determination in the LTFV investigation of soil pipe fittings from China on July 17, 2018.[1] On July 11, 2018, Commerce received ministerial error allegations. *See* the ''Amendment to Final Determination'' section below for further discussion.

On August 22, 2018, the ITC notified Commerce of its final determination, pursuant to 735(d) of the Act, that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of LTFV imports of soil pipe fittings from China, and of its determination that critical circumstances do not exist with respect to imports of soil pipe fittings from China.[2]

Scope of the Order

The merchandise covered by the scope of this order is cast iron soil pipe fittings, finished and unfinished, regardless of industry or proprietary specifications, and regardless of size. Cast iron soil pipe fittings are nonmalleable iron castings of various designs and sizes, including, but not limited to, bends, tees, wyes, traps, drains (other than drain bodies), and other common or special fittings, with or without side inlets.

Cast iron soil pipe fittings are classified into two major types—hubless and hub and spigot. Hubless cast iron soil pipe fittings are manufactured without a hub, generally in compliance with Cast Iron Soil Pipe Institute (CISPI) specification 301 and/or American Society for Testing and Materials (ASTM) specification A888. Hub and spigot pipe fittings have hubs into which the spigot (plain end) of the pipe or fitting is inserted. Cast iron soil pipe fittings are generally distinguished from other types of nonmalleable cast iron fittings by the manner in which they are connected to cast iron soil pipe and other fittings.

Excluded from the scope are all drain bodies. Drain bodies are normally classified in subheading 7326.90.86.88 of the Harmonized Tariff Schedule of the United States (HTSUS).

The cast iron soil pipe fittings subject to the scope of this order are normally classified in subheading 7307.11.0045 of the HTSUS: Cast fittings of nonmalleable cast iron for cast iron soil pipe. They may also be entered under HTSUS 7324.29.0000 and 7307.92.3010. The HTSUS subheadings and specifications are provided for convenience and customs purposes only; the written description of the scope of this order is dispositive.

Amendment to Final Determination

Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Determination* to correct certain ministerial errors.[3] Based on these corrections, Shanxi Xuanshi Industrial Group Co., Ltd.'s (Xuanshi) estimated weighted-average dumping margin increases from 27.18 percent to 84.13

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[1] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part,* 83 FR 33205 (July 17, 2018) (*Final Determination*).

[2] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation Nos. 701–TA–583 and 731–TA–1381 (August 20, 2018).

[3] *See* Memorandum, ''Less-Than-Fair-Value Investigation on Cast Iron Soil Pipe Fittings from the People's Republic of China: Ministerial Error Allegations in the Final Determination,'' dated August 9, 2018.

percent, and Wor-Biz Trading Co., Ltd. (Anhui)'s (Wor-Biz) estimated weighted-average dumping margin increases from 22.11 percent to 33.67 percent. These corrections also increase the estimated weighted-average dumping margin for the non-examined, separate rate companies from 24.65 percent to 58.90 percent.

In addition, we are amending our instructions to U.S. Customs and Border Protection (CBP) with respect to the cash deposit rates in effect during certain periods of this LTFV investigation. Specifically, in the *Preliminary Determination,* we stated that should provisional measures in the companion countervailing duty (CVD) investigation expire, Commerce will direct CBP to collect cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in the *Preliminary Determination,* unadjusted for passed-through domestic subsidies or export subsidies determined in the companion CVD investigation.[4] Provisional measures in the companion CVD investigation expired on April 18, 2018.[5] However, the *Final Determination* (and the cash deposit instructions we issued to CBP pursuant to that determination) did not properly reflect our intention to apply the unadjusted cash deposit rates that should have been in effect beginning on this date.[6] Therefore, we will amend our instructions to CBP to apply the unadjusted cash deposit rates calculated in the *Preliminary Determination* for the period of April 18, 2018, through July 16, 2018 (the date prior to the publication of the *Final Determination*).

Further, for the period of July 17, 2018, until the date of expiration of provisional measures in this LTFV investigation (August 20, 2018), the correct cash deposit rates shall be equal to the estimated weighted-average dumping margins calculated in the *Final Determination,* unadjusted for the passed-through domestic subsidies or for export subsidies. See below for further discussion of the expiration of provisional measures in this LTFV investigation.

For the purposes of this amended final determination and order, we will instruct CBP to resume collecting cash deposits equal to the estimated weighted-average dumping margins listed below, adjusted for the export subsidy rates imposed in the companion CVD investigation, *i.e.,* by 0.09 percent for Xuanshi and the China-wide entity, 0.23 percent for Wor-Biz, and 0.16 percent for the separate-rate companies.[7]

Antidumping Duty Order

On August 22, 2018, in accordance with section 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that imports of cast iron soil pipe fittings are materially injuring a U.S. industry. Therefore, in accordance with section 735(c)(2) and 736(a) of the Act, we are publishing this antidumping duty order. In its determination, the ITC found two domestic like products covered by the scope of the investigation: drain bodies and all other soil pipe fittings. The ITC made a negative determination with respect to drain bodies and an affirmative determination with respect to all other soil pipe fittings. Because the ITC made different injury determinations for separate domestic like products, Commerce will instruct CBP to assess antidumping duties on entries of all cast iron soil pipe fittings (subject merchandise) other than drain bodies (excluded merchandise).

Drain Bodies

The ITC found that drain bodies are a separate domestic like product. The Final ITC Report describes typical drain bodies as having only one side that connects to a pipe or fitting.[8] Further, drain bodies are not classified as either hubless or hub and spigot.[9] Drain bodies may be painted in a different manner than other cast iron soil pipe fittings, which are coated in asphaltic material, black paint, or epoxy.[10] Drain bodies often require assembly with attachments (cast iron and non-cast iron) such as stainless steel strainers, grates, and bolts to be a drain fixture ready for use.[11] In addition, the purpose of a drain body is to collect and carry away liquid or water, including wastewater, while the purpose of other cast iron soil pipe fittings is to connect pipe and fittings.[12]

Because the ITC made a negative determination of material injury with respect to drain bodies, Commerce will direct CBP to terminate the suspension of liquidation for entries of drain bodies from China entered, or withdrawn from warehouse, and refund any cash deposit with respect to these entries.

All Soil Pipe Fittings Other Than Drain Bodies

Because the ITC determined that imports of all cast iron soil pipe fittings other than drain bodies from China are materially injuring a U.S. industry, all unliquidated entries of subject merchandise from China, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of soil pipe fittings from China. Antidumping duties will be assessed on unliquidated soil pipe fittings from China entered, or withdrawn from warehouse, for consumption on or after February 20, 2018, the date of publication of the *Preliminary Determination,* but will not be assessed on entries occurring after the expiration of the provisional measures period until the date of publication of the ITC's notice of final determination in the **Federal Register**, as discussed further below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will direct CBP to continue to suspend liquidation of subject merchandise (*i.e.,* all soil pipe fittings other than drain bodies) from China, which were entered, or withdrawn from warehouse, for consumption on or after February 20, 2018, the date of publication of the *Preliminary Determination.* We will also instruct CBP to require cash deposits equal to the amounts as indicated below. These instructions suspending

[4] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, Postponement of Final Determination and Extension of Provisional Measures,* 83 FR 7145, 7147 (February 20, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum. *See also* Section 772(c)(1)(C) of the Tariff Act of 1930 (the Act).

[5] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 82 FR 60178 (December 19, 2017). *See also* 19 CFR 351.210(h).

[6] *See Final Determination at 83 FR 33207 (''Continuation of Suspension of Liquidation'').*

[7] *See Final Determination* at 83 FR 33428. *See also Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 83 FR 32075 (July 11, 2018); and *Cast Iron Soil Pipe Fittings from the People's Republic of China: Countervailing Duty Order,* published concurrently with this notice.

[8] *See* Cast Iron Soil Pipe Fittings from China, Investigation Nos. 701–TA–583 and 731–TA–1381 (Final), Publication 4812, August 2018 (Final ITC Report) at I–14 and I–15.

[9] *Id.*

[10] *Id.* at I–15.

[11] *Id.*

[12] *Id.*

liquidation will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed below.[13] The ''China-wide'' rate applies to all exporters of subject merchandise not specifically listed in the table below. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from China have been adjusted, as appropriate, for export subsidies found in the final determination of the companion countervailing duty investigation of this merchandise imported from China.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of soil pipe fittings from China, Commerce extended the four-month period to six months in this proceeding.[14] In the underlying investigation, Commerce published the preliminary determination on February 20, 2018. Therefore, the extended period, beginning on the date of publication of the preliminary determination, ended on August 20, 2018. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final affirmative injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice,[15] we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of soil pipe fittings from China entered, or withdrawn from warehouse, for consumption on or after August 20, 2018, until the date of publication of the ITC's final affirmative injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of soil pipe fittings from China discussed above, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of soil pipe fittings from China, entered or withdrawn from warehouse, for consumption on or after November 22, 2017 (*i.e.,* 90 days prior to the date of publication of the preliminary determination), but before February 20, 2018 (*i.e.,* the date of publication of the preliminary determination for this investigation).

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Producer	Exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Shanxi Xuanshi Industrial Group Co., Ltd	Shanxi Xuanshi Industrial Group Co., Ltd	84.13	84.04
Guang Zhou Premier & Pinan Foundry Co., Ltd./Botou Chenyuan Foundry Co., Ltd./Wuhu Best Machines Co., Ltd.	Wor-Biz Trading Co., Ltd. (Anhui)	33.67	33.44
Shijiazhuang Asia Casting Co., Ltd	Shijiazhuang Asia Casting Co., Ltd	58.90	58.74
Qinshui Shunshida Casting Co., Ltd./Xinle Xinye Metal Products Co., Ltd.	Shanxi Zhongrui Tianyue Trading Co., Ltd	58.90	58.74
Qinshui Shunshida Casting Co., Ltd./Xinle Rishuo Casting Factory/Shijiazhuang Shunjinguangao Trade Co., Ltd./Xinle Tang Rong Fa Lan Pan Co., Ltd.	Dalian Lino F.T.Z. Co., Ltd	58.90	58.74
Xinle City Zhile Pipeline Industry Co., Ltd./Qinshui Shunshida Casting Co., Ltd./Foshan City Deying Metal Products Co., Ltd.	Dinggin Hardware (Dalian) Co., Ltd	58.90	58.74
Xinle Rishuo Casting Factory/Qinshui Shunshida Casting Co., Ltd.	Dalian Metal I/E Co., Ltd	58.90	58.74
Qinshui County Xinwei Precision Co., Ltd	Qinshui Shunshida Casting Co., Ltd	58.90	58.74
Shanxi Guruiwei Casting Co., Ltd	Richang Qiaoshan Trade Co., Ltd	58.90	58.74
Shijiazhuang Jingruisheng Metal Products Co., Ltd./Qinshui Shunshida Casting Co., Ltd./Xinle City Zhile Pipe Co., Ltd.	Hebei Metals & Engineering Products Trading Co., Ltd.	58.90	58.74
China-Wide Entity		360.39	360.30

Notifications to Interested Parties

This notice constitutes the antidumping duty order with respect to soil pipe fittings from China pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This amended final determination and antidumping duty order are published in accordance with sections 735(e) and 736(a) of the Act and 19 CFR 351.224(e) and 351.211(b).

[13] *See* Section 736(a)(3) of the Act.

[14] *See Preliminary Determination.*

[15] *See, e.g., Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016).

Dated: August 28, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2018–19094 Filed 8–30–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–083]

Certain Steel Wheels From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain steel wheels from the People's Republic of China (China) for the period of investigation January 1, 2017, through December 31, 2017. We invite interested parties to comment on this preliminary determination.

DATES: Applicable August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang or Myrna Lobo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–5484 or 202–482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 16, 2018.[1] On June 6, 2018, Commerce postponed the deadline for the preliminary determination of the investigation to the full 130 days permitted under section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2), and the revised deadline is now August 24, 2018.[2]

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are certain steel wheels from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the Preamble to Commerce's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of that notice.[4] No parties commented on the scope of this investigation.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners' request,[5] we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of certain steel wheels from China. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than January 7, 2019, unless postponed.[6]

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit on the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[8] For further information, see ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Preliminary Determination and Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, Commerce established rates for Xiamen Sunrise Wheel Group Co., Ltd. (Xiamen Sunrise), Xiamen Sunrise Wheel Co., Ltd. (Sunrise Wheel), Xiamen Sunrise Metal Co., Ltd. (Sunrise Metal), Xiamen Topu Import & Export Co., Ltd. (Topu), and Sichuan Sunrise Metal Industry Co., Ltd. (Sichuan Sunrise) (collectively, Xiamen Sunrise), and applied a rate based on adverse facts available to Zhejiang Jingu Company Limited and Shanghai Yata Industry Company Limited (collectively, Zhejiang Jingu).

In accordance with sections 705(d)(1)(A) and 705(c)(5)(A) of the Act, for companies not individually investigated, Commerce applies an ''all-others'' rate. The all-others rate is normally calculated by weight averaging the subsidy rates of the individual companies selected for individual examination with those companies' export sales of the subject merchandise to the United States, excluding any zero and *de minimis* rates calculated for the

[1] *See Certain Steel Wheels from the People's Republic of China: Initiation of Countervailing Duty Investigation,* 83 FR 17794 (April 24, 2018) (*Initiation Notice*).

[2] *See Certain Steel Wheels from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 83 FR 26257 (June 6, 2018).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Certain Steel Wheels from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (Preamble); *see also Initiation Notice.*

[5] *See* Letter from the petitioners, ''Certain Steel Wheels from China (C–570–083)—Petitioner's Request for Alignment of Countervailing Duty Investigation Final Determination Deadline with Antidumping Investigation Final Determination Deadline,'' dated August 8, 2018.

[6] *See Steel Wheels From the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 82 FR 42110 (August 20, 2018).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] *See* sections 776(a) and (b) of the Act.

exporters and producers individually investigated, and any rates determined entirely under section 776 of the Act.

In this investigation, the only rates that are not zero or *de minimis* or based entirely on the facts available is the rate calculated for Xiamen Sunrise. Consequently, we are assigning the rate calculated for Xiamen Sunrise as the ''all-others'' rate.

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Producer/exporter	Subsidy rate (percent)
Xiamen Sunrise Wheel Group Co., Ltd.[9]	58.75
Zhejiang Jingu Company Limited [10]	172.51
All-Others	58.75

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation that were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Furthermore, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If Commerce's final determination is affirmative, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after Commerce's final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: August 24, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise subject to this investigation is certain on-the-road steel wheels, discs, and rims for tubeless tires, with a nominal rim diameter of 22.5 inches and 24.5 inches, regardless of width. Certain on-the-road steel wheels with a nominal wheel diameter of 22.5 inches and 24.5 inches are generally for Class 6, 7, and 8 commercial vehicles (as classified by the Federal Highway Administration Gross Vehicle Weight Rating system), including tractors, semi-trailers, dump trucks, garbage trucks, concrete mixers, and buses, and are the current standard wheel diameters for such applications. The standard widths of certain on-the-road steel wheels are 7.5 inches, 8.25 inches, and 9.0 inches, but all certain on-the-road steel wheels, regardless of width, are covered by the scope. While 22.5 inches and 24.5 inches are standard wheel sizes used by Class 6, 7, and 8 commercial vehicles, the scope covers sizes that may be adopted in the future for Class 6, 7, and 8 commercial vehicles.

The scope includes certain on-the-road steel wheels with either a ''hub-piloted'' or ''stud- piloted'' mounting configuration, and includes rims and discs for such wheels, whether imported as an assembly or separately. The scope includes certain on-the-road steel wheels, discs, and rims, of carbon and/or alloy steel composition, whether cladded or not cladded, whether finished or not finished, and whether coated or uncoated. All on-the-road wheels sold in the United States are subject to the requirements of the National Highway Traffic Safety Administration and bear markings, such as the ''DOT'' symbol, indicating compliance with applicable motor vehicle standards. See 49 CFR 571.120. The scope includes certain on- the-road steel wheels imported with or without the required markings. Certain on-the-road steel wheels imported as an assembly with a tire mounted on the wheel and/or with a valve stem attached are included. However, if the certain on-the-road steel wheel is imported as an assembly with a tire mounted on the wheel and/or with a valve stem attached, the certain on- the-road steel wheel is covered by the scope, but the tire and/or valve stem is not covered by the scope.

Excluded from the scope are:

(1) Steel wheels for tube-type tires that require a removable side ring;

(2) aluminum wheels;

(3) wheels where steel represents less than fifty percent of the product by weight; and

(4) steel wheels that do not meet National Highway Traffic Safety Administration requirements, other than the rim marking requirements found in 49 CFR 571.120S5.2.

Imports of the subject merchandise are currently classified under the following

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Xiamen Sunrise: Sunrise Wheel, Sunrise Metal, Topu, and Sichuan Sunrise.

[10] As discussed in the Preliminary Decision Memorandum, as an extension of our application of adverse facts available with respect to Zhejiang Jingu, Commerce has assigned Zhejiang Jingu's rate to each of the entities named as cross-owned in its affiliation questionnaire response: Shanghai Yata Industry Company Limited; Shangdong Jingu Auto Parts Co., Ltd.; Chengdu Jingu Wheel Co., Ltd.; and An'Gang Jingu (Hangzhou) Metal Materials Co., Ltd.

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8708.70.4530, 8708.70.4560, 8708.70.6030, 8708.70.6060, 8716.90.5045, and 8716.90.5059. Merchandise meeting the scope description may also enter under the following HTSUS subheadings: 4011.20.1015, 4011.20.5020, and 8708.99.4850. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Alignment
V. Respondent Selection
VI. Injury Test
VII. Application of the CVD Law to Imports from China
VIII. Diversification of China's Economy
IX. Subsidies Valuation
X. Benchmarks
XI. Use of Facts Otherwise Available and Adverse Inferences
XII. Analysis of Programs
XIII. Calculation of the All-Others Rate
XIV. ITC Notification
XV. Disclosure and Public Comment
XVI. Verification
XVII. Recommendation
Appendix

[FR Doc. 2018–18974 Filed 8–30–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG443

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 Groundfish 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 Tuesday, September 18, 2018 at 1:30 p.m.

ADDRESSES:

Meeting address: The meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; phone: (781) 245–9300.

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 discuss Framework Adjustment 58: Specifications/Management Measures specifically draft alternatives and analysis including: (1) Rebuilding plan options for several groundfish stocks, (2) 2019 total allowable catches for U.S./Canada stocks of Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder, (3) minimum size exemptions for vessels fishing in Northwest Atlantic Fisheries Organization waters, and (4) guidance on sector overages. They also plan to discuss Amendment 23, Groundfish Monitoring and receive an update on the development of the draft alternatives and analysis. The committee will review the Council's Groundfish Priorities for 2019 and discuss a draft list of possible groundfish priorities for 2019 and make recommendations to the Council. Review Groundfish Plan Development Team, Groundfish Advisory Panel, and Transboundary Management Guidance Committee recommendations and make recommendations to the Council. 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. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the date.

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

Dated: August 28, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–18976 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG452

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of scoping meetings pertaining to Amendment 47 to the Snapper Grouper Fishery Management Plan of the South Atlantic Region addressing modifications to the South Atlantic Charter/Headboat for Snapper-Grouper permit.

DATES: The series of scoping meetings will be held from October 1 through November 1, 2018. All meetings will begin at 6 p.m.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific dates and times.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Public scoping comments are being solicited for measures proposed in draft Amendment 47 to the Snapper Grouper Fishery Management Plan of the South Atlantic Region addressing modifications to the federal South Atlantic Charter/Headboat for Snapper-Grouper permit (for-hire permit). Public scoping occurs early in the amendment development process and the Council is soliciting input on proposed options that include a moratorium on for-hire permits, options for the start date of a moratorium, exceptions for eligibility, transferability of for-hire permits, options to allow new entrants, establishing a for-hire permits pool, creating multiple for-hire permit types, and implementing a time limit or sunset

provision for a moratorium on for-hire permits. Options are also being considered for modifying the current permit condition that specifies a harvest prohibition on snapper grouper species in state water when the species is closed to harvest in federal waters, issuing a for-hire permit for an individual rather than a vessel, and attaching a consistent identifying number to the federal for-hire permit in a similar manner as is applied to limited entry permits.

Council staff will provide an overview of options being considered for draft Snapper Grouper Amendment 47 and answer questions during each scoping meeting. Public comments will be accepted at each scoping meeting location on the specified date.

In-Person Scoping Meetings

1. October 1, 2018—Safe Harbor Seafood, 4371 Ocean Street, Jacksonville, FL 32233; Phone: (904) 247–0255
2. October 2, 2018—Eau Gallie Civic Center, 1551 Highland Avenue, Melbourne, FL 32935; Phone: (321) 608–7400
3. October 3, 2018—Loxahatchee River Center, 805 North U.S. Highway One, Jupiter, FL 33477; Phone: (561) 743–7123
4. October 4, 2018, Harvey Government Center, 1200 Truman Avenue, Key West, FL 33040; Phone: (305) 295–4385
5. October 9, 2018—Coastal Electric Cooperative, 1265 South Coastal Highway, Midway, GA 31320; Phone: (912) 884–3311
6. October 9, 2018—Jennette's Pier, 7223 South Virginia Dare Trail, Nags Head, NC 27959; Phone: (252) 255–1501
7. October 10, 2018—North Carolina Division of Marine Fisheries Central District Office, 5285 Highway 70W, Morehead City, NC 28557; Phone: (252) 808–8011
8. October 11, 2018—Cape Fear Museum, 814 Market Street, Wilmington, NC 28401; Phone: (910) 798–4362
9. October 29, 2018—Murrells Inlet Community Center, 4462 Murrells Inlet Road, Murrells Inlet, SC 29576; Phone: (843) 545–3651
10. October 30, 2018—Haddrells Point Fin to Feather, 887 Ben Sawyer Boulevard, Mt. Pleasant, SC 29464; Phone: (843) 881–3644
11. November 1, 2018—Hilton Head Boat House, 405 Squire Pope Road, Hilton Head, SC 29926; Phone: (843) 681–2628

Submitting Written Comments

The Council requests that written comments be submitted using the online public comment form available from the Council's website. All comments submitted using the online form will be automatically posted to the website and accessible for Council members and the public to view. The direct link to the Public Hearing and Scoping meeting page and the public comment form is: *http://safmc.net/safmc-meetings/public-hearings-scoping-meetings.* Written comments may also be submitted by mail or FAX. All written comments are due by 5 p.m. on November 5, 2018.

Comments may be submitted by mail to: Gregg Waugh, Executive Director, SAFMC, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405. Fax comments to 843/769–4520.

The Snapper Grouper Amendment 47 scoping document, public comment form, and other relevant materials will be posted on the Council's website as they become available.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: August 28, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–18978 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG448

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Fishery Monitoring Advisory Committee will meet September 13, 2018 through September 14, 2018.

DATES: The meeting will be held on Thursday, September 13, 2018, from 9 a.m. to 5:30 p.m. and on Friday, September 14, 2018, from 9 a.m. to 3 p.m. (or as needed).

ADDRESSES: The meeting will be held in Room 2039, Building 4, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Seattle, WA 98115; Teleconference number: (907) 271–2896.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Elizabeth Figus, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Thursday, September 13, 2018 to Friday, September 14, 2018

The agenda will include: A discussion of EM updates (including latest developments from the trawl EM Committee), presentation of the draft Annual Deployment Plan, a review of the NMFS Observer Safety Document, and a discussion of observer analyses.

The Agenda is subject to change, and the latest version will be posted at *www.npfmc.org* prior to the meeting, along with meeting materials.

Public Comment

Public comment letters will be accepted and should be submitted either electronically to Elizabeth Figus, Council staff: *Elizabeth.figus@noaa.gov* or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252. In-person oral public testimony will be accepted at the discretion of the chair.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: August 28, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–18980 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG446

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Meeting of the South Atlantic Fishery Management Council.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Advisory Panel Selection Committee (Closed Session); Southeast Data, Assessment and Review (SEDAR) Committee; Standard Operating, Policy, and Procedure (SOPPs) Committee; Spiny Lobster Committee; Habitat Protection and Ecosystem-Based Management Committee; Snapper Grouper Committee; Mackerel Cobia Committee; and Executive Finance Committee. The Council meeting week will also include a Recreational Fishing Workshop, a formal public comment period, and a meeting of the full Council.

DATES: The Council meeting will be held from 1 p.m. on Sunday, September 16, 2018 until 12 p.m. on Friday, September 21, 2018.

ADDRESSES: The meeting will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC phone: (843) 571–1000; fax: (843) 766–9444.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*. Meeting information is available from the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/*.

SUPPLEMENTARY INFORMATION:

Public comment: Written comments may be directed to Gregg Waugh, Executive Director, South Atlantic Fishery Management Council (see **ADDRESSES**) or electronically via the Council's website at *http://safmc.net/safmc-meetings/council-meetings/*. The public comment form is open for use when the briefing book is posted to the website on the Friday, two weeks prior to the Council meeting (8/31/18). Comments received by close of business the Monday before the meeting (9/10/18) will be compiled, posted to the website as part of the meeting materials, and included in the administrative record; please use the Council's online form available from the website. For written comments received after the Monday before the meeting (after 9/10/18), individuals submitting a comment must use the Council's online form available from the website. Comments will automatically be posted to the website and available for Council consideration. Comments received prior to noon on Thursday, September 20, 2018 will be a part of the meeting administrative record.

The items of discussion in the individual meeting agendas are as follows:

Recreational Workshop, Sunday, September 16, 2018 From 1 p.m. Until 5 p.m. and Monday, September 17, 2018, 8:30 a.m. Until 12 p.m.

The Council is cooperating with the American Sportfishing Association (ASA), Coastal Conservation Association (CCA), and Yamaha Marine Group to conduct a Recreational Workshop prior to the Council meeting. The September workshop is part of a 3-phrase project to explore approaches to innovative management of the private recreational sector of the South Atlantic Snapper Grouper fishery. Participants include Council members and Snapper Grouper advisory panel representatives, and other invited representatives identified by ASA from the recreational fishing community that are familiar with the Council process and recreational fishing issues. The public is welcome to attend and listen to the workshop and subsequent regional meetings. Comments on the September workshop may be provided during the Council meeting public comment session scheduled for Wednesday, September 19, 2018 at 4 p.m.

Swearing in of New Council Members, Monday, September 17, 2018, 1:30 p.m. Until 1:40 p.m.

Newly appointed Council members will be sworn to duty by the NOAA Fisheries Regional Administrator.

Advisory Panel Selection Committee (Closed Session), Monday, September 17, 2018, 1:40 p.m. Until 2:30 p.m.

1. The Committee will review applications for open seats on its System Management Plan Workgroup and advisory panels and provide recommendations for appointments.

2. The Committee will also discuss improving communication with advisory panels and provide direction to staff.

SEDAR Committee, Monday, September 17, 2018, 2:30 p.m. Until 3:30 p.m.

The Committee will receive an update on stock assessment activities including an overview of projects, Steering Committee actions, discuss items for the next Steering Committee meeting, and provide guidance to staff as needed.

SOPPs Committee, Monday, September 17, 2018, 3:30 p.m. Until 5 p.m.

The Committee will review and approve proposed changes to the Council Handbook and develop recommendations as appropriate.

Spiny Lobster Committee, Tuesday, September 18, 2018, 8:30 a.m. Until 9:30 a.m.

1. The Committee will receive an update on the status of 2017–2018 catches versus annual catch limit (ACLs) and an update from NOAA Fisheries on the status of amendments under formal review.

2. The Committee will review Spiny Lobster Amendment 13 addressing bullynets and measures recommended by the Florida Fish and Wildlife Conservation Commission (FWC), consider public comment, and consider approval for formal Secretarial review.

Habitat Protection and Ecosystem-Based Management Committee, Tuesday, September 18, 2018, 9:30 a.m. Until 12 p.m.

1. The Committee will discuss ways to address species migration northwards along the Atlantic Coast, with input from the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, and the South Atlantic Fishery Management Council. The committee will provide guidance and take action as appropriate.

2. The committee will receive an update on the Fishery Ecosystem Plan II Dashboard and tools, an overview of NOAA Fisheries Ecosystem-Based Fishery Management Implementation Plan draft for the South Atlantic Region, and take action as needed.

Snapper Grouper Committee Meeting, Tuesday, September 18, 2018, 1:30 p.m. Until 5 p.m. and Wednesday, September 19, 2018, 8:30 a.m. Until 3:00 p.m.

1. The committee will receive updates from NOAA fisheries on commercial catches versus quotas for species under ACLS and the status of amendments under formal secretarial review.

2. The Committee will review public scoping comments received for Snapper Grouper Regulatory Amendment 29 addressing best practices and options for use of powerhead gear and approve actions and alternatives to be analyzed as appropriate.

3. The Committee will receive an overview of Vision Blueprint Regulatory Amendment 26 addressing recreational management actions and alternatives as identified in the 2016–2020 Vision Blueprint for the Snapper Grouper Fishery Management Plan. The

Committee will modify the document as necessary, select preferred alternatives, and approve all actions.

4. The Committee will receive an overview of Vision Blueprint Regulatory Amendment 27 addressing commercial management actions and alternatives, as identified in the 2016–2020 Vision Blueprint for the Snapper Grouper Fishery. The Committee will modify the document as necessary and consider approval for formal Secretarial review.

5. The Committee will review public scoping comments for Snapper Grouper Amendment 47 addressing federal for-hire permit modification options and provide guidance to staff.

6. The Committee will receive an overview of Regulatory Amendment 30 addressing a rebuilding plan for red grouper, modify the draft amendment as necessary and approve preferred alternatives.

7. The Committee will review public scoping comments for Snapper Grouper Regulatory Amendment 32 addressing yellowtail snapper accountability measures, review the draft amendment, modify actions, and consider approval for public hearings.

8. The Committee will review Abbreviated Framework Amendment 2 addressing measures for vermilion snapper and black sea bass, modify the draft amendment as necessary, choose preferred alternatives, and consider approval for formal Secretarial review.

Mackerel Cobia Committee, Wednesday, September 19, 2018, 3 p.m. Until 4 p.m.

1. The Committee will receive an update on commercial catches versus ACLs, and an update on the status of amendments under formal review by NOAA Fisheries.

2. The Committee will review Coastal Migratory Pelagics Framework Amendment 6 addressing Atlantic king mackerel trip limits, confirm preferred alternatives, and consider approval for formal Secretarial Review.

Formal Public Comment, Wednesday, September 19, 2018, 4 p.m.

Public comment will be accepted on items on the Council meeting agenda scheduled to be approved for Secretarial Review: Snapper Grouper Abbreviated Framework 2 Amendment (vermilion snapper and black sea bass); Snapper Grouper Vision Blueprint Regulatory Amendment 27 (commercial measures); CMP Framework Amendment 6 (King mackerel trip limits); and Spiny Lobster Amendment 13 (Update management procedures and bully net measures). Public comment will also be accepted on all agenda items. The Council Chair, based on the number of individuals wishing to comment, will determine the amount of time provided to each commenter.

Executive/Finance Committee, Thursday, September 20, 2018, 8:30 a.m. Until 12 p.m.

1. The Committee will receive an overview of the current Magnuson-Stevens Reauthorization efforts and the CCC Working Paper which includes positions on reauthorization, discuss, and provide guidance to staff.

2. The Committee will receive an overview of the draft Calendar-Year 2018 budget and approve the budget.

3. The committee will review the Council's Follow Up document and Priorities list, discuss, and provide guidance to staff.

4. The Committee will receive an update on regulatory reform efforts, a review of NOAA Fisheries issues open for comment, and an overview of the Law Enforcement Advisory Panel meeting schedule. The committee will discuss these agenda items and provide guidance to staff.

Council Session: Thursday, September 20, 2018, 1:30 p.m. Until 5 p.m. and Friday, September 21, 2018, 8:30 a.m. Until 12 p.m. (Partially Closed Session if Needed)

The Full Council will begin with the Call to Order, adoption of the agenda, approval of minutes, election of chair and vice chair, and awards/recognition.

The Council will receive a Legal Briefing on Litigation from NOAA General Counsel (if needed) during Closed Session. The Council will receive staff reports including the Executive Director's Report, and updates from Council staff on the MyFishCount pilot project, outreach for for-hire electronic reporting requirements, the Council's Citizen Science Program, and the transition to an electronic newsletter.

Updates will be provided by NOAA Fisheries including a report on the status of commercial catches versus ACLs for species not covered during an earlier committee meeting, data-related reports, protected resources updates, update on the status of the of the Commercial Electronic Logbook Program, and the status of the Marine Recreational Information Program (MRIP) conversions for recreational fishing estimates. The Council will discuss and take action as necessary.

The Council will review any Exempted Fishing Permits received as necessary. The Council will receive an overview of MRIP and Revisions from NOAA Fisheries as well as Draft Amendment 11 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan for Management of Shortfin Mako Sharks and take action as appropriate.

The Council will receive committee reports from the Snapper Grouper, Mackerel Cobia, Spiny Lobster, AP Selection, SEDAR, Habitat, SOPPs, and Executive Finance Committees, as well a report from the Recreational Workshop, and take action as appropriate.

The Council will receive agency and liaison reports; and discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

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 this meeting. Action 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 Fishery Conservation and Management 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 auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: August 28, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–18979 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG144

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the North Pacific Ocean

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 Lamont-Doherty Earth Observatory of Columbia University (L–DEO) to incidentally take, by Level A and/or Level B harassment, marine mammals during a Marine Geophysical Survey in the North Pacific Ocean.

DATES: This Authorization is effective from September 1, 2018, through August 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-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable [adverse] impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

Summary of Request

On March 16, 2018, NMFS received a request from the L–DEO for an IHA to take marine mammals incidental to conducting a marine geophysical survey in the North Pacific Ocean. L–DEO submitted a revised application on June 11, 2018. On June 13, 2018, we deemed L–DEO's application for authorization to be adequate and complete. L–DEO's request is for take of small numbers of 39 species of marine mammals by Level A and Level B harassment. Underwater sound associated with airgun use may result in the behavioral harassment or auditory injury of marine mammals in the ensonified areas. Mortality is not an anticipated outcome of airgun surveys such as this, and, therefore, an IHA is appropriate.

NMFS has issued an IHA to L–DEO authorizing the take of 39 species by Level A and Level B harassment. The IHA is effective from September 1, 2018 through August 31, 2019.

Description of Planned Activity

The planned activity consists of two high-energy seismic surveys conducted at different locations in the North Pacific Ocean. Researchers from L–DEO and University of Hawaii, with funding from the U.S. National Science Foundation (NSF), in collaboration with researchers from United States Geological Survey (USGS), Oxford University, and GEOMAR Helmholtz Centre for Ocean Research Kiel (GEOMAR), plan to conduct the surveys from the Research Vessel (R/V) *Marcus G. Langseth* (*Langseth*) in the North Pacific Ocean. The first planned seismic survey would occur in the vicinity of the Main Hawaiian Islands in 2018 and a subsequent survey would take place at the Emperor Seamounts in 2019. The planned timing for the Hawaii survey is late summer/early fall 2018; the timing for the Emperor Seamounts survey would likely be late spring/early summer 2019. Both surveys would use a 36-airgun towed array with a total discharge volume of ~6,600 in^3. The main goal of the surveys planned by L–DEO and the University of Hawaii is to gain fundamental insight into the formation and evaluation of Hawaiian-Emperor Seamount chain, and inform a more comprehensive assessment of geohazards for the Hawaiian Islands region.

The Hawaii survey would be expected to last for 38 days, including ~19 days of seismic operations, 11 days of equipment deployment/retrieval, ~5 days of operational contingency time (*e.g.,* weather delays, etc.), and ~3 days of transit. The Emperor Seamounts survey would be expected to last 40 days, including ~13 days of seismic operations, ~11 days of equipment deployment/retrieval, ~3 days of operational contingency time, and 13 days of transit.

Representative survey tracklines are shown in Figures 1 and 2 in the application. Water depths in the Hawaii survey area range from ~700 m to more than 5,000 m. The water depths in the Emperor Seamounts survey area range from 1,500–6,000 m. The Hawaii seismic survey will be conducted within the U.S. exclusive economic zone (EEZ); the Emperor Seamounts survey will take place in International Waters.

The procedures to be used for the planned surveys would be similar to those used during previous seismic surveys by L–DEO and would use conventional seismic methodology. The surveys would involve one source vessel, the *Langseth,* which is owned by NSF and operated on its behalf by Columbia University's L–DEO. The *Langseth* would deploy an array of 36 airguns as an energy source with a total volume of ~6,600 in^3. The receiving system would consist of ocean bottom seismometers (OBSs) and a single hydrophone streamer 15 km in length. As the airgun arrays are towed along the survey lines, the hydrophone streamer would transfer the data to the on-board processing system, and the OBSs would receive and store the returning acoustic signals internally for later analysis.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (83 FR 30480; June 28, 2018). Since that time, no changes have been made to the planned 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

NMFS published a notice of proposed IHA in the **Federal Register** on June 28, 2018 (83 FR 30480). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission), the Marine Seismic Research Oversight Committee (MSROC), the Cascadia Research Consortium (CRC), the Natural Resources Defense Council (NRDC) and from members of the general public. NMFS has posted the comments online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-*

and-other-activities. The following is a summary of the public comments and NMFS' responses.

Comment: The Commission noted that several of the density estimates used by NMFS were outdated or incorrect.

Response: NMFS used several density sources to estimate take including Bradford *et al.* (2015, 2017) and methods described in Department of the Navy (2017). As the Commission recommended, for the final IHA notice, NMFS has revised the densities for striped dolphins to 25 from 5.36 animals/1,000 km² and for Fraser's dolphins to 21 from 4.17 animals/1,000 km² based on Bradford (2017). In the proposed notice, NMFS divided by three the unidentified *Mesoplodon* spp. density of 1.89 animals/1,000 km² from Bradford *et al.* (2017) (resulting in 0.63 animals/1,000 km²) for gingko-toothed, Deraniyagala's, and Hubb's beaked whale densities. NMFS revised the density for each species in the notice to 1.89 animals/1,000 km², since there was no data available identifying separate densities for these species. NMFS updated the false killer whale densities to animals/100 km² as take had been incorrectly estimated using a density of animals/1,000 km² in the notice of proposed IHA (Bradford *et al.* 2015). NMFS further indicated it would amend all takes accordingly. NMFS utilized an average group size from Bradford *et al.* (2017) to increase the number of recalculated Level B harassment takes of killer whales to five. NMFS also increased Level A harassment takes for humpback and sei whales to average group size.

Comment: The Commission recommended that NMFS re-calculate the monk seal density based on an abundance of 1,324 from Baker *et al.* (2016) as this is thought to be the best available density information. The Commission also recommended that NMFS re-estimate the number of Level B harassment takes of monk seals based on this data.

Response: NMFS has recalculated authorized Level B harassment takes based on the Commission's recommendation. A complete description may be found in the Estimated Take section.

Comment: The Commission and NRDC expressed concerns about potential impacts to small and resident populations of marine mammals located in Main Hawaiian Islands. The Commission recommended that NMFS require L–DEO to implement shut-down procedures if a melon-headed whale or group of melon-headed whales is observed in the habitat of the Kohala resident stock and ensure that the estimated number of Level B harassment takes is sufficient based on group size of melon-headed whales for the Hawaiian Islands stock. The Commission noted that similar issues exist for the various MHI insular stocks of spinner and common bottlenose dolphins. However, the group sizes for those species are much less than for melon- headed whales. The Commission recommended that NMFS (1) authorize only those numbers of Level B harassment takes of the various MHI insular stocks of spinner and bottlenose dolphins for which NMFS can make a small numbers determination and (2) if the authorized takes are met for any of those stocks, require L–DEO to implement shut-down procedures if a spinner or bottlenose dolphin or group of dolphins is observed approaching or within the Level B harassment zone in the habitat of the specific MHI insular stock.

Response: L–DEO will be required to implement shut-down procedures if a melon-headed whale or group of melon-headed whales is observed in Kohala resident stock habitat. NMFS has also revised authorized take numbers to ensure that the number of estimated takes is sufficient based on group size of melon-headed whales for the Hawaiian Islands stock (see *Take Calculation and Estimation* section for detail). NMFS also has made small numbers determinations for the stocks described in the comment above and will require L–DEO to implement shut-down procedures if a spinner or bottlenose dolphin or group of dolphins is observed approaching or within the Level B harassment zone in the habitat of the specific MHI insular stock if the authorized takes are met for any of these stocks.

Comment: The Commission noted that various datasets used for estimating densities in the area of the Emperor survey were compiled 30 to 35 years ago while others originated from other geographic regions with presumed assumptions. The Commission had previously recommended that NMFS should adjust the density estimates used to estimate the numbers of potential takes by incorporating some measure of uncertainty when available density data originate from other geographical areas, temporal scales, and species. Since many of the references from which the density data originated include coefficients of variation (CVs), standard errors (SEs), or confidence intervals (CI), which provide information on uncertainty relative to the underlying data, the Commission recommended that NMFS adjust the density estimates using some measure of uncertainty (*i.e.,* CV, SD, SE, upper CI) for the Emperor survey area. The Commission also recommended that NMFS convene a working group of scientists to determine how best to incorporate uncertainty in density data that are extrapolated.

Response: The Commission recommended that NMFS adjust density estimates using some measure of uncertainty when available density data originate from different geographic areas, temporal scales, and species, especially for actions which will occur outside the U.S. EEZ where site- and species-specific density estimates tend to be scant, such as L–DEO's planned survey in the Emperor Seamounts area. We have attempted to do so in this IHA, and feel the 25 percent correction factor is an appropriate method in this case to account for uncertainties in the density data that were available for use in the take estimates. NMFS is open to consideration of other correction factors for use in future IHAs and looks forward to further discussion with the Commission on how best to incorporate uncertainty in density estimates in instances where density data is limited.

Regarding the Commission's recommendation that NMFS convene an internal working group to determine what data sources are considered best available for the various species and in the various areas, NMFS may consider future action to address these issues, but currently intends to address these questions through ongoing interactions with the U.S. Navy, academic institutions, and other research organizations.

Comment: The Commission recommended that NMFS require L–DEO to specify why it is using radial distances for SELcum and SPLrms metrics and radii for SPLpeak metrics.

Response: The radius is commonly used to determine Level A harassment isopleths, as well as those for Level B. In order for L–DEO to be able to account for accumulation associated with NMFS Revised Technical Guidance's SELcum thresholds, including the use of the NMFS optional User Spreadsheet tool, they needed to determine far-field source level. In order to do, L–DEO relied upon the more conservative radial distance, since the radial distance is larger than the radius. They used the radial distance to determine modified far-field source levels, which were directly incorporated in the NMFS optional User Spreadsheet to determine Level A isopleths using the SELcum metric. L–DEO also used the more conservative radial distance to back calculate their modified far-field source levels for SPLpeak. The radius was then determined by plugging the radial

distance into the Pythagorean theorem (as the hypotenuse). This radius value was then used to calculate the peak sound pressure level isopleth.

In summary, use of the radius is not inconsistent with how isopleths have been calculated for other sources, including seismic activities. Use of the radius will also account for animals at depth that are at the longest radial distance. Note that the use of radial distance was used only to establish modified far-field source levels.

Comment: The Commission recommended that NMFS provide justification for why it believes that L–DEO's use of the Nucleus source model, which does not provide data above 2.5 kHz, is appropriate for determining the extents of the Level A harassment zones for MF and HF cetaceans.

Response: Experience and amplitude spectral density showed in the L–DEO application indicate that most of the energy output for *Langseth*-type source is below 1 kHz, and so the error done by omitting higher frequencies will be fairly small. To evaluate the impact of the high frequencies (>1 KHz), L–DEO calculated amplitude spectral densities using information from the *Langseth* Gulf of Mexico calibration experiment (Tolstoy *et al.,* 2009) and compared them to the results used in the L–DEO application (up to 3KHz). Scenario A is the one used in the L–DEO application (spectrum up to 3 KHz). Scenario B considers the same spectrum up to 10 KHz. The spectrum was obtained by upsampling the farfield signature obtained from the Nucleus modeling package. Scenario C considers the spectrum derived from the farfield signature obtained using the Nucleus modeling package from 1 Hz to ~200 Hz and L–DEO extended the spectrum with a realistic decay curve (−35dB/decade) from ~200 Hz up to 10 kHz. The −35dB/decade decay curve is derived from the slope hydrophone data from the Gulf of Mexico study (Fig. 14 of Tolstoy *et al.,* 2009). Because this decay curve boosts/increases the amplitudes between 200 Hz and 1 KHz much more than the predicted spectrum derived from the Nucleus modeling package and that is valid in that frequency range, for scenario D, L–DEO took a −30dB/decade decay curve around ~600 Hz.

Results show that the adjustment factors slightly decrease for scenarios C and D and the corresponding PTS SELcum Isopleths to thresholds are a little higher for those two scenarios (<20m) but are always smaller than the PTS SELcum Isopleths to thresholds derived from the Peak SPL that was used here.

Comment: The Commission recommended that NMFS require L–DEO to re-estimate the proposed Level A and B harassment zones and associated takes of marine mammals using (1) both operational (including number/type/spacing of airguns, tow depth, source level/operating pressure, operational volume) and site-specific environmental (including sound speed profiles, bathymetry, and sediment characteristics 41 at a minimum) parameters, (2) a comprehensive source model (*i.e.,* Gundalf Optimizer or AASM) and (3) an appropriate sound propagation model for the proposed incidental harassment authorization. Specifically, the Commission reiterates that L–DEO should be using the ray-tracing sound propagation model BELLHOP—which is a free, standard propagation code that readily incorporates all environmental inputs listed herein, rather than the limited, in-house MATLAB code currently in use.

Response: NMFS acknowledges the Commission's concerns about L–DEO's current modeling approach for estimating Level A and Level B harassment zones and takes. L–DEO's application and the **Federal Register** notice of the proposed IHA (83 FR 30480; June 28, 2018) describe the applicant's approach to modeling Level A and Level B harassment zones. The model LDEO currently uses does not allow for the consideration of environmental and site-specific parameters as requested by the Commission.

L–DEO's application describes their approach to modeling Level A and Level B harassment zones. In summary, LDEO acquired field measurements for several array configurations at shallow, intermediate, and deep-water depths during acoustic verification studies conducted in the northern Gulf of Mexico in 2007 and 2008 (Tolstoy *et al.,* 2009). Based on the empirical data from those studies, LDEO developed a sound propagation modeling approach that predicts received sound levels as a function of distance from a particular airgun array configuration in deep water. For this survey, LDEO modeled Level A and Level B harassment zones based on the empirically-derived measurements from the Gulf of Mexico calibration survey (Appendix H of NSF–USGS 2011). LDEO used the deep-water radii obtained from model results down to a maximum water depth of 2,000 m (Figure 2 and 3 in Appendix H of NSF–USGS 2011).

In 2015, LDEO explored the question of whether the Gulf of Mexico calibration data described above adequately informs the model to predict exclusion isopleths in other areas by conducting a retrospective sound power analysis of one of the lines acquired during L–DEO's seismic survey offshore New Jersey in 2014 (Crone, 2015). NMFS presented a comparison of the predicted radii (*i.e.,* modeled exclusion zones) with radii based on in situ measurements (*i.e.,* the upper bound [95th percentile] of the cross-line prediction) in a previous notice of issued Authorization for LDEO (see 80 FR 27635, May 14, 2015, Table 1). Briefly, the analysis presented in Crone (2015), specific to the survey site offshore New Jersey, confirmed that in-situ, site specific measurements and estimates of 160 decibel (dB) and 180 dB isopleths collected by the hydrophone streamer of the R/V Marcus Langseth in shallow water were smaller than the modeled (*i.e.,* predicted) zones for two seismic surveys conducted offshore New Jersey in shallow water in 2014 and 2015. In that particular case, Crone's (2015) results showed that LDEO's modeled 180 dB and 160 dB zones were approximately 28 percent and 33 percent smaller, respectively, than the in-situ, site-specific measurements, thus confirming that LDEO's model was conservative in that case.

The following is a summary of two additional analyses of in-situ data that support LDEO's use of the modeled Level A and Level B harassment zones in this particular case. In 2010, LDEO assessed the accuracy of their modeling approach by comparing the sound levels of the field measurements acquired in the Gulf of Mexico study to their model predictions (Diebold *et al.,* 2010). They reported that the observed sound levels from the field measurements fell almost entirely below the predicted mitigation radii curve for deep water (*i.e.,* greater than 1,000 m; 3280.8 ft) (Diebold *et al.,* 2010). In 2012, LDEO used a similar process to model distances to isopleths corresponding to Level A and Level B harassment thresholds for a shallow-water seismic survey in the northeast Pacific Ocean offshore Washington State. LDEO conducted the shallow-water survey using a 6,600 in^3 airgun configuration aboard the R/V Marcus Langseth and recorded the received sound levels on both the shelf and slope using the Langseth's 8 km hydrophone streamer. Crone *et al.* (2014) analyzed those received sound levels from the 2012 survey and confirmed that in-situ, site specific measurements and estimates of the 160 dB and 180 dB isopleths collected by the Langseth's hydrophone streamer in shallow water were two to three times smaller than

LDEO's modeling approach had predicted. While the results confirmed the role of bathymetry in sound propagation, Crone *et al.* (2014) were also able to confirm that the empirical measurements from the Gulf of Mexico calibration survey (the same measurements used to inform LDEO's modeling approach for the planned surveys in the northwest Atlantic Ocean) overestimated the size of the exclusion and buffer zones for the shallow-water 2012 survey off Washington State and were thus precautionary, in that particular case.

NMFS continues to work with LDEO to address the issue of incorporating site-specific information for future authorizations for seismic surveys. However, LDEO's current modeling approach (supported by the three data points discussed previously) represents the best available information for NMFS to reach determinations for this IHA. As described earlier, the comparisons of LDEO's model results and the field data collected at multiple locations (*i.e.,* the Gulf of Mexico, offshore Washington State, and offshore New Jersey) illustrate a degree of conservativeness built into LDEO's model for deep water, which NMFS expects to offset some of the limitations of the model to capture the variability resulting from site-specific factors. Based upon the best available information (*i.e.,* the three data points, two of which are peer-reviewed, discussed in this response), NMFS finds that the Level A and Level B harassment zone calculations are appropriate for use in this particular IHA.

LDEO has conveyed to NMFS that additional modeling efforts to refine the process and conduct comparative analysis may be possible with the availability of research funds and other resources. Obtaining research funds is typically accomplished through a competitive process, including those submitted to U.S. Federal agencies. The use of models for calculating Level A and Level B harassment zones and for developing take estimates is not a requirement of the MMPA incidental take authorization process. Further, NMFS does not provide specific guidance on model parameters nor prescribe a specific model for applicants as part of the MMPA incidental take authorization process at this time, although we do review methods to ensure adequate for prediction of take. There is a level of variability not only with parameters in the models, but also the uncertainty associated with data used in models, and therefore, the quality of the model results submitted by applicants. NMFS considers this variability when evaluating applications and the take estimates and mitigation measures that the model informs. NMFS takes into consideration the model used, and its results, in determining the potential impacts to marine mammals; however, it is just one component of the analysis during the MMPA authorization process as NMFS also takes into consideration other factors associated with the activity (*e.g.,* geographic location, duration of activities, context, sound source intensity, etc.).

Comment: Given the shortcomings noted for L–DEO's source and sound propagation modeling and the requirements that other action proponents are obliged to fulfill, the Commission recommended that NMFS require L–DEO to archive, analyze, and compare the in-situ data collected by the hydrophone streamer and OBSs to L–DEO's modeling results for the extents of the Level A and B harassment zones based on the various water depths to be surveyed and provide the data and results to NMFS.

Response: Based on information presented by the applicant and supported by published analysis such as Diebold *et al.* 2010, Tolstoy *et al.* 2009, Crone *et al.* 2014, Crone *et al.* 2017, Barton *et al.* 2006, and Diebold *et al.* 2006, L–DEO modeling results and predicted distances to harassment zones are likely more conservative than actual distances measured from data collected *in situ.* The Commission stated one reason for recommending that NMFS require L–DEO to conduct sound source verification efforts was due to the shortcomings of the L–DEO model. However, as previously noted, the L–DEO model is conservative and is viewed appropriate for *R/V Langseth* operations. Use of the L–DEO model is further supported by ten years of successful operations with no observed harm to marine life. For these reasons, additional sound source verification efforts are not warranted at this time.

L–DEO has met with the Commission and NMFS on several occasions to explain the model and why it is, although conservative, the most appropriate approach to use for *R/V Langseth* operations. The planned survey will mainly occur in deep water (98.5%) and as demonstrated in Diebold *et al.* 2010 and Tolstoy *et al.* 2009 for deep water, the results show that the predicted distances were conservative relative to measured values. Even allowing for scaling of actual measurements between different tow depths of Tolstoy (2009) from 6 m to 12 m in the IHA, this yields a radius of 4,940 which is much less than model predictions of 6,733 m included in the IHA application.

Comment: The Commission recommended that NMFS use a consistent approach for requiring all geophysical and seismic survey operators to abide by the same general mitigation measures, including prohibiting L–DEO from using power downs and the mitigation airgun during its geophysical surveys.

Response: NMFS is in the process of developing protocols that could be applied to geophyscical and seismic surveys. The protocols are being developed on the basis of detailed review of available literature, including peer-review science, review articles, gray literature, and protocols required by other countries around the world. NMFS will share the protocols with the Commission when they are ready for external comment and review.

Note that powerdowns are only allowed/required in lieu of shutdown when certain species of dolphins, specifically identified in the *Mitigation* section, enter the shutdown zone. In all other cases, shutdown would be implemented under conditions as described in the IHA.

Comment: The Commission noted that monitoring and reporting requirements adopted need to be sufficient to provide a reasonably accurate assessment of the manner of taking and the numbers of animals taken incidental to the specified activity. Those assessments should account for all animals in the various survey areas, including those animals directly on the trackline that are not detected and how well animals are detected based on the distance from the observer which is achieved by incorporating g(0) and f(0) values. The Commission recommended that NMFS require L–DEO to use the Commission's method as described in the Commission's Addendum to better estimate the numbers of marine mammals taken by Level A and B harassment for the incidental harassment authorization. The Commission stated that all other NSF-affiliated entities and all seismic operators should use this method as well.

Response: NMFS agrees that reporting of the manner of taking and the numbers of animals incidentally taken should account for all animals taken, including those animals directly on the trackline that are not detected and how well animals are detected based on the distance from the observer, to the extent practicable. NMFS appreciates the Commission's recommendations but we believe that the Commission's described method needs further consideration in

relation to the observations conducted during marine geophysical surveys. Therefore, at this time we do not prescribe a particular method for accomplishing this task. We look forward to engaging further both L–DEO, the Commission and other applicants to reach a determination on the most suitable method to for estimating g(0) and f(0) values.

Comment: The Commission and NRDC recommended that NMFS refrain from implementing its proposed one-year renewal process and instead use abbreviated **Federal Register** notices and reference existing documents to streamline the incidental harassment authorization process. The Commission further recommends that NMFS provide the Commission and the public with a legal analysis supporting its conclusion that the process is consistent with the requirements under section 101(a)(5)(D) of the MMPA. Furthermore, if NMFS decides to bypass the notice and comment process in advance of issuing a renewal, it should nevertheless publish notice in the **Federal Register** whenever such a renewal has been issued.

Response: 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. 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. Last, NMFS will publish on our website a description of the renewal process before any renewal is issued utilizing the new process.

Comment: The Commission recommends that NMFS require earlier submission of applications and other documentation so that it has adequate time to review and provide comments on the adequacy and accuracy of the application, allow applicants to make necessary revisions or additions to the application, draft its proposed authorization, and consider the comments received from the public.

Response: There are no regulations stipulating a required time frame for submission of an IHA applications in advance of the requested date of issuance. However, NMFS has provided to the public recommended time frames for submission of applications for IHAs and rulemakings/letter of authorization (LOAs) which are posted at *https://www.fisheries.noaa.gov/node/23111.* NMFS will continue to strongly encourage applicants to submit applications well in advance of the anticipated issuance dates such that applications can undergo thorough review and revisions can be made as appropriate.

Comment: The planned survey will pass through the ranges of a number of small island-associated populations around the main Hawaiian Islands. These include the range of the endangered Kohala resident stock of melon-headed whales and the newly designated critical habitat area for the Main Hawaiian Islands insular false killer whale Distinct Population Segment (83 FR 35062; July 24, 2018). Given that visual observation at night will be ineffective at detecting animals of either species, CRC recommended that seismic surveys through ranges of these species should only be allowed during daylight hours.

Response: L–DEO has agreed to attempt to time their surveys such that most of the seismic activity would occur within the ranges of the two species of concern only during daylight hours. However, unforeseen circumstances (*e.g.* weather, equipment breakdown) may preclude L–DEO from conducting all seismic operations during daylight within these species' ranges. Various operational requirements and protocols associated with marine seismic surveys do not generally allow for the prolonged stoppage or delay of seismic activities when a trackline is being surveyed. Additionally, it will take the *Langseth* approximately 10.6 hours per pass along Trackline 1 to traverse the stock boundaries of the Kohala resident stock. There will be two passes along both Tracklines 1 and 2 with each pass separated by several days. It will take the *Langseth* about 18.6 hours per pass on Trackline 1 and 12.5 hours per pass onTrackline 2 to traverse the larger insular false killer whale critical habitat area. The amount of time spent within the identified boundary areas will be limited and the majority of monitoring will occur during daylight hours.

Comment: CRC and a single individual both recommended that NMFS require additional monitoring of the melon-headed whale population during Trackline 1 of the seismic survey. This could be achieved by deploying satellite tags on individual melon-headed whales immediately (*i.e.,* within a few days) prior to the survey vessel undertaking Trackline 1. The proximity of one or more groups of melon-headed whales to survey activities could be monitored. CRC recommended that NMFS should either require L–DEO to implement this type of monitoring program themselves or notify independent researchers who are permitted to work in the area during the timing of the survey with enough advance notice to allow for satellite tag monitoring.

Response: NMFS generally does not require applicants to implement highly technical monitoring regimes, especially when the applicant would need to secure additional research permits. Furthermore, NMFS cannot direct an applicant to divulge what they deem to be highly sensitive information (*i.e.,* ship location and/or route). Instead, NMFS encouraged CRC to contact L–DEO directly. Also, as noted above, the time spent in the vicinity of the small resident population of melon-headed whale will be minimal.

Comment: MSROC noted the scientific and societal importance of the planned *Langseth* seismic surveys, endorsed these collaborative research programs, and strongly encouraged NMFS to approve and issue an IHA. They urged NMFS to issue the IHA as soon as possible following the close of the public comment period.

Response: NMFS appreciates the importance of this research and has issued the IHA to L–DEO in a timely manner.

Comment: An individual referred to recent research findings (McCauley *et al.* 2017) indicating that use of airgun arrays may damage a range of invertebrates. The individual also felt that NOAA has the capacity & obligation to substantiate these claims prior to issuing any further permits.

Response: Relatively little research has been focused on assessing the impacts of airguns on invertebrates. The study by McCauley *et al.* (2017) found that exposure to airgun sound decreased zooplankton abundance compared to control samples, and caused a two- to three-fold increase in adult and larval zooplankton mortality. They observed impacts on the zooplankton as far as 1.2

km from the exposure location—a much greater impact range than previously thought; however, there was no consistent decline in the proportion of dead zooplankton as distance increased and received levels decreased. The authors also stated that in order to have significant impacts on r-selected species such as plankton, the spatial or temporal scale of impact must be large in comparison with the ecosystem concerned, and it is possible that the findings reflect avoidance by zooplankton rather than mortality (McCauley *et al.,* 2017). In addition, the results of this study are inconsistent with a large body of research that generally finds limited spatial and temporal impacts to zooplankton as a result of exposure to airgun noise (*e.g.,* Dalen and Knutsen, 1987; Payne, 2004; Stanley *et al.,* 2011).

A modeling exercise was conducted as a follow-up to the McCauley *et al.* (2017) study (as recommended by McCauley *et al.* (2017)), in order to assess the potential for impacts on ocean ecosystem dynamics and zooplankton population dynamics (Richardson *et al.,* 2017). Richardson *et al.* (2017) found that for copepods with a short life cycle in a high-energy environment, a full-scale airgun survey would impact copepod abundance up to three days following the end of the survey, suggesting that effects such as those found by McCauley *et al.* (2017) would not be expected to be detectable downstream of the survey areas, either spatially or temporally. However, these findings are relevant for zooplankton with rapid reproductive cycles in areas where there is a high natural replenishment rate resulting from new water masses moving in, and the findings may not apply in lower-energy environments or for zooplankton with longer life-cycles. In fact, the study found that by turning off the current, as may reflect lower-energy environments, the time to recovery for the modelled population extended from several days to several weeks.

In the absence of further validation of the McCauley *et al.* (2017) findings, if we assume a worst-case likelihood of severe impacts to zooplankton within approximately 1 km of the acoustic source, the large spatial scale and wide dispersal of tracklines does not lead us to expect any meaningful follow-on effects to the prey base for marine mammals predators. While the large scale of effect observed by McCauley *et al.* (2017) may be of concern, especially in a more temperate environment, NMFS concludes that these findings indicate a need for more study, particularly where repeated noise exposure is expected—a condition unlikely to occur in relation to these planned surveys

Description of Marine Mammals in the Area of the Specified Activity

Section 4 of the IHA application summarizes available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. More general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*). Table 1 lists all species with expected potential for occurrence in the North Pacific Ocean and summarizes information related to the population, including regulatory status under the MMPA and ESA. Some of the populations of marine mammals considered in this document occur within the U.S. EEZ and are therefore assigned to stocks and are assessed in NMFS' Stock Assessment Reports (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*). As such, information on potential biological removal (PBR; 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) and on annual levels of serious injury and mortality from anthropogenic sources are not available for these marine mammal populations.

Twenty-eight cetacean species, including 21 odontocetes (dolphins and small- and large-toothed whales) and seven mysticetes (baleen whales), and one pinniped species, could occur in the planned Hawaii survey area (Table 4). In the Emperor Seamounts survey area, 27 marine mammal species could occur, including 15 odontocetes (dolphins and small- and large-toothed whales), eight mysticetes (baleen whales), and four pinniped species. Some species occur in both locations. In total, 39 species are expected to occur in the vicinity of the specified activity.

Marine mammal abundance estimates presented in this document represent the total number of individuals estimated within a particular study or survey area. All values presented in Table 1 are the most recent available at the time of publication.

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREAS

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/SI3	Present at time of survey (Y/N)	
							HI	Emperor seamounts
Order Cetartiodactyla-Cetacea-Superfamily Mysticeti (baleen whales)								
Family Eschrichtiidae:								
Gray whale	*Eschrichtius robustus*	Western North Pacific	E/D; Y	140 (0.04, 135, 2011) [4]	0.06	unk	N	Y
Family Balaenidae:								
North Pacific right whale	*Eubalaena japonica*	Eastern North Pacific	E/D; Y	31 (0.226, 26, 2013) [6]	N/A	0	N	Y
		N/A		450 [5]				
Family Balaenopteridae (rorquals):								
Humpback whale	*Megaptera novaeangliae*	Central North Pacific	-/-; N	10,103 (0.03, 7,890, 2006) [6].	83	25	Y	Y
		Western North Pacific	E/D; Y	1,107 (0.30, 865, 2006) [6]	3	3.2		
Minke whale	*Balaenoptera acutorostrata*	Hawaii		UNK			N	Y
		N/A		22,000 [7]				
Bryde's whale	*Balaenoptera edeni/brydei*	Hawaii	-/-; N	1,751 (0.29, 1,378, 2010) [17].	13.8	0	Y	Y
		Eastern Tropical Pacific	-/-; N	UNK	UND	UNK		
Sei whale	*Balaenoptera borealis*	Hawaii	E/D; Y	178 (0.9, 93, 2010) [4]	0.2	0.2	Y	Y
Fin whale	*Balaenoptera physalus physalus.*	Hawaii	E/D; Y	154 (1.05, 75, 2010) [17]	0.1	0	Y	Y
		N/A		13,620–18,680 [9]				
Blue whale	*Balaenoptera musculus musculus.*	Central North Pacific	E/D; Y	133 (1.09, 63, 2010) [17]	0.1	0	Y	Y

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREAS—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/SI3	Present at time of survey (Y/N)	
							HI	Emperor seamounts
Superfamily Odontoceti (toothed whales, dolphins, porpoises)								
Family Physeteridae:								
Sperm whale	*Physeter macrocephalus*	Hawaii	E/D; Y	4,559 (0.33, 3,478, 2010) [17].	13.9	0.7	Y	Y
		N/A	N/A	29,674 [10]–26,300 [11]				
Family Kogiidae:								
Pygmy sperm whale	*Kogia breviceps*	Hawaii	-/-; N	7,138 [4]	UND	0	Y	Y
Dwarf sperm whale	*Kogia sima*	Hawaii	-/-; N	17,519 [4]	UND	0	Y	Y
Family Ziphiidae (beaked whales):								
Cuvier's beaked whale	*Ziphius cavirostris*	Hawaii	-/-; N	723 (0.69, 428, 2010) [17]	4.3	0	Y	Y
		N/A		20,000 [12]				
Longman's beaked whale	*Indopacetus pacificus*	Hawaii	-/-; N	7,619 (0.66, 4,592, 2010) [17].	46	0	y	N
Blainville's beaked whale	*Mesoplodon densirostris*	Hawaii	-/-; N	2,105 (1.13,1, 980, 2010) [17].	10	0	Y	N
Stejneger's beaked whale	*Mesoplodon stejnegeri*	Alaska	N	UNK	UND	0	N	Y
Ginkgo-toothed beaked whale.	*Mesoplodon ginkgodens*	N/A		25,300 [12]			Rare	Absent
Deraniyagala's beaked whale.	*Mesoplodon hotaula*	N/A		25,300 [12]			Y	N
Hubb's beaked whale	*Mesoplodon carlhubbsi*	N/A		25,300 [12]			Y	N
Baird's beaked whale	*Berardius bairdii*	N/A		10,190 [13]			N	Y
Family Delphinidae:								
Rough-toothed dolphin	*Steno bredanensis*	Hawaii	-/-; N	72,528 (0.39, 52,033, 2010) [17].	46	UNK	Common	N
Common bottlenose dolphin.	*Tursiops truncatus*	Hawaii Pelagic	-/-; N	21,815 (0.57, 13,957, 2010) [17].	140	0.2	Common	N
		Kaua'i and Ni'ihau	-/-; N	184 (0.11, 168, 2005) [4]	1.7	unk	Common	N
		O'ahu	-/-; N	743 (0.54, 485, 2006) [4]	4.9	unk	Common	N
		4 Islands Region	-/-; N	191 (0.24, 156, 2006)	unk	unk	Common	N
		Hawaii Island	-/-; N	128 (0.13, 115, 2006) [4]	1.6	unk	Common	N
Common dolphin	*Delphinus delphis*	N/A		2,963,000 [14]			N	Y
Pantropical spotted dolphin	*Stenella attenuata*	Hawaii Pelagic	-/-; N	55,795 (0.40, 40,338, 2010) [17].	403	0	Y	N
		O'ahu	-/-; N	unk	unk	unk		
		4 Island Region	-/-; N	unk	unk	unk		
		Hawaii Island	-/-; N	unk	unk	≥0.2		
Spinner dolphin	*Stenella longirostris*	Hawaii Pelagic	-/-; N	unk	unk	unk	Y	N
		Hawaii Island	-/-; N	631 (0.04, 585, 2013) [4]	5.9	unk	Common	N
		Oahu/4-Islands	-/-; N	355 (0.09, 329, 2013) [4]	3.3	unk	Y	N
Striped dolphin	*Stenella coeruleoalba*	Hawaii	-/-; N	61,021 (0.38, 44,922, 2010) [17].	449	unk	Y	Y
		N/A		964,362 [15]				
Fraser's dolphin	*Lagenodelphis hosei*	Hawaii	-/-; N	51,491 (0.66, 31,034, 2010) [17].	310	0	Y	N
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	Central North Pacific		988,333 [16]			N	Y
Northern right whale dolphin.	*Lissodelphis borealis*	N/A		307,784 [16]			N	Y
Risso's dolphin	*Grampus griseus*	Hawaii	-/-; N	11,613 (0.39, 8,210, 2010) [17].	82	0	Y	Y
		N/A/		110,457 [15]				
Melon-headed whale	*Peponocephala electra*	Hawaii	-/-; N	8,666 (1.00, 4,299, 2010) [17].	43	0	Y	N
		Kohala Resident	-/-; N	447 (0.12, 404, 2009) [4]	4	0		
Pygmy killer whale	*Feresa attenuata*	Hawaii	-/-; N	10,640 (0.53, 6,998, 2010) [17].	56	1.1	Y	N
False killer whale	*Pseudorca crassidens*	Hawaii Insular	E/D;Y	167 (0.14, 149, 2015) [17]	0.3	0	Y	Y
		Northwest Hawaiian Islands	-/-; N	617 (1.11, 290, 2010) [17]	2.3	0.4		
		Hawaii Pelagic	-/-; N	1,540 (0.66, 928, 2010) [17].	9.3	7.6		
		N/A		16,668 [18]				
Killer whale	*Orcinus orca*	Hawaii	-/-; N	146 (0.96, 74, 2010)	0.7	0	Y	Y
		N/A		8,500 [19]				
Short-finned pilot whale	*Globicephala macrorhynchus*	Hawaii	-/-; N	19,503 (0.49, 13,197, 2010).	106	0.9	Y	Y
		N/A		53,608 [16]				
Family Phoenidae (porpoises):								
Dall's porpoise	*Phocoenoides dalli*	N/A		1,186,000 [20]			N	Y
Order Carnivora—Superfamily Pinnipedia								
Family Otariidae (eared seals and sea lions):								
Steller sea lion	*Eumetopias jubatus*	Western DPS	E/D; Y	50,983 (-,50,983, 2015)			N	Y
Northern fur seal	*Callorhinus ursinus*	Eastern Pacific	-/D; Y	626,734 (0.2, 530,474, 2014).	11,405	437	N	Y
		N/A		1,100,000 [5]				
Family Phocidae (earless seals):								
Hawaiian monk seal	*Neomonachus schauinslandi*	Hawaii	E/D; Y	1,324 (0.03, 1,261, 2015) [17].	4.4	≥1.6	Y	N
Northern elephant seal	*Mirounga angustirostris*			210,000–239,000 [21]			N	Y
Ribbon seal	*Histriophoca fasciata*	Alaska	-/-; N	184,000 (0.12, 163,000, 2013).	9,785	3.8	N	Y

[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.
[4] Carretta *et al.* 2017.
[5] Jefferson *et al.* 2015.
[6] Muto *et al.* 2017.
[7] IWC 2018.
[8] Central and Eastern North Pacific (Hakamada and Matsuoka 2015a).
[9] Ohsumi and Wada, 1974.
[10] Whitehead 2002.
[11] Barlow and Taylor 2005.
[12] Wade and Gerrodette 1993.
[13] Western Pacific Ocean (Okamura *et al.* 2012).
[14] ETP (Gerrodette and Forcada 2002 in Hammond *et al.* 2008b).
[15] Gerrodette *et al.* 2008.
[16] North Pacific (Miyashita 1993b).
[17] Carretta *et al.* 2018.
[18] Western North Pacific (Miyashita 1993a).
[19] Ford 2009.
[20] Buckland *et al.* 1993.
[21] Lowry *et al.* 2014.
Note:—*Italicized species are not expected to be taken or authorized for take.*

All species that could potentially occur in the planned survey area are included in Table 1. With the exception of Steller sea lions, these species or stocks temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. However, the temporal and/or spatial occurrence of Steller sea lions is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. The Steller sea lion occurs along the North Pacific Rim from northern Japan to California (Loughlin *et al.* 1984). They are distributed around the coasts to the outer shelf from northern Japan through the Kuril Islands and Okhotsk Sea, through the Aleutian Islands, central Bering Sea, southern Alaska, and south to California (NMFS 2016c). There is little information available on at-sea occurrence of Steller sea lions in the northwestern Pacific Ocean. The Emperor Seamounts survey area is roughly 1,200 kilometers away from the Aleutian Islands in waters 2,000 to more than 5,000 meters deep. Steller sea lions are unlikely to occur in the offshore survey area based on their known distributional range and habitat preference. Therefore, it is extremely unlikely that Steller sea lions would be exposed to the stressors associated with seismic activities and will not be discussed further.

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 30480; June 28, 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 marine geophysical survey activities have the potential to result in behavioral harassment and, in a limited number of instances, auditory injury (PTS) of marine mammals in the vicinity of the action area. The **Federal Register** notice of proposed IHA (83 FR 30480; June 28, 2018) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to that **Federal Register** notice for that information. No instances of serious injury or mortality are expected as a result of L–DEO's survey activities.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination. As described in detail below, modifications have been made to several take estimates based on recommendations from the public regarding density or occurrence of certain marine mammal species or stocks.

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 primarily be by Level B harassment, as use of seismic airguns has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) for mysticetes and high frequency cetaceans (*i.e.,* kogiidae spp.), due to larger predicted auditory injury zones for those functional hearing groups. The required mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

Auditory injury is unlikely to occur for mid-frequency species given very small modeled zones of injury for those species (13.6 m). Moreover, the source level of the array is a theoretical definition assuming a point source and measurement in the far-field of the source (MacGillivray, 2006). As described by Caldwell and Dragoset (2000), an array is not a point source, but one that spans a small area. In the far-field, individual elements in arrays will effectively work as one source because individual pressure peaks will have coalesced into one relatively broad pulse. The array can then be considered a ''point source.'' For distances within the near-field, *i.e.,* approximately 2–3 times the array dimensions, pressure peaks from individual elements do not arrive simultaneously because the observation point is not equidistant from each element. The effect is destructive interference of the outputs of each element, so that peak pressures in the near-field will be significantly lower than the output of the largest individual element. Here, the 230 dB peak isopleth distances would in all cases be expected to be within the near-field of the array where the definition of source level breaks down. Therefore, actual locations within this distance of the array center where the sound level exceeds 230 dB peak SPL would not necessarily exist. In general, Caldwell and Dragoset (2000) suggest that the

near-field for airgun arrays is considered to extend out to approximately 250 m.

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 exposure estimate and associated numbers of authorized takes.

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.* 2012). Based on the best available science 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 to fall under Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) sources. L–DEO's activity includes the use of impulsive seismic sources. Therefore, the 160 dB re 1 μPa (rms) criteria is applicable for analysis of level B harassment.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 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). The Technical Guidance identifies the received levels, or thresholds, above which individual marine mammals are predicted to experience changes in their hearing sensitivity for all underwater anthropogenic sound sources, reflects the best available science, and better predicts the potential for auditory injury than does NMFS' historical criteria.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and 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. As described above, L–DEO's activity includes the use of intermittent and impulsive seismic sources.

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT IN MARINE MAMMALS

Hearing group	PTS onset thresholds	
	Impulsive *	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat:}$ 232 dB; $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.

Note: * 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 1μPa2s. 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 estimating the area ensonified above the relevant acoustic thresholds.

The surveys will acquire data with the 36-airgun array with a total discharge of 6,600 in^3 at a maximum tow depth of 12 m. L–DEO model results are used to determine the 160-dBrms radius for the 36-airgun array and 40-in^3 airgun at a 12-m tow depth in deep water (≤1000 m) down to a maximum water depth of 2,000 m. Received sound levels were predicted by L–DEO's model (Diebold *et al.,* 2010) which uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (approximately 1,600 m), intermediate water depth on the slope (approximately 600–1,100 m), and shallow water (approximately 50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.* 2009; Diebold *et al.* 2010).

For deep and intermediate-water cases, the field measurements cannot be used readily to derive Level A and Level

B isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–500 m, which may not intersect all the sound pressure level (SPL) isopleths at their widest point from the sea surface down to the maximum relevant water depth for marine mammals of ~2,000 m. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data recorded at the deep and slope sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate-water depths, comparisons at short ranges between sound levels for direct arrivals recorded by the calibration hydrophone and model results for the same array tow depth are in good agreement (Fig. 12 and 14 in Appendix H of NSF–USGS, 2011). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent. Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the GoM calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

For deep water (>1,000 m), L–DEO used the deep-water radii obtained from model results down to a maximum water depth of 2000 m. The radii for intermediate water depths (100–1,000 m) were derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (See Fig. 16 in Appendix H of NSF–USGS, 2011).

Measurements have not been reported for the single 40-in^3 airgun. L–DEO model results are used to determine the 160-dB (rms) radius for the 40-in^3 airgun at a 12 m tow depth in deep water (See LGL 2018, Figure A–2). For intermediate-water depths, a correction factor of 1.5 was applied to the deep-water model results.

L–DEO's modeling methodology is described in greater detail in the IHA application (LGL 2018). The estimated distances to the Level B harassment isopleth for the *Langseth's* 36-airgun array and single 40-in^3 airgun are shown in Table 3.

TABLE 3—PREDICTED RADIAL DISTANCES FROM R/V LANGSETH SEISMIC SOURCE TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Source and volume	Tow depth (m)	Water depth (m)	Predicted distances (in m) to the 160-dB received sound level
Single Bolt airgun, 40 in^3	12	>1,000	[1] 431
		100–1,000	[2] 647
4 strings, 36 airguns, 6,600 in^3	12	>1,000	[1] 6,733
		100–1,000	[2] 10,100

[1] Distance is based on L–DEO model results.
[2] Distance is based on L–DEO model results with a 1.5 × correction factor between deep and intermediate water depths.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the NUCLEUS software program and the NMFS User Spreadsheet, described below. The updated acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS 2016). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for SEL_{cum} and peak SPL for the *Langseth* airgun array were derived from calculating the modified farfield signature (Table 4). The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. L–DEO used the acoustic modeling methodology as used for Level B harassment with a small grid step of 1

m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid.

TABLE 4—MODELED SOURCE LEVELS BASED ON MODIFIED FARFIELD SIGNATURE FOR THE R/V LANGSETH 6,600 in³ AIRGUN ARRAY, AND SINGLE 40 in³ AIRGUN

	Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	Phocid pinnipeds (underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	Otariid pinnipeds (underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)
6,600 in³ airgun array (Peak SPL_{flat})	252.06	252.65	253.24	252.25	252.52
6,600 in³ airgun array (SEL_{cum})	232.98	232.83	233.08	232.83	232.07
40 in³ airgun (Peak SPL_{flat})	223.93	N.A.	223.92	223.95	N.A.
40 in³ airgun (SEL_{cum})	202.99	202.89	204.37	202.89	202.35

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the *Langseth's* airgun array (modeled in 1 hertz (Hz) bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (*i.e.,* to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities and shot intervals specific to each of the three planned surveys (Table 1), potential radial distances to auditory injury zones were then calculated for SEL_{cum} thresholds.

Inputs to the User Spreadsheets in the form of estimated SLs are shown in Table 5. User Spreadsheets used by L–DEO to estimate distances to Level A harassment isopleths for the 36-airgun array and single 40 in³ airgun for the surveys are shown is Tables A–2, A–3, A–5, and A–8 in Appendix A of the IHA application (LGL 2018). Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the surveys are shown in Table 5. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL_{cum} and Peak SPL_{flat}) is exceeded (*i.e.,* metric resulting in the largest isopleth).

TABLE 5—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

	Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	Phocid pinnipeds (underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	Otariid pinnipeds (underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)
6,600 in³ airgun array (Peak SPL_{flat})	45.0	13.6	364.75	51.6	10.6
6,600 in³ airgun array (SEL_{cum})	320.2	N.A.	1	10.4	N.A.
40 in³ airgun (Peak SPL_{flat})	1.76	N.A.	12.5	1.98	N.A.
40 in³ airgun (SEL_{cum})	0.5	N.A.	N.A.	N.A.	N.A.

Note that because of some of the assumptions included in the methods used, isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimate of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 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 planned seismic survey, 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.

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 best available scientific information was considered in conducting marine mammal exposure estimates (the basis for estimating take).

In the planned survey area in the Hawaiian EEZ, densities from Bradford *et al.* (2017) were used, when available. For the pygmy sperm whale, dwarf sperm whale, and spinner dolphin, densities from Barlow *et al.* (2009) were used because densities were not provided by Bradford *et al.* (2017). Densities for striped dolphin and Fraser's dolphins were revised based on input from the Commission. As noted previously, NMFS had divided the unidentified Mesoplodon species' density of 1.89 animals/1,000 km² from Bradford *et al.* (2017) by three. For this notice, NMFS NMFS assumed that each species of those species could have a density of 1.89 animals/1,000 km². For the humpback, sei, minke, and killer whales, the calculated take was increased to mean group size.

For Hawaiian monk seals, NMFS followed the methods used by the U.S. Navy (Navy 2017a) to determine densities. The U.S. Navy calculated density of Hawaiian monk seal for three areas: The Main Hawaiian Islands in waters less than 200 meters, the Northwest Hawaiian Islands in waters less than 200 meters, and waters 200 meters deep to the Hawaiian EEZ boundary.

The 200 meter isobath was selected as a boundary because of information related to Hawaiian monk seal foraging behavior that came out of the final rule for designated critical habitat. Ninety-eight percent of recorded dives were within the 200-meter isobath in the Main Hawaiian Islands this depth boundary was considered sufficient for foraging habitat for adults and juveniles. The area around the Main Hawaiian Islands to the 200-meter isobath was estimated to be 6,630 km^2 (6,142 km^2 in the Northwest Hawaiian Islands). The area from the 200-meter isobath to the Hawaiian EEZ is estimated to be 2,461,994 km^2. The U.S. Navy also assumed that 90 percent of the population would occur inside the 200-meter isobath.

The U.S. Navy used the following calculation to estimate density:

[(number of seals * percent of the population in or out of the 200-m)/200-m area] * In-water factor

By applying the U.S. Navy's methodology using updated population estimates for the 2017 stock assessment report for the U.S. Pacific (Carretta *et al.* 2018) and haul-out factors, we can estimate Hawaiian monk seal density. NMFS had used older abundance data in the proposed notice.

Main Hawaiian Islands inside 200 m isobath

[(145 seals * 0.90)/6,630 km^2] * 0.68 = 0.0134 seals/km^2

Northwest Hawaiian Islands inside 200 m isobath

[(1,179 seals * 0.90)/6,142 km^2] * 0.68 = 0. 1175 seals/km^2

Hawaiian EEZ

[(1,324 * 0.10)/2,461,994 km2] * 0.68 = 0.000037 seals/km^2

Based on where the action will occur, it NMFS utilized the density estimate for the Hawaiian EEZ.

There are very few published data on the densities of cetaceans or pinnipeds in the Emperor Seamounts area, so NMFS relied on a range of sources to establish marine mammal densities. As part of the Navy's Final Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement for SURTASS LFA Sonar Routine Training, Testing, and Military Operations, the Navy modelled densities for a designated mission area northeast of Japan during the summer season. These values were used for the North Pacific right whale, sei whale, fin whale, sperm whale, Cuvier's beaked whale, Stejneger's beaked whale, and Baird's beaked whale.

For northern right whale dolphin, Dall's porpoise, and northern fur seal, L–DEO used densities from Buckland *et al.* (1993). Forney and Wade (2006) reported a density of 0.3/100 km^2 for killer whales at latitudes 43–48 °N where the planned survey would be conducted. Although Miyashita (1993) published data on the abundance of striped, Pantropical spotted, bottlenose, and Risso's dolphins, and false killer and short-finned pilot whales in the Northwest Pacific Ocean as far north as 41°N, the distributional range of the Pantropical spotted and bottlenose dolphins does not extend as far north as the planned survey area. For the other species, we used data from 40–41°N, 160–180°E to calculate densities and estimate the numbers of individuals that could be exposed to seismic sounds during the survey. Risso's dolphin, false killer whale, and short-finned pilot whale are expected to be rare in the survey area, and the calculated densities were zero. Thus, we used the mean group size from Bradford *et al.* (2017) for Risso's dolphin and short-finned pilot whale, and the mean group size of false killer whales from Barlow (2006).

The short-beaked common dolphin is expected to be rare in the Emperor Seamounts survey area; thus, there are no density estimates available. L–DEO used the mean group size (rounded up) for the California Current from Barlow (2016). The density of Bryde's whale in the planned survey area was assumed to be zero, based on information from Hakamada *et al.* (2009, 2017) and Forney *et al.* (2015); its known distribution range does not appear to extend that far north. For this species, L–DEO rounded up the mean group size from Bradford *et al.* (2017). For pygmy and dwarf sperm whales, NMFS assumed densities in the Emperor Seamounts would be equivalent to those in the Hawaii survey are and used densities from Bradford *et al.* 2017.

The densities for the remaining species were obtained from calculations using data from the papers presented to the IWC. For blue and humpback whales, L–DEO used a weighted mean density from Matsuoka *et al.* (2009) for the years 1994–2007 and Hakamada and Matsuoka (2015) for the years 2008–2014. L–DEO used Matsuoka *et al.* (2009) instead of Matsuoka *et al.* (2015), as the later document did not contain all of the necessary information to calculate densities. L–DEO used densities for their Block 9N which coincides with the planned Emperor Seamounts survey area. The density for each survey period was weighted by the number of years in the survey period; that is, 14 years for Matsuoka *et al.* (2009) and 7 years for Hakamada and Matsuoka (2015), to obtain a final density for the 21-year period. For minke whales L–DEO used the estimates of numbers of whales in survey blocks overlapping the Emperor Seamounts survey area from Hakamada *et al.* (2009); densities were estimated by dividing the number of whales in Block 9N by the area of Block 9N. For gray whales, NMFS used a paper by Rugh *et al.* (2005) that looked at abundance of eastern DPS gray whales. The paper provides mean group sizes for their surveys, which ranged from 1 to 2 individuals. For purposes of estimating exposures we will assume that the western DPS group sizes would not vary greatly from the eastern DPS. As such, NMFS assumes that there will be two western DPS gray whales Level B takes, based on mean group size.

Finally, no northern elephant seals have been reported during any of the above surveys although Buckland *et al.* (1993) estimated fur seal abundance during their surveys. Telemetry studies, however, indicate that elephant seals do forage as far west as the Emperor Seamounts survey area. Here, L–DEO assumed a density of 0.00831/1000 km^2, which is 10% of that used by LGL Limited (2017) for an area off the west coast of the U.S. However, densities of northern elephant seals in the region are expected to be much less than densities of northern fur seals. For species that are unlikely to occur in the survey area, such as ribbon seals, exposures are set at 5 individuals. Densities for animals in Emperor Seamounts are shown in Table 8.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A harassment or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A harassment and Level B harassment thresholds. The area estimated to be ensonified in a single

day of active seismic operations is then calculated (Table 6) based on the areas predicted to be ensonified around the array and the estimated trackline distance traveled per day. For purposes of Level B take calculations, areas estimated to be ensonified to Level A harassment thresholds are subtracted from areas estimated to be ensonified to Level B harassment thresholds in order to avoid double counting the animals taken (*i.e.,* if an animal is taken by Level A harassment, it is not also counted as taken by Level B harassment). The daily ensonified areas are multiplied by density estimates for each species to arrive at a daily exposure rate. The daily exposure rate is subsequently multiplied by the number of planned survey days plus a 25 percent contingency factor. Active seismic operations are planned for 13 days at Emperor Seamounts and 19 days at Hawaii. Therefore, the number of survey days is increased to 16 in the Emperor Seamounts and 24 in Hawaii area. Estimated exposures for the Hawaii survey and the Emperor Seamounts survey are shown respectively in Table 7 and Table 8.

TABLE 6—AREAS (km^2) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS, PER DAY FOR HAWAII AND EMPEROR SEAMOUNTS SURVEYS

Survey	Criteria	Daily ensonified area (km^2)	Planned survey days	Total survey days (25% increase)	Relevant isopleth (m)
Hawaii Level B					
Multi-depth line (intermediate water)	160 dB	538.5	12	15	10,100
Multi-depth line (deep water)	160 dB	2349.8	12	15	6,733
Multi-depth line (total)	160 dB	2888.2	12	15	6,733
Deep-water line	160 dB	2566.3	7	9	6,733
Hawaii Level A [1]					
Hawaii	LF Cetacean	115.6	19	24	320.2
	MF Cetacean	4.9	19	24	13.6
	HF Cetacean	96.8	19	24	268.3
	Phocid	15.7	19	24	43.7
Emperor Seamounts Level B					
Emperor Seamounts	160 dB	2566.3	13	16	6,733
Emperor Seamounts Level A [1]					
Emperor Seamounts	LF Cetacean	115.6	13	16	320.2
	MF Cetacean	4.9	13	16	13.6
	HF Cetacean	96.8	13	16	268.3
	Phocid	15.7	13	16	43.7
	Otariid	3.8	13	16	10.6

[1] Level A ensonified areas are estimated based on the greater of the distances calculated to Level A isopleths using dual criteria (SEL_{cum} and $_{peak}SPL$).

TABLE 7—DENSITIES, EXPOSURES, PERCENTAGE OF STOCK OR POPULATION EXPOSED, AND NUMBER OF AUTHORIZED TAKES DURING HAWAII SURVEY

Species	Stock	Density (#/1,000 km^2)	Total exposures	Percentage of stock/ population	Authorized takes	
					Level A	Level B
Humpback whale	Central North Pacific		[4] 2	<0.01	0	2
	Western North Pacific		0.2			
Minke whale	Hawaii	[3] 0	[4] 1	<0.01	0	1
Bryde's whale	Hawaii	[1] 0.72	47	2.8	2	45
Sei whale	Hawaii	[1] 0.16	11	6.2	0	11
Fin whale	Hawaii	[1] 0.06	4	2.7	0	4
Blue whale	Central North Pacific	[1] 0.05	5	3.9	0	5
Odontocetes						
Sperm whale	Hawaii	[1] 1.86	123	2.7	0	123
Pygmy sperm whale	Hawaii	[2] 2.91	191	2.8	7	184
Dwarf sperm whale	Hawaii	[2] 7.14	470	2.8	16	454
Cuvier's beaked whale	Hawaii pelagic	[1] 0.30	20	2.8	0	20
Longman's beaked whale	Hawaii	[1] 3.11	205	2.7	0	205
Blainville's beaked whale	Hawaii pelagic	[1] 0.86	57	2.7	0	57
Ginkgo-toothed beaked whale	N/A	[6] 1.89	124	0.5	0	124
Deraniygala's beaked whale	N/A	[6] 1.89	124	0.5	0	124
Hubb's beaked whale	N/A	[6] 1.89	124	0.5	0	124
Rough-toothed dolphin	Hawaii	[1] 29.63	1,949	2.7	0	1,949
Common bottlenose dolphin	HI Pelagic	[1] 8.99	592	[7] 2.7	0	592
	Oahu			1.2		
	HI Islands			7.0		
Pantropical spotted dolphin	HI Pelagic	[1] 23.32	1,534	[8] 2.6	0	1,534

TABLE 7—DENSITIES, EXPOSURES, PERCENTAGE OF STOCK OR POPULATION EXPOSED, AND NUMBER OF AUTHORIZED TAKES DURING HAWAII SURVEY—Continued

Species	Stock	Density (#/1,000 km²)	Total exposures	Percentage of stock/population	Authorized takes	
					Level A	Level B
	Oahu			N.A.		
	HI Islands			N.A.		
Spinner dolphin	HI Pelagic	[2] 6.99	460	N.A.	0	460
	HI Island			[9] 3.8		
	Oahu/4 island			6.7		
Striped dolphin	HI Pelagic	[1] 25	1,644	0.6	0	1,644
Fraser's dolphin	Hawaii	[1] 21.0	1,381	2.7	0	1,381
Risso's dolphin	Hawaii	[1] 4.74	312	2.7	0	312
Melon-headed whale	HI Islands	[1] 3.54	810	8.6	0	[10] 810
	Kohala resident			13.4		
Pygmy killer whale	Hawaii	[1] 4.35	286	2.7	0	286
False killer whale	MHI Insular	[5] 0.09	5	11.9	0	[11] 20
	HI Pelagic	[5] 0.06	40	2.6	0	40
Killer whale	Hawaiian Islands	[1] 0.06	[4] 5	2.42	0	5
Short-finned pilot whale	Hawaii	[1] 7.97	524	2.7	0	524
Pinnipeds						
Hawaiian monk seal	Hawaii	[3] 0.000037	3	0.22	0	3

[1]— Bradford *et al.* 2017.
[2]—Barlow *et al.* 2009.
[3]—Baker *et al.* 2016.
[4]—Requested take authorization (Level B only) increased to mean group size from Mobley *et al.* 2001.
[5]—Bradford *et al.* 2015.
[6]—From Bradford *et al.* (2017) for 'Unidentified *Mesoplodon*'.
[7]—Assumes 98.5 percent of takes are from Hawaii pelagic stock (588) with remaining 1 percent from Oahu stock (6) and 0.5 percent from Hawaiian Islands (3) stock. Assumed average group size of 9 for Oahu and Hawaii Island stocks.
[8]—Assumes 94.16 percent of takes are from Hawaii pelagic stock (1,461), 5.25 percent are from Hawaiia Island stock (82), and 0.59 are from Oahu stock. Populations of insular stocks are unknown.
[9]—Assumes 0.36 percent for Oahu/4-Islands stock (1), 0.95 percent for Hawaii Island stock (4) and remaining from Pelagic stock (459) stocks. NMFS will assume average group size of 24 for the Oahu/4-Island and Hawaii Island stock exposures (NMFS 2016).
[10]—Assumes Level B harassment of 3 groups of 20 Kohala resident stock whales and 3 groups of 250 Hawaiian Island stock animals.
[11]—Increased to average group size of 20 (Oleson *et al.* 2010).

Changes to Main Hawaiian Islands insular false killer whale take estiamtes—NMFS has recalculated exposures of Main Hawaiian Islands insular false killer whale DPS due to recently designated critical habitat for this species (83 FR 35062; July 24, 2018). A total of 3,455-kilometers of tracklines will be surveyed around the Main Hawaiian Islands where insular false killer whales show a preference for deeper waters just offshore (45-meters) to the 3,200-meter depth boundary. The majority of the planned tracklines are outside this area in waters deeper than 3,200-meters. NMFS used critical habitat to serve as the range boundary for this DPS. In order to calculate the amount of exposure for Main Hawaiian Islands Insular false killer whales during the planned action, NMFS determined the amount of tracklines within the DPS's range. There are 236.6 km of planned tracklines in Main Hawaiian Islands insular false killer whale range (or about 6.8 percent of the tracklines for the entire Hawaii seismic survey). Only portions of Tracklines 1 and 2 are within the DPS's range. Because the size of the ensonified areas changes with water depth, NMFS determined the amount of tracklines in each depth range. All of Trackline 1 takes place in deep water (>1,000 meters/141.6 km), and most of Trackline 2 takes place in deep water (76.6 km) with 18.4 km in intermediate depth water (100 to 1,000 m). Tracklines 1 and 2 would be surveyed twice, once for reflection data, and once for refraction data. At a speed of 7.6 km/hr, it would take the *Langseth* about 37.3 hours to survey Trackline 1, and 25 hours to survey Trackline 2 (both passes), for about 2.6 days in total.

NMFS calculated ensonified area along the tracklines to arrive at a total of 3,940-km² within the species' range. As noted previously, a contingency of 25 percent was added to the number of survey days, which is the equivalent of adding 25 percent to the planned line tracklines. The total amount of ensonified area with the 25 percent contingency is 4,92 5km². Bradford *et al.* (2015) calculated the density of Main Hawaiian Islands Insular false killer whales at 0.09 individuals per 100 km², which was multiplied by the total ensonified area plus contingency, resulting in five Main Hawaiian Island insular false killer whale exposures. False killer whales are commonly sighted in groups of 10 to 20 (Baird 2009; Baird *et al.* 2010; Wade and Gerrodette 1993) with 20 individuals being regarded as about the average group size (Oleson *et al.* 2010). Therefore, authorized Level B harassment takes was increased from 5 individuals to 20.

Changes to melon-headed whale take estimates—NMFS had estimated in the proposed notice that there would be 235 Level B harassment takes of melon-headed whales from the combined Kohala resident stock and the Hawaiian Islands stock. Kohala resident stock members could only be affected during Trackline 1 operations off of the Kohala Peninsula and the west coast of Hawaii Island in waters of less than 2,500 m of water. This segment of the survey represents a small portion of the total Hawaiian Island tracklines. The Hawaiian Islands stock of melon-headed whales may be found along any of the planned tracklines, including within the range of the Kohala resident stock. Kohala resident whales can be found in large groups of up to several hundred with a median group size of 210 (Forney *et al.* 2017). However, they have also been observed in smaller groups of 4 and 17 individuals (Aschettino *et al.* 2011). Additionally, these smaller groups were often followed by much larger groups, which suggests that the small groups may have branched off from larger groups.

L–DEO is required to shutdown whenever a melon-headed whale is detected while passing through the Kohala resident stock's range. L–DEO

also intends to pass through this range during daylight hours to maximize the potential for detection. PSOs should be able to observe the larger groups containing hundreds of animals at a significant distance and implement shutdown accordingly. When a small group of whales is observed, shutdown will also be implemented and PSOs will shift to state of heightened alert since a larger main group may be in close proximity. Given this information, NMFS will assume that up to 3 groups of 20 Kohala resident whales may be taken by Level B harassment if they enter the zone undetected by PSOs. This would result in up to 60 Level B harassment takes. Given the species' large group sizes, NMFS will also assume that up to 3 groups of 250 Hawaiian Island animals may be taken during the remainder of the cruise outside of the range of Kohala resident stock. Therefore, NMFS authorizes the take of up to 810 melon headed whales.

Changes to common bottlenose dolphin take estimates—There are four individual common bottlenose dolphin stocks within the Hawaiian Islands complex. None of the planned survey tracklines will traverse the ranges of the Kauai/Niihau or 4-Islands stocks so animals from these stocks will not be impacted by seismic activities. In the proposed notice NMFS had estimated that a small number of takes would be accrued to the 4 Islands stock. Therefore, takes of this stock are not authorized in the final IHA and NMFS revised the number of authorized takes estimated to accrue to the remaining Hawaii pelagic, Oahu, and Hawaiian Islands stocks as described below.

During the survey along Trackline 1 a short time will be spent traversing the northern boundary of the Hawaiian Island stock while along Trackline 2 the survey will run through the northwest boundary of the Oahu stock. The vast majority of planned survey tracklines occur in waters that are greater than 1,000 m which marks the boundary between the Hawaiian pelagic and Hawaiian insular stocks. According to a GIS analysis, an estimated 0.47 percent of all Hawaii tracklines will take place in waters less than 1,000 m deep northwest of Oahu along Trackline 2 and 1.00 percent will occur in depths less than 1,000 m north of Hawaii along Trackline 1. Therefore, NMFS will assume that the remaining 98.5% percent (588) of total takes will be accrued by the pelagic stock, 0.5 percent (3) will accrue to the Oahu stock and 1 percent (6) will accrue to the Hawaiian Island stock. Insular stocks have an average group size of group size of 8.5 rounded up to 9, so 9 takes will accrue to the Oahu stock and 9 takes to the Hawaiian Island stock (Baird *et al.* 2002). Note that the ranges of these two insular stocks completely encompass the islands for which they are named out to the 1,000 m bathymetric contour line. Given such expansive ranges, it is unlikely that large numbers of either stock would be concentrated near a trackline during the short time the vessel is within the delineated stock boundaries.

Changes to spinner dolphin take estimates—For the final IHA, NMFS conducted a comprehensive GIS analysis to determine how spinner dolphin takes should be accrued among the various stocks in the region. This had not been done for the proposed IHA. There are four stocks of spinner dolphins within the U.S. EEZ of the Hawaiian Islands. Planned seismic survey tracklines would traverse the ranges of the Hawaii Island, Oahu/4-Islands, and Hawaii Pelagic stocks. Stock boundaries for the Hawaii Island and Oahu/4-Islands stocks extend out 10 nautical miles (nmi) from the coasts of these islands. An estimated 0.36 percent of all tracklines will take place in the range of the Oahu/4-Island stock northwest of Oahu along Trackline 2, and 0.95 percent will occur in the range of the Hawaii Island stock north of Hawaii along Trackline 1, with remaining takes being accrued by the Hawaii Pelagic stock. This results in 1 estimated Oahu/4-Island stock exposure, 4 Hawaii Island stock exposures, and 459 Pelagic stock exposures. NMFS will assume average group size of 24 individuals for the Oahu/4-Island and Hawaii Island stock exposures (NMFS 2016).

Changes to pantropical spotted dolphin take estimates—A comprehensive GIS analysis was also conducted for the pantropical spotted dolphin stock takes estimates, which had not been included in the proposed IHA. There are four management stocks of pantropical spotted dolphins within the Hawaiian Islands EEZ (Oleson *et al.* 2013) including: (1) The Oahu stock, which includes spotted dolphins within 20 km of Oahu, (2) the 4-Island stock, which includes spotted dolphins within 20 km of Maui, Molokai, Lanai, and Kahoolawe collectively, (3) the Hawaii Island stock, which includes spotted dolphins found within 65 km of Hawaii Island, and (4) the Hawaii pelagic stock, which includes spotted dolphins inhabiting the waters throughout the Hawaiian Islands EEZ, outside of the insular stock areas, but including adjacent high seas. Planned seismic survey lines would traverse the Hawaii Island, Oahu, and Hawaii Pelagic stocks. An estimated 0.59 percent of all tracklines will take place in the range of the Oahu stock northwest of Oahu along Trackline 2, and 5.25 percent will occur in the range of the Hawaii Island stock north and west of Hawaii along Trackline 1 with the remaining accrued by the Hawaii Pelagic stock. This results in an estimated 9 Oahu stock exposures, 82 Hawaii Island stock exposures, and 1,461 Pelagic stock exposures.

For Hawaiian monk seals, NMFS used an updated abundance estimate (Baker *et al.* 2016) recommended by the Commission to estimate density. NMFS multiplied the updated estimated density by the daily ensonified area (160 dB zone) on one day, times the 1.25 percent operational contingency. Since the planned action will take place in different water depths, there are two different daily ensonified areas. For deep water (≤1,000 meters), the daily ensonified area is 2,349.8 km^2. For intermediate depths (100–1,000 meters), the daily ensonified area is 538.5 km^2. The vast majority of the survey (3,403 kilometers) will take place in deep water. Only 52 km will take place in intermediate depths. However, use of the updated abundance and density estimates resulted in the same number of authorized Level B harassment takes (3) that was included in the proposed IHA.

TABLE 8—DENSITIES, EXPSOURES, PERCENTAGE OF STOCK OR POPULATION EXPOSED, AND NUMBER OF AUTHORIZED TAKES DURING EMPEROR SEAMOUNTS SURVEY

Species	Stock	Estimated density (#/1000 km^2)	Total exposures	Percentage of population (total takes)	Authorized takes	
					Level A	Level B
Gray whale	N/A	N.A.	[2] 2	1.43	0	2
North Pacific right whale	N/A	[1] 0.01	[10] 2	0.45	0	2
Humpback whale	Central North Pacific	[1] 0.41	18	[11] 0.17	[13] 2	[11] 16
	Western North Pacific DPS			[11] 0.18		
Minke whale	N/A	2.48	103	0.47	5	98

TABLE 8—DENSITIES, EXPSOURES, PERCENTAGE OF STOCK OR POPULATION EXPOSED, AND NUMBER OF AUTHORIZED TAKES DURING EMPEROR SEAMOUNTS SURVEY—Continued

Species	Stock	Estimated density (#/1000 km^2)	Total exposures	Percentage of population (total takes)	Authorized takes	
					Level A	Level B
Bryde's whale	N/A	N.A.	[3]2	<0.01	0	2
Sei whale	N/A	[1]0.29	14	0.05	[3]3	11
Fin whale	N/A	[1]0.20	8	0.06	0	8
Blue whale	Central North Pacific	0.13	5	3.7	0	5
Odontocetes						
Sperm whale	N/A	[1]2.20	90	0.30	0	90
Pygmy sperm whale	N/A	[4]2.91	121	1.7	0	121
Dwarf sperm whale	N/A	[4]7.14	298	1.7	0	298
Cuvier's beaked whale	N/A	[1]5.40	225	1.11	0	225
Stejner's beaked whale	Alaska	[1]0.5	21	0.08	0	21
Baird's beaked whale	N/A	[1]2.9	121	1.19	0	121
Short-beaked common dolphin	N/A	[5]180	N.A.	<0.01	0	180
Striped dolphin	N/A	[6]9.21	384	0.04	0	384
Pacific white-sided dolphin	N/A	[7]68.81	2,870	0.29	0	2,870
Northern right whale dolphin	N/A	[7]3.37	141	0.04	0	141
Risso's dolphin	N/A	[3]27	1,126	1.02	0	1,126
False killer whale	N/A	[5]10	417	2.5	0	417
Killer whale	N/A	[8 12]3.00	1,253	14.7	0	1,253
Short-finned pilot whale	N/A	[3]41	1,713	3.2	0	1,713
Dall's porpoise	N/A	35.46	1,479	0.13	56	1,423
Pinnipeds						
Northern fur seal	N/A	[7]3.56	149	0.01	0	149
Northern elephant seal	N/A	8.31	343	0.15	0	343
Ribbon seal	Alaska	N.A.	[9]5	<0.01	0	5

[1]—Navy 2017b. Final Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement.—SURTASS.
[2]—Mean group size based on Rugh *et al.* (2005).
[3]—Mean group size from Bradford *et al.* (2017).
[4]—Bradford *et al.* (2017).
[5]—Mean group size from Barlow (2016).
[6]—Miyashita (1993).
[7]—Buckland *et al.* (1993).
[8]—Forney and Wade (2006).
[9]—Estimated exposures increased to 5 for pinnipeds.
[10]—Mean group size from Matsuoka *et al.* (2009).
[11]—Based on population size, take is split proportionally between central north Pacific (91.2 percent of total take) and western north Pacific DPS stocks (9.8 percent of total take). Assumes 2 Level B harassment takes of western north Pacific DPS.
[12]—Density is based on number of animals/100 km^2.
[13]—Mean group size from Mobley *et al.* (2001).

The only stocks that occur in both the Emperor Seamounts and the Hawaiian Islands are the Central North Pacific (CNP) humpback whale, Western North Pacific (WNP) humpback whale, and Central North Pacific (CNP) blue whale stocks. NMFS combined take estimates from both surveys and calculated the percentage of each stock taken. The results were 0.18 percent for the CNP humpback stock, 0.36 percent for the WNP humpback stock, and 7.5 percent for the CNP blue whale stock.

It should be noted that authorized take numbers shown in Tables 7 and 8 are expected to be conservative for several reasons. First, in the calculations of estimated take, 25 percent has been added in the form of operational survey days to account for the possibility of additional seismic operations associated with airgun testing and repeat coverage of any areas where initial data quality is sub-standard, and in recognition of the uncertainties in the density estimates used to estimate take as described above. Additionally, marine mammals would be expected to move away from a loud sound source that represents an aversive stimulus, such as an airgun array, potentially reducing the number of Level A takes. However, the extent to which marine mammals would move away from the sound source is difficult to quantify and is, therefore, not accounted for in the take estimates.

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.

L–DEO has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of planned mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO will implement mitigation measures for marine mammals. Mitigation measures that will be adopted during the planned surveys include (1) Vessel-based visual mitigation monitoring; (2) Vessel-based passive acoustic monitoring; (3) Establishment of an exclusion zone; (4) Power down procedures; (5) Shutdown procedures; (6) Ramp-up procedures; and (7) Vessel strike avoidance measures. Note that additional measures have been included in the final IHA that were not contained in the proposed IHA. These measures are described in the following sections.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual PSOs) to scan the ocean surface visually for the presence of marine mammals. The area to be scanned visually includes primarily the exclusion zone, but also the buffer zone. The buffer zone means an area beyond the exclusion zone to be monitored for the presence of marine mammals that may enter the exclusion zone. During pre-clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the exclusion zone in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.,* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 meter exclusion zone, out to a radius of 1,000 meters from the edges of the airgun array (500–1,000 meters). Visual monitoring of the exclusion zones and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring close to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to naïve marine mammals that may be in the area during pre-clearance, and (2) during airgun use, aid in establishing and maintaining the exclusion zone by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the exclusion zone. Note that L–DEO must monitor the Level B harassment zone beyond 1,000 meters and enumerate any takes beyond this buffer zone.

L–DEO must use at least five dedicated, trained, NMFS-approved Protected Species Observers (PSOs). The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, during a deep penetration (*i.e.,* ''high energy'') seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of the airgun array. Visual monitoring of the exclusion and buffer zones must begin no less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs shall establish and monitor the exclusion and buffer zones. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source (*i.e.,* anytime airguns are active, including ramp-up), occurrences of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown or powerdown of the acoustic source.

During use of the airgun (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the buffer zone (but outside the exclusion zone) should be communicated to the operator to prepare for the potential shutdown or powerdown of the acoustic source. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable. Visual PSOs may be on watch for a maximum of two consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

For the final IHA, NMFS had added the requirement L–DEO must make a good faith effort to schedule their surveys to maximize the amount of seismic activity that takes place during daylight hours within the defined ranges of the Kohala resident stock of melon-headed whale and the Main Hawaiian Islands insular stock of fales killer whales. This will greatly assist PSOs in their efforts to effectively monitor these species. Furthermore, L–DEO must implement shutdown procedures if a melon-headed whale or group of melon-headed whales is observed in the Kohala resident stock's range.

Passive Acoustic Monitoring

Acoustic monitoring means the use of trained personnel (sometimes referred to as passive acoustic monitoring (PAM) operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an exclusion zone around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.,* due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

PAM would take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, if PSOs are unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring would serve to alert visual PSOs when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It would be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The *R/V Langseth* will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source. Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional five hours without acoustic monitoring during daylight hours. In the proposed IHA, NMFS stated that only two hours of operations would be allowed without acoustic monitoring. However, L–DEO reported that approximately five hours are required to redeploy the spare PAM system if the primary PAM system fails. Note that operations may continue only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids) detected solely by PAM in the applicable exclusion zone in the previous two hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and
- Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of five hours in any 24-hour period.

Establishment of an Exclusion Zone and Buffer Zone

An exclusion zone (EZ) is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs would establish a minimum EZ with a 500 m radius for the 36 airgun array. The 500 m EZ would be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the acoustic source would be shut down.

The 500 m EZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SELcum and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Additionally, a 500 m EZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions.

Pre-Clearance and Ramp-Up

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array's airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-clearance observation (30 minutes) is to ensure no protected species are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only time observations of protected species in the buffer zone would prevent operations (*i.e.,* the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic operations and to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the exclusion and buffer zones for 30 minutes prior to the initiation of ramp-up (pre-clearance).
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in.
- One of the PSOs conducting pre-clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.
- Ramp-up may not be initiated if any marine mammal is within the applicable exclusion or buffer zone. If a marine mammal is observed within the applicable exclusion zone or the buffer zone during the 30 minute pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and 30 minutes for all other species).
- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must

provide information to the PSO documenting that appropriate procedures were followed.

• PSOs must monitor the exclusion and buffer zones during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the applicable exclusion zone. Once ramp-up has begun, observations of marine mammals within the buffer zone do not require shutdown or powerdown, but such observation shall be communicated to the operator to prepare for the potential shutdown or powerdown.

• Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances.

• If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than that described for shutdown and powerdown (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable exclusion zone. For any longer shutdown, pre-clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-clearance watch of 30 min is not required.

• Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance of 30 min.

Shutdown and Powerdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array while a powerdown requires immediate de-activation of all individual airgun elements of the array except the single 40-in^3 airgun. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown or powerdown of the acoustic source if a marine mammal is detected within the applicable exclusion zone. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown and powerdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up and powerdown) shutdown must occur under the following conditions:

• A marine mammal appears within or enters the applicable exclusion zone; and

• A marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable exclusion zone.

The shutdown requirements described below have been added to the final IHA as they were not included in the proposed IHA. Under the following conditions L–DEO must implement shutdown:

• A marine mammal species, for which authorization was granted but the takes have been met, approaches the Level A or B harassment zones;

• A large whale with a calf or an aggregation of large whales is observed regardless of the distance from the *Langseth;*

• A melon-headed whale or group of melon-headed whales is observed in the range of the Kohala resident stock. This stock is found off the the Kohala Peninsula and west coast of Hawaii Island and at a depth of less than 2,500 m (Carretta *et al.* 2018). L–DEO will attempt to time their seismic operations along Trackline 1 so they will traverse the Kohala resident stock's range during daytime.

• A spinner or bottlenose dolphin or group of dolphins is observed approaching or is within the Level B harassment zone in the habitat of the specific MHI insular stock if the authorized takes have been met for any of these stocks.

When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the EZ. If the acoustic PSO cannot confirm presence within the EZ, visual PSOs will be notified but shutdown is not required.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the 500 m EZ. The animal would be considered to have cleared the 500 m EZ if it is visually observed to have departed the 500 m EZ, or it has not been seen within the 500 m EZ for 15 min in the case of small odontocetes and pinnipeds, or 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

The shutdown requirement can be waived for small dolphins in which case the acoustic source shall be powered down to the single 40-in^3 airgun if an individual is visually detected within the exclusion zone. As defined here, the small delphinoid group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement would apply solely to specific genera of small dolphins including *Tursiops, Delphinus, Lagenodelphis, Lagenorhynchus, Lissodelphis, Stenella and Steno.* The acoustic source shall be powered down to 40-in^3 airgun if an individual belonging to these genera is visually detected within the 500 m exclusion zone. Note that when the acoustic source is powered down to the 40-in^3 airgun due to the presence of specified dolphins, a shutdown zone of 100 m and Level B harassment zone of 430 m will be in effect for species other than specified dolphin genera that may approach the survey vessel. This mitigation measure had not been included in the notice of proposed IHA.

Powerdown conditions shall be maintained until delphinids for which shutdown is waived are no longer observed within the 500 m exclusion zone, following which full-power operations may be resumed without ramp-up. Visual PSOs may elect to waive the powerdown requirement if delphinids for which shutdown is waived appear to be voluntarily approaching the vessel for the purpose of interacting with the vessel or towed gear, and may use best professional judgment in making this decision.

We include this small delphinoid exception because power-down/shutdown requirements for small delphinoids under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small delphinoids are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely

unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small delphinoids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012). The potential for increased shutdowns resulting from such a measure would require the Langseth to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinoids) are no more likely to incur auditory injury than are small delphinoids, they are much less likely to approach vessels. Therefore, retaining a power-down/shutdown requirement for large delphinoids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a power-down/shutdown requirement for large delphinoids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger exclusion zone). If PSOs observe any behaviors in a small delphinid for which shutdown is waived that indicate an adverse reaction, then powerdown will be initiated immediately.

Upon implementation of shutdown, the source may be reactivated after the marine mammal(s) has been observed exiting the applicable exclusion zone (*i.e.,* animal is not required to fully exit the buffer zone where applicable) or following 15 minutes for small odontocetes and 30 minutes for all other species with no further observation of the marine mammal(s).

In the event of a live stranding (or near-shore atypical milling) event, L–DEO must adhere to recently established protocols, which were not contained in the proposed IHA. If the stranding event occurs within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise the IHA-holder of the need to implement shutdown procedures for all active acoustic sources operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following:

- If at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise the IHA-holder that the shutdown around the animals' location is no longer needed.
- Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee) determines and advises the IHA-holder that all live animals involved have left the area (either of their own volition or following an intervention).
- If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the IHA-holder will be required to determine what measures are necessary to minimize that likelihood (*e.g.,* extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

Shutdown procedures are not related to the investigation of the cause of the stranding and their implementation is not intended to imply that the specified activity is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that contributed to the stranding.

Vessel Strike Avoidance

These measures apply to all vessels associated with the planned survey activity; however, we note that these requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply. These measures include the following:

1. Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should be exercised when an animal is observed. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (specific distances detailed below), to ensure the potential for strike is minimized. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal to broad taxonomic group (*i.e.,* as a large whale or other marine mammal).

2. Vessel speeds must be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of any marine mammal are observed near a vessel.

3. All vessels must maintain a minimum separation distance of 100 m from large whales (*i.e.,* sperm whales and all baleen whales.

4. All vessels must attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel.

5. When marine mammals are sighted while a vessel is underway, the vessel should take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel should reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This recommendation does not apply to any vessel towing gear.

We have carefully evaluated the suite of mitigation measures described here and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the planned measures, 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 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.

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations and nighttime start ups (if applicable) of the airguns. During seismic operations, at least five visual PSOs would be based aboard the *Langseth.* Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 × 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel.
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals. (c) PSOs must have the following requirements and qualifications:
- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider.
- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards),
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working.
- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand.
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course.
- NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved.
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics.
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

For data collection purposes, PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

- Vessel names (source vessel and other vessels associated with survey) and call signs;
- PSO names and affiliations;
- Dates of departures and returns to port with port name;
- Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
- Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
- Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions

changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;

• Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.,* vessel traffic, equipment malfunctions); and

• Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

The following information should be recorded upon visual observation of any protected species:

• Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

• PSO who sighted the animal;

• Time of sighting;

• Vessel location at time of sighting;

• Water depth;

• Direction of vessel's travel (compass direction);

• Direction of animal's travel relative to the vessel;

• Pace of the animal;

• Estimated distance to the animal and its heading relative to vessel at initial sighting;

• Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;

• Estimated number of animals (high/low/best);

• Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);

• Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

• Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);

• Animal's closest point of approach (CPA) and/or closest distance from any element of the acoustic source;

• Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other); and

• Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a marine mammal is detected while using the PAM system, the following information should be recorded:

• An acoustic encounter identification number, and whether the detection was linked with a visual sighting;

• Date and time when first and last heard;

• Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal);

• Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

L–DEO will be required to shall submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of protected species near the activities, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all protected species sightings (dates, times, locations, activities, associated survey activities). The report must include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those on the trackline but not detected. The report must also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files must be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data must be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as described above and the IHA. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Reporting Injured or Dead Marine Mammals

NMFS has revised the standard protcols that apply when an injured or dead marine mammal is discovered and has included them here. These updated protocols were not described in the proposed IHA. In the event that personnel involved in survey activities covered by the authorization discover an injured or dead marine mammal, the IHA-holder shall report the incident to the Office of Protected Resources (OPR), NMFS and to the NMFS Pacific Islands Regional Stranding Coordinator as soon as feasible. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

Additional Information Requests—If NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted (example circumstances noted below), and an investigation into the stranding is being pursued, NMFS will submit a written request to the IHA-holder indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information.

• Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and

• If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.,* within 48 hours and 50 km) and immediately after the discovery of the stranding.

Examples of circumstances that could trigger the additional information request include, but are not limited to, the following:

• Atypical nearshore milling events of live cetaceans;

• Mass strandings of cetaceans (two or more individuals, not including cow/calf pairs);
• Beaked whale strandings;
• Necropsies with findings of pathologies that are unusual for the species or area; or
• Stranded animals with findings consistent with blast trauma.

In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

Vessel Strike—In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, L–DEO must shall report the incident to OPR, NMFS and to regional stranding coordinators as soon as feasible. The report must include the following information:
• Time, date, and location (latitude/longitude) of the incident;
• Species identification (if known) or description of the animal(s) involved;
• Vessel's speed during and leading up to the incident;
• Vessel's course/heading and what operations were being conducted (if applicable);
• Status of all sound sources in use;
• Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
• Estimated size and length of animal that was struck;
• Description of the behavior of the marine mammal immediately preceding and following the strike;
• If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
• Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
• To the extent practicable, photographs or video footage of the animal(s).

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' 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, our analysis applies to all species listed in Table 7 and 8, given that NMFS expects the anticipated effects of the planned seismic survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of L–DEO's planned surveys, even in the absence of planned mitigation. As discussed in the *Potential Effects* section, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

NMFS has authorized a limited number of instances of Level A harassment of 6 species and Level B harassment of 39 marine mammal species. However, we believe that any PTS incurred in marine mammals as a result of the activity would be in the form of only a small degree of PTS, not total deafness, and would be unlikely to affect the fitness of any individuals, because of the constant movement of both the *Langseth* and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time (*i.e.,* since the duration of exposure to loud sounds will be relatively short). We expect that the majority of takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance 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).

Potential impacts to marine mammal habitat were discussed previously in this document (see *Potential Effects of the Specified Activity on Marine Mammals and their Habitat*). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. 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 project areas; 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 relatively short duration (up to 24 days for Hawaii survey) and temporary nature of the disturbance as well as the availability of similar habitat and resources in the surrounding area, 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.

The activity is expected to impact a small percentage of all marine mammal stocks that would be affected by L–DEO's planned survey (less than 15 percent percent of all species, including those taken by both surveys). Additionally, the acoustic ''footprint'' of the planned surveys would be small relative to the ranges of the marine mammals that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the planned survey area.

The required mitigation measures are expected to reduce the severity of takes by allowing for detection of marine

mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via power downs and/or shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the required mitigation will be effective in preventing at least some extent of potential PTS in marine mammals that may otherwise occur in the absence of the mitigation.

The ESA-listed marine mammal species under our jurisdiction that are likely to be taken by the planned surveys include the endangered sei, fin, blue, sperm, gray, North Pacific Right, Western North Pacific DPS humpback, and Main Hawaiian Islands Insular DPS false killer whale as well as the Hawaiian monk seal. We have authorized very small numbers of takes for these species relative to their population sizes. Therefore, we do not expect population-level impacts to any of these species. The other marine mammal species that may be taken by harassment during the survey are not listed as threatened or endangered under the ESA. With the exception of the northern fur seal, none of the non-listed marine mammals for which we have authorized take are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

The tracklines of the Hawaii survey either traverse or are proximal to BIAs for 11 species that NMFS has authorized for take. Ten of the BIAs pertain to small and resident cetacean populations while a breeding BIA has been delineated for humpback whales. However, this designation is only applicable to humpback whales in the December through March timeframe (Baird *et al.,* 2015). Since the Hawaii survey is in September, there will be no effects on humpback whales. For cetacean species with small and resident BIAs in the Hawaii survey area, that designation is applicable year-round. There are up to 24 days of seismic operations planned for the Hawaii survey. Only a portion of those days would involve seismic operations within BIA boundaries along Tracklines 1 and 2. Time spent in any single BIA during a trackline pass would be less than a day. No physical impacts to BIA habitat are anticipated from seismic activities. While SPLs of sufficient strength have been known to cause injury to fish and fish mortality, the most likely impact to prey species from survey activities would be temporary avoidance of the affected area. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is expected. Given the short operational seismic time near or traversing BIAs, as well as the ability of cetaceans and prey species to move away from acoustic sources, NMFS expects that there would be, at worst, minimal impacts to animals and habitat within the designated BIAs.

NMFS has included a number of mitigation and monitoring measures to reduce potential impacts to small and resident populations in the Main Hawaiian Islands. Given the small population and large recorded group sizes of Kohala resident melon-headed whales, L–DEO must shut down when a melon-headed whale or group of melon-headed whales is observed in the range of the Kohala resident stock. Furthermore, L–DEO will plan to time their seismic operations along Trackline 1 so they will traverse the Kohala resident stock's range during daytime. L–DEO will similarly plan to conduct daylight crossings of designated critical habitat for the Main Hawaiian Island insular false killer whale. Spinner and bottlenose dolphin stocks also have small and resident populations. Therefore, when a group of dolphins is observed approaching or is within the Level B harassment zone in the habitat of the specific MHI insular stock L–DEO must shut down if the authorized takes have been met for any of these stocks. Additional protective measures include mandatory shutdown when a large whale with a calf or an aggregation of large whales is observed regardless of the distance from the Langseth;

NMFS concludes that exposures to marine mammal species and stocks due to L–DEO's planned survey would result in only short-term (temporary and short in duration) effects to individuals 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. NMFS does not anticipate that authorized take numbers will impact annual rates of recruitment or survival.

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 marine mammal species or stocks through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- The planned activity is temporary and of relatively short duration;
- The anticipated impacts of the activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel;
- The number of instances of PTS that may occur are expected to be limited. Instances of PTS that are incurred in marine mammals would be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the survey to avoid exposure to sounds from the activity;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the survey will be temporary and spatially limited;
- The required mitigation measures, including visual and acoustic monitoring, power-downs, and shutdowns, are expected to minimize potential impacts to marine mammals. Specific mitigation measures added to this final IHA include shutting down when a large whale with a calf or an aggregation of large whales is observed; shutting down when a melon-headed whale or group of melon-headed whales is observed in the range of the Kohala resident stock; shutting down when a spinner or bottlenose dolphin or group of dolphins approach the Level B harassment zone in the habitat of the specific MHI insular stock if the authorized takes have been met for any of these stocks; and timing surveys to traverse ranges of the Kohala resident stock of melon-headed whale and the Main Hawaiian Islands insular stock of false killer whales during daylight hours.

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 the planned 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; 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. Tables 7 and 8 provide numbers of authorized take by Level A harassment and Level B harassment. These are the numbers we use for purposes of the small numbers analysis.

The numbers of marine mammals for which we have authorized take across the two surveys would be considered small relative to the relevant populations (a maximum of 14.7 percent) for the species for which abundance estimates are available. Several small resident or insular populations that could experience Level B harassment during the Hawaii survey were discussed in the Estimated Take section. For the Kohala resident stock of melo-headed whales (pop. 447), NMFS assumed that up to 3 groups of 20 Kohala residents could be taken by Level B harassment, representing 13.4 percent of the Kohala stock, if they enter the zone undetected by PSOs. Additionally, the range of the Hawaiian Island stock overlaps the range of the Kohala resident stock. Therefore, any melon-headed whale takes within the Kohala resident stock's range could also be from either stock. Sesimic operations will occur in the ranges of the Hawaiian Island stock (pop. 128) and Oahu stock (pop. 743) of common bottlenose dolphins. Based on GIS analysis of the tracklines and the ranges of the stocks, NMFS determined that 7 percent of the Hawaii Island stock and 1.2 percent of the Oahu stock could be exposed to Level B harassment. Similar GIS analysis of the Hawaii Island (pop. 631) and Oahu/4-Island (pop. 355) stocks of spinner dolphins resulted in estimated Level B harassment of 3.8 percent of the Hawaii Islands stock population and 6.7 percent of the Oahu/4-Island stock population. Analysis of pantropical spotted dolphins determined that there would be 9 Oahu stock exposures and 82 Hawaii Island stock exposures. The populations of these stocks are unknown, so the percentage of stocks affected cannot be determined. However, the large ranges of these species (up to 20 km from Oahu and 65 km from Hawaii) make it likely that the survey would only impact limited numbers of these stocks.

Based on the analysis contained herein of the planned activity (including the required 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.

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.

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. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division, whenever we propose to authorize take for endangered or threatened species.

The NMFS Permits and Conservation Division issued a Biological Opinion on August 24, 2018 to NMFS's Office of Protected Resources which concluded that the specified activities are not likely to jeopardize the continued existence of the North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, Western North Pacific DPS humpback whale, gray whale, Hawaiian Islands Insular DPS false killer whale, and the Hawaiian monk seal or adversely modify critical habitat because none exists within the action area.

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 the proposed action (*i.e.,* the issuance of regulations and an LOA) with respect to potential impacts on the human environment.

Accordingly, NMFS has adopted the L–DEO Final Environmental Assessment (EA), *Environmental Assessment/Analysis of Marine Geophysical Surveys by the R/V Marcus G. Langseth in the North Pacific Ocean, 2018/2019* and after an independent evaluation of the document found that it included adequate information analyzing the effects on the human environment of issuing incidental take authorizations. In August 2018, NMFS issued a Finding of No Significant Impact (FONSI).

Authorization

As a result of these determinations, we have issued an IHA to L–DEO for conducting seismic surveys in the Pacific Ocean near the main Hawaiian Islands and the Emperor Seamounts area from September 1, 2018 through August 31, 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 27, 2018.

Cathy E. Tortorici,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–19008 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG442

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 Groundfish Advisory Panel 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 Tuesday, September 18, 2018 at 8:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; phone: (781) 245–9300.

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 Advisory Panel will discuss Framework Adjustment 58: Specifications/Management Measures

specifically draft alternatives and analysis including: (1) Rebuilding plan options for several groundfish stocks, (2) 2019 total allowable catches for U.S./Canada stocks of Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder, (3) minimum size exemptions for vessels fishing in Northwest Atlantic Fisheries Organization waters, and (4) guidance on sector overages. They also plan to discuss Amendment 23: Groundfish Monitoring and receive an update on the development of the draft alternatives and analysis. The panel will review the Council's Groundfish Priorities for 2019 and discuss a draft list of possible groundfish priorities for 2019 and make recommendations to the Groundfish Committee. 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. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 28, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–18975 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG449

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Groundfish Plan Teams will meet September 18, 2018 through September 21, 2018.

DATES: The meetings will be held on Tuesday, September 18, 2018 through Friday, September 21, 2018, from 9 a.m. to 5 p.m.

ADDRESSES: The meetings will be held at the Alaska Fishery Science Center in the Traynor Room 2076 and NMML Room 2079, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Stram or Jim Armstrong, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, September 18, 2018 to Friday, September 21, 2018

The Plan Teams will review the preliminary stock assessments for Groundfish and receive reports including but not limited to: 2018 Survey Estimates, CIE Reviews for GOA Pollock and BSAI Flatfish, and the Economic Stock Assessment and Fishery Evaluation (SAFE).

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org* prior to the meeting, along with meeting materials.

Public Comment

Public comment letters will be accepted and should be submitted either electronically to Jim Armstrong, Council staff: *james.armstrong@noaa.gov* or through the mail: North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252. In-person oral public testimony will be accepted at the discretion of the chairs.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: August 28, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–18977 Filed 8–30–18; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and delete products and services previously furnished by such agencies.

DATES: Comments must be received on or before: September 30, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the products listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agency listed:

Products

NSN(s)—Product Name(s):

MR 1100—Set, Brush
MR 1110—Brush, Bottle
MR 13135—Tray, Ice Cube, No Spill
MR 13134—Container, Square, Pop, Small, 0.3 Qt.
MR 13133—Container, Rectangle, Pop, 2.5 Qt.
MR 13132—Container, Square, Pop, Small, 0.9 Qt.
MR 13131—Container, Rectangle, Pop, 1.5 Qt
MR 13130—Set, Bowl, Colander, Large, 3 pc
MR 13129—Set, Container, Plastic, 16 pc
MR 13128—Set, Bowl, Mixing, 3 pc
MR 13127—Colander, Plastic
MR 13126—Board, Cutting, Prep

MR 13125—Board, Cutting, Utility
MR 13124—Set, Clip, 8 pc
MR 13122—Box, Grater
MR 13121—Clips, Magnetic
MR 13120—Set, Container, Pop, 5pc
MR 1124—Basket, Suction, Sink, Steel
MR 1123—Mat Drying, Silicone, Large
MR 1122—Brush, Dish
MR 1119—Rack, Dish
MR 1118—Holder, Sponge
MR 1114—Mat, Sink, Small
MR 1112—Set, Cleaning, Water Bottle
MR 1111—Strainer, Sink
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Mandatory for: The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4
Contracting Activity: Defense Commissary Agency
Distribution: C-List

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): 7510–01–484–0012—Paper Holder & Micro Note Holder
Mandatory Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s):
8010–00–935–6609—Enamel, Lacquer, Acrylic, Gloss White
8010–00–935–7064—Enamel, Lacquer, Acrylic, Gloss Red
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s):
MR 10739—Herb Stripper, Includes Shipper 20739
MR 10738—Holder, Pot Lid and Utensil, Includes Shipper 20738
MR 10737—Snack Container, Licensed, Includes Shipper 20735
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Defense Commissary Agency

NSN(s)—Product Name(s):
7510–01–417–1220—Toner, Cartridges, New
Mandatory Source of Supply: Alabama Industries for the Blind, Talladega, AL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

Services

Service Type: Linen Management Service
Mandatory for: Fleet and Industrial Supply Center, Norfolk, VA
Mandatory Source of Supply: Chesapeake Service Systems, Inc., Chesapeake, VA
Contracting Activity: DEPT OF THE NAVY, U.S. FLEET FORCES COMMAND

Service Type: Food Service Attendant Service
Mandatory for: U.S. Navy Cargo Handling and Port Group, Williamsburg, VA
Mandatory Source of Supply: VersAbility Resources, Inc., Hampton, VA
Contracting Activity: DEPT OF THE NAVY, U.S. FLEET FORCES COMMAND

Service Type: Administrative Service
Mandatory for: Quantico Marine Corps Base—Systems Command: 2033 Barnett Ave., Quantico, VA
Mandatory Source of Supply: Didlake, Inc., Manassas, VA
Contracting Activity: DEPT OF THE NAVY, U.S. FLEET FORCES COMMAND

Service Type: Mail and Messenger Service
Mandatory for: Naval Engineering Field Activity Chesapeake: Atlantic Division, Washington Navy Yard, Naval Facilities Engineering Command (NAVFACENGCOM), 851 Sicard Street NE, Washington, DC
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: DEPT OF THE NAVY, U.S. FLEET FORCES COMMAND

Service Type: Custodial Service
Mandatory for: U.S. Army Corps of Engineers, Lake Michigan Area Office, 307 South Harbor Street, Grand Haven, MI
Mandatory Source of Supply: Kandu Industries, Inc., Holland, MI
Contracting Activity: DEPT OF THE ARMY, W072 ENDIST DETROIT

Service Type: Janitorial/Custodial Service
Mandatory for: Portsmouth Naval Shipyard: Buildings 153 & 170, Kittery, ME
Mandatory Source of Supply: Northern New England Employment Services, Portland, ME
Contracting Activity: DEPT OF THE NAVY, NAVY CRANE CENTER

Service Type: Janitorial/Custodial Service
Mandatory for: National Personnel Records Center: 111 Winnebago Street, St. Louis, MO
Mandatory Source of Supply: Challenge Unlimited, Inc., Alton, IL
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR

Service Type: Grounds Maintenance Service
Mandatory for: Vancouver Army Barracks, Vancouver, WA
Mandatory Source of Supply: Relay Resources, Portland, OR
Contracting Activity: DEPT OF THE ARMY, W6QM MICC CTR–FT DIX (RC)

Michael R. Jurkowski,

Business Management Specialist.

[FR Doc. 2018–19006 Filed 8–30–18; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds a product and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* September 30, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/25/2018(83 FR 102) and 6/8/2018 (83 FR 111), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and service and impact of the additions on the current or most recent contractors, the Committee has determined that the product and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and service to the Government.

2. The action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and service are added to the Procurement List:

Product

NSN(s)—Product Name(s):
8540–00–NIB–0101—Towel, Multifold, 3 Panel, White
Mandatory for: Total Government Requirement
Mandatory Source of Supply: Outlook-Nebraska, Inc., Omaha, NE
Contracting Activity: General Services Administration, New York, NY
Distribution: A-List

Service

Service Type: Mess Attendant Service
Mandatory for: US Air Force, Luke AFB, Ray V. Hensman (RVH) Dining Facility and Falcon Inn (FI) Flight Kitchen, 14185 Falcon Street, Luke AFB, AZ
Mandatory Source of Supply: The Centers for Habilitation/TCH, Tempe, AZ
Contracting Activity: Dept of the Air Force, FA4887 56 CONS CC

Deletions

On 7/27/2018 (83 FR 145), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

NSN(s)—Product Name(s):
8415–01–502–3285—Silk/Lightweight Drawers, Size Small-Regular, Green
8415–01–502–3287—Silk/Lightweight Drawers, Size Medium-Regular, Green
8415–01–502–3288—Silk/Lightweight Drawers, Size Large-Regular, Green
8415–01–502–3289—Silk/Lightweight Drawers, Size Large-Long, Green
8415–01–502–3290—Silk/Lightweight Drawers, Size Extra Large-Regular
8415–01–502–3292—Silk/Lightweight Drawers, Size Extra Large-Long, G
8415–01–502–3321—Green, Midweight Undershirt, Size Short—Regular
8415–01–502–3322—Green, Midweight Undershirt, Size Medium—Regular
8415–01–502–3324—Green, Midweight Undershirt, Size Large—Regular
8415–01–502–3325—Green, Midweight Undershirt, X-tra Large—Regular
8415–01–502–3328—Green, Midweight Undershirt, Large—Long
8415–01–502–3341—Green, Midweight Undershirt, X-Large—Long
8415–01–502–4366—Silk/Lightweight Undershirts, Size Small-Regular,
8415–01–502–4368—Silk/Lightweight Undershirts, Size Medium-Regular,
8415–01–502–4370—Silk/Lightweight Undershirts, Size Large-Regular,
8415–01–502–4371—Silk/Lightweight Undershirts, Size Large-Long, Green
8415–01–502–4373—Silk/Lightweight Undershirts, Size Extra Large-Reg
8415–01–502–4375—Silk/Lightweight Undershirts, Size Extra Large-Lon
Mandatory Source(s) of Supply: Peckham Vocational Industries, Inc., Lansing, MI; Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY
Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s):
5340–01–230–0219—Bracket, Angle with Four Holes, Abrams M–1 Tank, Green
5340–01–386–2917—Bracket, Angle, Command AAVC–7A1 Amphibious Assault Vehicle
5340–01–112–9693—Bracket, Angle, Bradley Fighting Vehicle System
5340–01–525–0579—Bracket, Angle, Right Side, Medium Tactical Vehicles
5340–01–102–3483—Bracket, Angle with Two Holes, Abrams M–1 Tank
5340–01–525–0574—Bracket, Angle, Left Side, Medium Tactical Vehicles
5340–01–519–7318—Bracket, Angle, Truck 1–1/4 Ton HMMWV Vehicle System
5340–01–162–7040—Bracket, Angle, Personnel M113A1, M113–A2, M–113A3 Armored Carrier
5340–01–163–4245—Bracket, Double Angle, Hercules M88A2 Recovery Vehicle
5340–01–288–5231—Bracket, Double Angle, Bradley Fighting Vehicle System
5340–01–167–1810—Bracket, Mounting, Personnel M113A1, M113–A2, M–113A3 Armored Carrier
5340–01–329–8589—Bracket, Mounting, Bradley Fighting Vehicle System
5340–01–084–1232—Bracket, Mounting, Cargo Truck
5340–01–500–4197—Bracket, Mounting, Mine Resistant Ambush Protected Fighting Vehicle
5340–00–627–5411—Bracket, Mounting, Stratofortress B–52 Aircraft
5340–01–347–9608—Bracket, Mounting, F–16 Aircraft
5340–00–602–4977—Bracket, Mounting, Hercules M88A2 Recovery Vehicle
5340–01–272–6634—Bracket, Mounting, Truck 1–1/4 Ton HMMWV Vehicle System
5340–01–098–5119—Bracket, Mounting, Howitzer M–109
5340–01–078–7642—Bracket, Mounting, Abrams M–1 Tank
5340–01–521–0196—Bracket, Mounting, Non-Weapons System
5340–01–458–0473—Bracket, Mounting, M–16 Rifle 5.56MM
Mandatory Source(s) of Supply: Unknown
Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s):
6840–00–NIB–0039—Disinfectant Spray, Aerosol, Lysol Brand III, Original Scent
6840–00–NIB–0040—Disinfectant Spray, Aerosol, Lysol Brand III, Fresh Scent
6840–00–NIB–0041—Disinfectant Spray, Aerosol, Lysol Brand III, Country Scent
6840–00–NIB–0042—Disinfectant Spray, Aerosol, Lysol Brand III, Crisp Linen Scent
6840–00–NIB–0043—Disinfectant Spray, Aerosol, Lysol Brand III, Spring Waterfall Scent
Mandatory Source(s) of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: General Services Administration, New York, NY

NSN(s)—Product Name(s): 8410–00–NSH–6369—Knee Length, X Large
Mandatory Source(s) of Supply: Human Technologies Corporation, Utica, NY
Contracting Activity: AMS 31C3, Washington, DC

Services

Service Type: Janitorial/Custodial Service
Mandatory for: USPS, Mail Transportation Equipment Center: 7600 West Roosevelt Road, Forest Park, IL
Mandatory Source(s) of Supply: Lester and Rosalie ANIXTER CENTER, Chicago, IL
Contracting Activity: U.S. Postal Service, Washington, DC

Service Type: Janitorial/Custodial Service
Mandatory for: Naval Air Reserve Center, 6201 32nd Avenue, Minneapolis, MN
Mandatory Source(s) of Supply: AccessAbility, Inc., Minneapolis, MN
Contracting Activity: Dept of the Navy, U S Fleet Forces Command

Service Type: Laundry Service
Mandatory for: U.S. Army Aviation Support Command: CMPSC Commissary, Granite City, IL
Mandatory Source(s) of Supply: Unknown
Contracting Activity: Dept of the Army, W40M Northeregion Contract Ofc

Service Type: Food Service Attendant Service

Mandatory for: U.S. Army Aviation Support Command: CMPSC Niagara Falls International Airport: 914th Tactical Airlift Group (AFRES), Niagara Falls, NY
Mandatory Source(s) of Supply: Unknown
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK

Note: The Committee for Purchase From People Who Are Blind or Severely Disabled published a document in the **Federal Register** of July 27, 2018, concerning an incorrect notice of deletion for Ground Maintenance Service for the U.S. Army Aviation Support Command: CMPSC, Niagra Falls International Airport: 914th Tactical Airlift Group (AFRES). As shown immediately above, the notice should read Food Service Attendant Service.

Michael R. Jurkowski,

Business Management Specialist.

[FR Doc. 2018–19007 Filed 8–30–18; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions; Corrections

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice; corrections.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled published a document in the **Federal Register** of August 24, 2018, concerning a notice of additions for NSNs: 2540–00–587–2532—Tarpaulin, Green, 12′ x 17′ and 2540–01–330–8062—Tarpaulin, Tan, 12′ x 17′ to the Procurement List for the Defense Logistics Agency Land and Maritime. The document should contain ''Mandatory for'' and ''Distribution'' information. And, the document should correct the Commission Response.

Also, concerning NSNs 5180–00–NIB–0025—Tool Kit, Refrigeration, Base and 5180–00–NIB–0026—Tool Kit, Refrigeration, Individual to the Procurement List for U.S. Army Contracting Command—Warren. The document corrects ''the NSNs'' information and Mandatory Source of Supply.

DATES: Comments must be received on or before September 23, 2018.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117.

Correction

In the **Federal Register** of August 24, 2018, in FR Doc. 83, No. 165, on page 42878, in the third column, statement to read: Commission Response to **Federal Register** Comment:, and include Mandatory for: 100% of the requirement of the Department of Defense and Distribution: C-List.

On page 42881, in the first column, correct the NSNs to read 5180–01–666–1184—Tool Kit, Refrigeration, Base and 5180–01–666–0751—Tool, Kit Refrigeration, Individual and correct Mandatory Source of Supply to read Wiscraft, Inc., Milwaukee, WI.

Dated: August 27, 2018.

Michael R. Jurkowski,

Business Management Specialist, Business Operations.

[FR Doc. 2018–19005 Filed 8–30–18; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2018–0024]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to revise an existing information collection titled, ''Consumer Complaint Intake System Company Portal Boarding Form.''

DATES: Written comments are encouraged and must be received on or before October 1, 2018 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov.*
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review'', use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to the Bureau of Consumer Financial Protection, (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Complaint Intake System Company Portal Boarding Form.

OMB Control Number: 3170–0054.

Type of Review: Revision of a currently approved collection.

Affected Public: Private sector.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 94.

Abstract: Section 1013(b)(3)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, requires the Bureau of Consumer Financial Protection (''the Bureau'') to ''facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.'' [1] In furtherance of its statutory mandates related to consumer complaints, the Bureau utilizes a Consumer Complaint Intake System Company Portal Boarding Form (Boarding Form) to sign up companies for access to the secure, web-based Company Portal (Company Portal). The Company Portal allows companies to view and respond to complaints submitted to the Bureau, supports the efficient routing of consumer complaints to companies, and enables a timely and secure response by companies to the Bureau and

[1] Codified at 12 U.S.C. 5493(b)(3)(A). *See also* Dodd-Frank Act, Section 1034 (discussing responses to consumer complaints), codified at 12 U.S.C. 5534; Section 1021(c)(2) (noting that one of the Bureau's primary functions is ''collecting, investigating, and responding to consumer complaints''), codified at 12 U.S.C. 5511(c)(2).

consumers.[2] This information collection reflects comments received in response to the May 14, 2018 (83 FR 22254) Notice and Request for Comment, seeking input from the public regarding renewal of the Boarding Form with modifications to improve efficiency and reduce company burden.

Request for Comments

The Bureau issued a 60-day **Federal Register** notice on May 14, 2018, 83 FR 22254, Docket Number: CFPB–2018–0018. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the 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. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: August 27, 2018.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2018–19063 Filed 8–30–18; 8:45 am]

BILLING CODE 4810–AM–P

[2] In addition to the Boarding Form for companies, the Bureau utilizes separate OMB-approved forms to board government agencies and congressional offices onto their own distinct portals to access certain complaint information through OMB Control No. 3170–0057 (Consumer Response Government and Congressional Boarding Forms; expires December 31, 2018).

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense, Department of Defense.

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces will take place.

DATES: Open to the public, Friday, September 7, 2018 from 11:00 a.m. to 1:00 p.m.

ADDRESSES: One Liberty Center, 875 N Randolph Street, Suite 150, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dwight Sullivan, 703–695–1055 (Voice), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DACIPAD, One Liberty Center, 875 N Randolph Street, Suite 150, Arlington, Virginia 22203. Website: *http://dacipad.whs.mil/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its meeting on September 7, 2018. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), Congress tasked the DAC–IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the ninth public meeting held by the DAC–IPAD. The purpose of the meeting is to deliberate on the Committee's letter to the Secretary of Defense which includes its recommendations on the implementation of Article 140a of the Uniform Code of Military Justice (UCMJ) regarding military justice data collection and management.

Agenda: 11:00 a.m.–11:05 a.m. Welcome and introduction; 11:05 a.m.–12:45 p.m. Committee deliberations regarding Article 140a, UCMJ; 12:45 p.m.–1:00 p.m. Public comment; 1:00 p.m. Adjourn.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. Visitors are required to sign in at the One Liberty Center security desk and must leave government-issued photo identification on file and wear a visitor badge while in the building. Department of Defense Common Access Card (CAC) holders who do not have authorized access to One Liberty Center must provide an alternate form of government-issued photo identification to leave on file with security while in the building. All visitors must pass through a metal detection security screening. Individuals requiring special accommodations to access the public meeting should contact the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made. In the event the Office of Personnel Management closes the government due to inclement weather or for any other reason, please consult the website for any changes to the public meeting date or time.

Written Statements: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. Oral statements from the public will be permitted, though the number and length of such oral statements may be limited based on the time available and the number of such requests. Oral presentations by members of the public will be permitted from 3:40 p.m. to 4:00 p.m. on April 20, 2018, in front of the Committee members.

Dated: August 27, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–18888 Filed 8–30–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Final Missouri River Recovery Management Plan and Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Kansas City and Omaha Districts of the U.S. Army Corps of Engineers (USACE), in cooperation with the U.S. Fish and Wildlife Service (USFWS), have developed the Missouri River Recovery Management Plan and Environmental Impact Statement (MRRMP–EIS). This document is a programmatic assessment of major federal actions necessary to avoid a finding of jeopardy to the pallid sturgeon (*Scaphirhynchus albus*), interior least tern (*Sterna antillarum athalassos*), and the Northern Great Plains piping plover (*Charadrius melodus*) caused by operation of the Missouri River Mainstem System and the Kansas River Reservoir System and operation and maintenance of the Missouri River Bank Stabilization and Navigation Project (BSNP) in accordance with the Endangered Species Act (ESA) of 1973, as amended. This programmatic document also assesses the Missouri River BSNP fish and wildlife mitigation project described in the 2003 Record of Decision (ROD) and authorized by the Water Resources Development Act (WRDA) of 1986, 1999, and 2007 as it relates to endangered species.

DATES: Submit written comments on the final EIS and supporting documents on or before October 9, 2018.

ADDRESSES: Send written comments to U.S. Army Corps of Engineers, Omaha District, ATTN: CENWO–PM–AC—MRRMP–EIS, 1616 Capitol Ave., Omaha, NE 68102; attach comment letters via email at *cenwo-planning@usace.army.mil;* or provide comments via an online comment form (preferred method) at *http://parkplanning.nps.gov/MRRMP.*

FOR FURTHER INFORMATION CONTACT: Tiffany Vanosdall, Project Manager at 402–995–2695.

SUPPLEMENTARY INFORMATION: The USACE is issuing this notice pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (43 CFR parts 1500 through 1508). This notice announces the availability of the final MRRMP–EIS. The MRRMP–EIS, its appendices, and other supporting documents can be accessed at: *www.moriverrecovery.org* under the ''Management Plan'' tab on the website homepage. These documents can also be accessed at *http://parkplanning.nps.gov/MRRMP.*

Background Information

The draft MRRMP–EIS was released on December 23, 2016 and included a 122-day public comment period that ended on April 24, 2017. During that time USACE held six public meetings to solicit comments from the public. USACE analyzed the comments received from the public and considered them in preparation of the final MRRMP–EIS (Appendix K). The final MRRMP–EIS is available for public review until October 9, 2018. The USACE has also completed formal consultation with the USFWS under Section 7 of the ESA. A final Biological Assessment (BA) was completed by the USACE in October of 2017 and a Final BiOp was completed by the USFWS in April, 2018. The BiOp concludes that the proposed action described in the BA would not cause jeopardy for the least tern, piping plover, or pallid sturgeon. The preferred alternative in the Final EIS incorporates the proposed action described in the 2017 BA and incorporates the 2018 BiOp.

This EIS provides the necessary information for the public to fully evaluate a range of alternatives designed to meet the purpose and need of the MRRMP–EIS and to provide thoughtful and meaningful comment for the Agency's consideration. Six alternatives were carried forward for detailed evaluation in the MRRMP–EIS (the no-action alternative and five action alternatives). The following management actions were included in all six of the alternatives:

—Mechanical construction of emergent sandbar habitat (ESH);
—Vegetation management, predator management, and human restriction measures on ESH;
—Pallid sturgeon propagation and augmentation;
—Pallid sturgeon early life stage habitat construction downstream of Ponca, Nebraska;
—Habitat development and management of acquired lands; and
—Monitoring and evaluation of management actions.

However, the scale and extent of mechanical ESH creation and pallid surgeon early life stage habitat construction would vary among the alternatives.

Under the no-action alternative, in addition to the actions common to all alternatives, the USACE would mechanically construct ESH at a rate of 164 acres per year in the Garrison and Gavins Point reaches and construct pallid early life stage habitat to achieve an average of 20 acres of shallow water habitat per river mile. The no-action alternative would also continue to implement the spring pulse included in the Master Manual.

Alternative 2 represents the USFWS's interpretation of the management actions that could be ultimately implemented as part of the 2003 Amended BiOp Reasonable and Prudent Alternative (RPA). In addition to the actions common to all alternatives, the USACE would mechanically construct ESH at a rate up to 1,331 acres per year in the Garrison, Fort Randall, Lewis and Clark Lake, and Gavins Point reaches and pallid early life stage habitat to achieve an average of 30 acres of shallow water habitat per river mile. Alternative 2 would also include a spring pallid flow release consisting of a bimodal pulse in March and May and a low summer flow.

Under Alternatives 3–6, the USACE would follow the processes and criteria in the SAMP that was developed based on the results of the effects analysis. The SAMP identifies the process and criteria to implement initial management actions, assess hypotheses, and introduce new management actions should they become necessary. Initial management actions include specific study efforts to fill data gaps in knowledge of the pallid sturgeon life cycle, creation of spawning habitat for pallid sturgeon to monitor effectiveness, and the construction of pallid early life stage habitat following the interception and rearing complex (IRC) concept identified in the effects analysis.

In addition to the actions common to Alternatives 3–6, Alternative 3 would include mechanical construction of ESH at an average rate of 332 acres per year when construction is needed in the Garrison, Fort Randall, and Gavins Point reaches. Alternative 3 would not implement the plenary spring pulse included in the Master Manual. However, as part of the SAMP the potential for a one-time spawning cue

test release, if studies during the first 9–10 years do not provide a clear answer on whether a spawning cue is important, is included in Alternative 3.

In addition to the actions common to Alternatives 3–6, Alternative 4 would include mechanical construction of ESH at an average rate of 195 acres per year when construction is needed in the Garrison, Fort Randall, and Gavins Point reaches. Alternative 4 also includes implementation of a spring ESH creation release if System storage is at 42 MAF or greater on April 1, normal flows that could create 250 acres of ESH have not occurred in the previous four years, and downstream flow is below identified flood control constraints specific to this alternative.

In addition to the actions common to Alternatives 3–6, Alternative 5 would include mechanical construction of ESH at an average rate of 253 acres per year when construction is needed in the Garrison, Fort Randall, and Gavins Point reaches. Alternative 5 also includes implementation of a fall ESH creation release if System storage is at 54.5 MAF or greater on October 17, normal flows that could create 250 acres of ESH have not occurred in the previous four years, and downstream flow is below identified flood control constraints specific to this alternative.

In addition to the actions common to Alternatives 3–6, Alternative 6 would include mechanical construction of ESH at an average rate of 245 acres per year when construction is needed in the Garrison, Fort Randall, and Gavins Point reaches. Alternative 6 also includes implementation of a spawning cue release, attempted every 3 years, consisting of a bimodal pulse in March and May. These spawning cue releases would not be started or would be terminated whenever downstream flow is at identified flood control constraints specific to this alternative.

The final EIS evaluates the potential effects on the human environment associated with each of the above alternatives. Resources and uses evaluated include: River infrastructure and hydrological processes; pallid sturgeon; piping plover and interior least tern; fish and wildlife habitat; other special status species; water quality; air quality; cultural resources; land use and ownership; commercial sand and gravel dredging; flood risk management and interior drainage; hydropower; irrigation; navigation; recreation; thermal power; water supply; wastewater facilities; tribal interests (other); human health and safety; environmental justice; ecosystem services; and Mississippi River resources.

Based on projected impacts, the ability to meet the plan's purpose, need and species objectives, and other decision criteria, USACE has identified Alternative 3-Mechanical Construction as its preferred alternative. Importantly, Alternative 3 would be implemented under the science and adaptive management framework summarized in Chapter 4 of the MRRMP–EIS and detailed within the Science and Adaptive Management Plan (SAMP).

Schedule. Public comments on the final MRRMP–EIS must be received by October 9, 2018. The USACE will consider new comments received on the final MRRMP–EIS prior to issuing a Record of Decision which is expected in the fall of 2018.

Public Disclosure Statement. If you wish to comment, you may provide your comments as indicated under the **ADDRESSES** section of this notice. Before including your address, phone number, email address, or any other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made available to the public at any time. While you can request us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 20, 2018.

Mark Harberg,

Program Manager, U.S. Army Corps of Engineers.

[FR Doc. 2018–18982 Filed 8–30–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0037]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application for the Educational Flexibility (Ed-Flex) Program

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 new information collection.

DATES: Interested persons are invited to submit comments on or before October 1, 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–0037. 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 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melissa Siry, 202–260–0926.

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: Application for the Educational Flexibility (Ed-Flex) Program.

OMB Control Number: 1810—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 45.

Total Estimated Number of Annual Burden Hours: 1,800.

Abstract: The Educational Flexibility (Ed-Flex) program is authorized under the Education Flexibility Partnership Act of 1999 and was reauthorized by section 9207 of the Every Student Succeeds Act (ESSA). The Ed-Flex program allows the Secretary to authorize a State educational agency that serves an eligible State to waive statutory or regulatory requirements applicable to one or more the included programs for any local educational agency (LEAs), educational service agency, or school within the State. This information collection includes data reporting requirements that States must follow as part of the process of applying to be designated an Ed-Flex Partnership State.

Dated: August 28, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–18992 Filed 8–30–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 19, 2018 8:30 a.m.–4:45 p.m., Thursday, September 20, 2018 8:30 a.m.–1:00 p.m.

ADDRESSES: Embassy Suites by Hilton Seattle Bellevue, 3225 158th Avenue SE, Bellevue, WA 98008.

FOR FURTHER INFORMATION CONTACT: Kristen Holmes, Federal Coordinator, Department of Energy Richland Operations Office, P.O. Box 550, H5–20, Richland, WA 99352; Phone: (509) 373–5803; or Email: *kristen.l.holmes@rl.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Potential Draft Advice
  - Double Shell Tank Integrity
  - Waste Incidental to Reprocessing (WIR)
- Discussion Topics
  - Tri-Party Agreement Agencies' Updates
  - Approval of Hanford Advisory Board Work Plan for 2019
  - Hanford Advisory Board Committee Reports
  - Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristen Holmes at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kristen Holmes at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Kristen Holmes' office at the address or phone number listed above. Minutes will also be available at the following website: *http://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation.*

Signed in Washington, DC, on August 28, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–18935 Filed 8–30–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Methane Hydrate Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Methane Hydrate Advisory Committee. The Federal Advisory Committee Act requires that notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday, October 18, 2018
8:30 a.m. to 9:00 p.m. (CST)—Registration
9:00 a.m. to 5:00 p.m. (CST)—Meeting
Friday, October 19, 2018
8:30 a.m. to 12:00 p.m. (CST)—Meeting

ADDRESSES: Houston Airport Marriott at George Bush International, 18700 John F. Kennedy Blvd., Houston, TX, 77032.

FOR FURTHER INFORMATION CONTACT: Gabby Intihar, U.S. Department of Energy, Office of Oil and Natural Gas, 1000 Independence Avenue SW, Washington, DC 20585. *Phone:* (202) 586–2092.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy, and assist in developing recommendations and priorities for the Department of Energy's Methane Hydrate Research and Development Program.

Tentative Agenda: The agenda will include: Welcome and Introduction by the Designated Federal Officer; Committee Business; Update on Regulatory Reform; Methane Hydrate Program Budget; Update on Methane Hydrate Major Projects and International R&D Activities; Gas Hydrate in the Natural Environment; Advisory Committee Discussion; and Public Comments, if any.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chair of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Gabby Intihar at the phone number listed above and provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government issued identification. Space is limited. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the three-minute rule.

Minutes: The minutes of this meeting will be available for public review and

copying within 60 days at the following website: *http://energy.gov/fe/services/advisory-committees/methane-hydrate-advisory-committee*.

Signed in Washington, DC, on August 28, 2018.

Latanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–18955 Filed 8–30–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2310–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Rose Wind Holdings, LLC

This is a supplemental notice in the above-referenced proceeding Rose Wind Holdings, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 17, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18947 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–706–005.
Applicants: GridLiance West LLC.
Description: Compliance filing: GWL Compliance Filing WS 12 to be effective 9/14/2017.
Filed Date: 8/23/18.
Accession Number: 20180823–5117.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–1788–000.
Applicants: MATL LLP.
Description: Response of MATL LLP to July 24, 2018 letter requesting additional information.
Filed Date: 8/21/18.
Accession Number: 20180821–5125.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2206–001.
Applicants: GridLiance West LLC.
Description: Tariff Amendment: GWL Name Change WS 12 Amendment Filing to be effective 8/13/2018.
Filed Date: 8/23/18.
Accession Number: 20180823–5120.
Comments Due: 5 p.m. ET 9/4/18.

Docket Numbers: ER18–2288–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended Service Agreements City of Victorville Foxborough & SCLA Nos. 218 & 230 to be effective 9/1/2018.
Filed Date: 8/23/18.
Accession Number: 20180823–5130.
Comments Due: 5 p.m. ET 9/13/18.

Docket Numbers: ER18–2289–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Financial Transmission Rights Liquidation Revisions to be effective 8/24/2018.
Filed Date: 8/23/18.
Accession Number: 20180823–5131.
Comments Due: 5 p.m. ET 9/13/18.

Docket Numbers: ER18–2290–000.
Applicants: Northeastern Power Company.
Description: Tariff Cancellation: Notice of Cancellation to be effective 11/27/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5016.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2291–000.
Applicants: Northeastern Power Company.
Description: Tariff Cancellation: Notice of Cancellation tariff 124 to be effective 11/27/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5021.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2292–000.
Applicants: Northeastern Power Company.
Description: Tariff Cancellation: Notice of Cancellation 874 to be effective 11/27/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5022.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2293–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: Changes to ISO New England Financial Assurance Policy to be effective 9/17/2019.
Filed Date: 8/24/18.
Accession Number: 20180824–5071.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2294–000.
Applicants: Public Service Company of New Hampshire.
Description: § 205(d) Rate Filing: Amoskeag Station—Interconnection Agreement to be effective 8/26/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5096.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2295–000.
Applicants: Public Service Company of New Hampshire.
Description: § 205(d) Rate Filing: Ayers Island Station—Interconnection Agreement to be effective 8/26/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5098.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2296–000.
Applicants: Public Service Company of New Hampshire.

Description: § 205(d) Rate Filing: Canaan Station—Interconnection Agreement to be effective 8/26/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5100.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2297–000.
Applicants: Public Service Company of New Hampshire.
Description: § 205(d) Rate Filing: Eastman Falls Station—Interconnection Agreement to be effective 8/26/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5102.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2298–000.
Applicants: Public Service Company of New Hampshire.
Description: § 205(d) Rate Filing: Garvins Falls/Hooksett Station—Interconnection Agreement to be effective 8/26/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5104.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2299–000.
Applicants: Public Service Company of New Hampshire.
Description: § 205(d) Rate Filing: Gorham Station—Interconnection Agreement to be effective 8/26/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5106.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2300–000.
Applicants: Public Service Company of New Hampshire.
Description: § 205(d) Rate Filing: Jackman Station—Interconnection Agreement to be effective 8/26/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5108.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2301–000.
Applicants: Public Service Company of New Hampshire.
Description: § 205(d) Rate Filing: Smith Station—Interconnection Agreement to be effective 8/26/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5110.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2302–000.
Applicants: The United Illuminating Company.
Description: § 205(d) Rate Filing: Localized Costs Sharing Agreement No. 18 to be effective 1/1/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5127.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2303–000.
Applicants: Adams Wind Farm, LLC.
Description: Baseline eTariff Filing: MBR Tariff Filing of Adams Wind Farm LLC to be effective 10/24/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5161.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2304–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: BPA Hermiston Interchange Move Agmt to be effective 8/25/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5162.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2305–000.
Applicants: Bobilli BSS, LLC.
Description: Baseline eTariff Filing: MBR Tariff Filing of Bobilli BSS, LLC to be effective 10/24/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5165.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2306–000.
Applicants: Garwind, LLC.
Description: Baseline eTariff Filing: MBR Tariff Filing of Garwind, LLC to be effective 10/24/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5168.
Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2307–000.
Applicants: Appalachian Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Appalachian Power submits revised ILDSA, Service Agreement No. 1252 to be effective 8/1/2018.
Filed Date: 8/24/18.
Accession Number: 20180824–5171.
Comments Due: 5 p.m. ET 9/14/18.

Take notice that the Commission received the following electric securities filings:
Docket Numbers: ES18–45–000.
Applicants: Allegheny Generating Company.
Description: Supplement to July 6, 2018 Application for Authorization Under Section 204(a) of the Federal Power Act to Issue Debt, et al. of Allegheny Generating Company.
Filed Date: 8/23/18.
Accession Number: 20180823–5160.
Comments Due: 5 p.m. ET 9/4/18.

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: August 24, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18956 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–540–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Request Under Blanket Authorization

Take notice that on August 17, 2018, Panhandle Eastern Pipe Line Company, LP (Panhandle), 1300 Main Street, Houston, Texas 77002, filed in Docket No. CP18–540–000, a Prior Notice Request pursuant to sections 157.205, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Panhandle's blanket certificate issued in Docket No. CP83–83–000, requesting approval to abandon by sale to ETC Field Services LLC, the Deer Loop Lateral Facilities, consisting of approximately 20.64 miles of 12.75-inch diameter pipeline and appurtenances, located in Carson, Hutchinson and Moore Counties, Texas (Deer Loop Lateral Abandonment Project).

The Deer Loop Lateral was originally constructed to transport high-pressure gas from Panhandle's Deer Compressor Station to its Sneed Compressor Station, allowing existing Deer to Sneed facilities to operate as a lower-pressure gathering system.[1] Over the years, Panhandle abandoned or spun off its facilities located upstream of the Deer Loop Lateral when Panhandle abandoned its gathering function. Available supply in the vicinity upstream of the Deer Loop Lateral has steadily declined, and in recent years, the line has transported no significant volume. On June 1, 2018, Panhandle and ETC Field Services executed an Asset Sale Agreement (Agreement) in which Panhandle agreed to sell the Deer Loop Lateral to ETC Field Services. Panhandle states that, upon Commission approval and closing of the sale, ETC Field Services will physically integrate the Deer Loop Lateral into its non-jurisdictional gathering operations.

[1] Panhandle Eastern Pipe Line Company, 3 FERC 61,099 (1978); 6 FERC 61,180 (1978).

Panhandle states that authorization of the requested abandonment will allow it to avoid the operating and maintenance costs associated with these facilities and allow ETC Field Services to avoid construction of duplicative pipeline facilities and allow the continued use of existing pipeline facilities as part of its non-jurisdictional gathering system all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web 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 TTY, contact (202) 502–8659.

Any questions regarding this prior notice request may be directed to Blair Lichtenwalter, Senior Director, Certificates, Panhandle Eastern Pipe Line Company, LP, by phone at (713) 989–2605 or by email at *blair.lichtenwalter@energytransfer.com* or Irma S. Jarrett, Manager, Certificates, Panhandle Eastern Pipe Line Company, LP, 1300 Main Street, Houston, Texas 77002 by phone at (713) 989–7679 (telephone), or by email at *irma.jarrett@energytransfer.com*.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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 seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: August 24, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18957 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2306–000]

Garwind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding Garwind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 17, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18944 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2308–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; K&K Wind Enterprises, LLC

This is a supplemental notice in the above-referenced proceeding K&K Wind Enterprises, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 17, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2018..

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18945 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2305–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Bobilli BSS, LLC

This is a supplemental notice in the above-referenced proceeding Bobilli BSS, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 17, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18943 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2312–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Enel Green Power Diamond Vista Wind Project, LLC

This is a supplemental notice in the above-referenced proceeding of Enel Green Power Diamond Vista Wind Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 17, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor

must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2018..

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18949 Filed 8–30–18; 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: EC18–141–000.

Applicants: American Transmission Company LLC, Northern States Power Company, a Wisconsin corporation.

Description: Joint Application for Approval Under Section 203 of the Federal Power Act, et al.

Filed Date: 8/24/18.

Accession Number: 20180824–5200.

Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: EC18–142–000.

Applicants: Meadow Lake Wind Farm VI LLC, Prairie Queen Wind Farm LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities, et al. of Meadow Lake Wind Farm VI LLC, et al.

Filed Date: 8/24/18.

Accession Number: 20180824–5235.

Comments Due: 5 p.m. ET 9/14/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3181–002.

Applicants: UGI Development Company.

Description: Notice of Non-Material Change in Status of UGI Development Company.

Filed Date: 8/24/18.

Accession Number: 20180824–5205.

Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2308–000.

Applicants: K&K Wind Enterprises, LLC.

Description: Baseline eTariff Filing: MBR Tariff Filing of K&K Wind Enterprises, LLC to be effective 10/24/2018.

Filed Date: 8/24/18.

Accession Number: 20180824–5180.

Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2309–000.

Applicants: Rose Creek Wind, LLC.

Description: Baseline eTariff Filing: MBR Tariff Filing of Rose Creek Wind, LLC to be effective 10/24/2018.

Filed Date: 8/24/18.

Accession Number: 20180824–5189.

Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2310–000.

Applicants: Rose Wind Holdings, LLC.

Description: Baseline eTariff Filing: MBR Tariff Filing of Rose Wind Holdings, LLC to be effective 10/24/2018.

Filed Date: 8/24/18.

Accession Number: 20180824–5190.

Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2311–000.

Applicants: SF Wind Enterprises, LLC.

Description: Baseline eTariff Filing: MBR Tariff Filing of SF Wind Enterprises, LLC to be effective 10/24/2018.

Filed Date: 8/24/18.

Accession Number: 20180824–5191.

Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2312–000.

Applicants: Enel Green Power Diamond Vista Wind Project, LLC.

Description: Baseline eTariff Filing: MBR Tariff to be effective 9/1/2018.

Filed Date: 8/24/18.

Accession Number: 20180824–5192.

Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2313–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Amendments to KMPUD IA and TFA—TO Service Agreement No. 276 to be effective 10/25/2018.

Filed Date: 8/24/18.

Accession Number: 20180824–5193.

Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2314–000.

Applicants: Sholes Wind Energy, LLC.

Description: Baseline eTariff Filing: Sholes Wind, LLC Application for Market-Based Rate Authority to be effective 10/23/2018.

Filed Date: 8/24/18.

Accession Number: 20180824–5194.

Comments Due: 5 p.m. ET 9/14/18.

Docket Numbers: ER18–2315–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA, SA No. 4943; Queue No. AC1–050 to be effective 8/7/2018.

Filed Date: 8/27/18.

Accession Number: 20180827–5038.

Comments Due: 5 p.m. ET 9/17/18.

Docket Numbers: ER18–2316–000.

Applicants: Pacific Gas and Electric Company.

Description: Request for One-Time Waiver of Pacific Gas and Electric Company.

Filed Date: 8/24/18.

Accession Number: 20180824–5243.

Comments Due: 5 p.m. ET 9/14/18.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR18–9–000.

Applicants: North American Electric Reliability Corporation.

Description: Request of North American Electric Reliability Corporation for Acceptance of 2019 Business Plans and Budgets of NERC and Regional Entities and for Approval of Assessments to Fund Budgets.

Filed Date: 8/24/18.

Accession Number: 20180824–5203.

Comments Due: 5 p.m. ET 9/14/18.

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: August 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18940 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–123–000.
Applicants: Santa Rita East Wind Energy LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Santa Rita East Wind Energy LLC.
Filed Date: 8/27/18.
Accession Number: 20180827–5096.
Comments Due: 5 p.m. ET 9/17/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2317–000.
Applicants: Meadow Lake Wind Farm V LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 10/26/2018.
Filed Date: 8/27/18.
Accession Number: 20180827–5074.
Comments Due: 5 p.m. ET 9/17/18.

Docket Numbers: ER18–2318–000.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Order No. 844 Compliance Filing to be effective 1/1/2019.
Filed Date: 8/27/18.
Accession Number: 20180827–5083.
Comments Due: 5 p.m. ET 9/17/18.

Docket Numbers: ER18–2319–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2018–08–27 Att O–SPS, PSCo ADIT Filing to be effective 1/1/2019.
Filed Date: 8/27/18.
Accession Number: 20180827–5098.
Comments Due: 5 p.m. ET 9/17/18.

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: August 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18941 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2303–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Adams Wind Farm, LLC

This is a supplemental notice in the above-referenced proceeding Adams Wind Farm, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 17, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18942 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–541–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization

Take notice that on August 17, 2018, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP18–541–000 a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA), and Texas Eastern's blanket certificate issued in Docket No. CP82–535–000, to construct its Rahway River Additional Pipe Replacement Project, in Woodbridge, New Jersey.

Specifically, Texas Eastern proposes to replace an additional approximately 400-foot segment of its new 20-inch-diameter Line 1 pipeline. In Docket No. CP17–496–000, Texas Eastern was authorized to replace a 1,250-foot segment of its Line 1 pipeline beneath the Rahway River (Rahway River Pipeline Replacement Project), which was designed to ensure the continued safe operation of Texas Eastern's pipeline facilities. The Project described herein would increase the total length of pipeline to be replaced to approximately 1,650 feet. Texas Eastern states that the 400-foot additional segment is located entirely within a warehouse parking lot. Texas Eastern avers that the additional activities will not cause a significant change to the estimated total cost of the Rahway River Pipeline Replacement Project in Docket No. CP17–496–000, all as more fully set forth in the application which is on file with the Commission

and open to public inspection. The filing may also be viewed on the web 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 TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Lisa A. Connolly, Director, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, by telephone at (713) 627–4102, by fax at (713) 627–5947, or by email at *lisa.connolly@enbridge.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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 seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: August 27, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–18915 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2311–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: SF Wind Enterprises, LLC

This is a supplemental notice in the above-referenced proceeding SF Wind Enterprises, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 17, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18948 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–524–000]

D'Lo Gas Storage, LLC; Notice of Intent to Prepare an Environmental Assessment for the Proposed D'Lo Natural Gas Storage Project Amendment, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the D'Lo Natural Gas Storage Project Amendment involving construction and operation of facilities by D'Lo Gas

Storage, LLC (DGS) in Simpson and Rankin Counties, Mississippi. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on September 26, 2018.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider and address all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on July 13, 2018, you will need to file those comments in Docket No. CP18–524–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

DGS provided landowners with a fact sheet prepared by the FERC entitled An Interstate Natural Gas Facility On My Land? What Do I Need To Know? This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*).

Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located 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 will be asked to select the type of filing you are making; a comment on a particular project is considered a Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–524–000) with your submission:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

The FERC issued a Certificate for the original D'Lo Gas Storage Project on September 6, 2012 in Docket No. CP12–39–000. DGS proposes to amend the originally certificated project design, as described below. The D'Lo Gas Storage Project would provide about 1.2 billion cubic feet (Bcf) per day of withdrawal and 0.59 Bcf per day of injection capacity. According to DGS, its project would help meet the growing demand for firm and interruptible high deliverability natural gas storage services to support deliveries of natural gas to widely variable electric power generation loads, and to provide services to growing local distribution companies and other markets that require highly reliable natural gas service in Mississippi, and the Northeastern, mid-Atlantic, Southeastern, and Florida regions.

DGS is proposing the following amendments to the originally certificated project design:

- Elimination of the Gulf South Interconnect Lateral and Gulf South Meter Station facilities; and
- relocation of Primary Source Water Wells #2 and #4 and Primary Brine Disposal Wells #2 and #4 approximately 0.4 mile south of their originally proposed locations.

The revised scope of the total project includes:

- The solution mining of three salt dome caverns with a designed total working gas volume of 8.0 Bcf per cavern;
- a new solution mining facility site having injection and withdrawal capacity of 4,000–8,000 gallons per minute (gpm);
- a new compressor station with four 8,000 horsepower (hp) and one 4,735 hp Caterpillar gas engine driven compressors, totaling 36,735 hp;
- the drilling and completion of four primary and three secondary source water wells, each having a total production capability of 1,000 gpm;
- the drilling and completion of four primary and one secondary brine disposal wells, each having injection capability of 1,000 gpm;
- 4.0 miles of 20-inch-diameter source water pipelines;
- 4.0 miles of 20-inch-diameter brine disposal pipelines;
- 0.2 mile of 24-inch-diameter natural gas pipeline from the compressor and solution mining facility sites to Cavern Well #3;
- 0.4 mile of 30-inch-diameter natural gas pipeline with an interconnect and meter station to Boardwalk Pipeline Company;
- 0.8 mile of 24-inch-diameter natural gas pipeline with an interconnect and meter station to Southern Natural Gas Pipeline Company;
- 3.2 miles of 30-inch-diameter natural gas pipeline with an

interconnect and meter station to Kinder Morgan Midcontinent Express Pipeline;

- a new 12-inch-diameter tap and interconnect and meter station to Southcross Energy; and
- the widening and improvement of 3.5 miles of existing access roads, and construction of 0.8 mile of new access roads for construction, operations, and maintenance of the proposed facilities.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 160.3 acres of land for the aboveground facilities and pipelines. Following construction, DGS would maintain about 113.8 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. The proposed changes presented above would reduce surface impacts from the original project by approximately 14.1 acres. DGS owns and/or controls all areas of the project that would be permanently impacted.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- public safety; and
- cumulative impacts

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in the public record through eLibrary.[2] Commission staff will consider and address all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] Commission staff will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that information related to this environmental review is sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

As stated above, the EA will be available in the public record through the Commission's eLibrary, under the Docket Number CP18–524–000.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *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.,* CP18–524). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (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.

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.*

Finally, public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 27, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–18914 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2309–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Rose Creek Wind, LLC

This is a supplemental notice in the above-referenced proceeding Rose Creek Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 17, 2018.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 27, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–18946 Filed 8–30–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0546; FRL–9982–98–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Aircraft Engines—Supplemental Information Related to Exhaust Emissions (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Aircraft Engines—Supplemental Information Related to Exhaust Emissions (EPA ICR Number 2427.04, OMB Control Number 2060–0680) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2018. Public comments were previously requested via the **Federal Register** on October 16th, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 1, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2016–0546, to (1) EPA online using *www.regulations.gov* (our preferred method), *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Cullen Leggett, Office of Transportation and Air Quality, Office of Air and Radiation, Environmental Protection Agency; telephone number: (734) 214–4514; fax number: (734) 214–4816; email address: *leggett.cullen@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Using its Clean Air Act authority in sections 231 and 114, 42 U.S.C. 7571 and 7414, the EPA is proposing to renew the existing data collection requirement for new aircraft engines to report emissions information, production volumes, and technical parameters. Also, at this time, the EPA is proposing to amend this existing requirement to collect data on non-volatile particulate matter (nvPM) emissions from some classes of aircraft engines.

Form numbers: EPA Form Number: 5900–223.

Respondents/affected entities: Respondents affected by this action are the manufacturers of aircraft gas turbine engines. Manufacturers producing aircraft gas turbine engines with a sea level static thrust greater than 26.7 kN will be subject to the new requirement for nvPM reporting.

Respondent's obligation to respond: Mandatory (pursuant to section 114 of the Clean Air Act).

Estimated number of respondents: 7 (total).

Frequency of response: Annual.

Total estimated burden: 502 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $43,199 (per year).

Changes in the estimates: There is an increase of 1,326 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to the proposed amendment to the existing

ICR for the collection of nvPM data from some classes of aircraft engines.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–18953 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HW–OECA–2014–0035; FRL—9982–67–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Sulfuric Acid Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Sulfuric Acid Plants (EPA ICR No. 1057.14, OMB Control No. 2060–0041), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2018. Public comments were previously requested, via the **Federal Register**, on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 1, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0035, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Sulfuric Acid Plants (40 CFR part 60 Subpart H) apply to both existing facilities and new facilities. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. A sulfuric acid plant is any facility producing sulfuric acid (H_2SO_4) by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge. A sulfuric acid plant does not include facilities where conversion to sulfuric acid is used primarily as a means of preventing emissions to the atmosphere of sulfur dioxide (SO_2) or other sulfur compounds.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all affected facilities subject to NSPS.

Form Numbers: None.

Respondents/affected entities: Owners or operators of sulfuric acid plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart H).

Estimated number of respondents: 53 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 13,500 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,660,000 (per year), which includes $239,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: The increase in burden from the most recently-approved ICR is due to an adjustment. Hours were added to approximate the time spent by each source to familiarize with the rule requirements, and the total hours were rounded to three significant digits, which resulted in a small increase in labor hours and O&M costs since the last renewal.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–18951 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2017–0640; FRL–9982–92–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Producers, Registrants and Applicants of Pesticides and Pesticide Devices Under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Producers, Registrants and Applicants of Pesticides and Pesticide Devices under Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (EPA ICR Number 0143.13, OMB Control Number 2070–0028), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through September 30, 2018. Public comments were previously requested via the **Federal Register** on February 13, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it

displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 1, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2017–0640 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Michelle Stevenson, Office of Compliance, Monitoring, Assistance, and Media Programs Division, Pesticides, Waste & Toxics Branch (2225A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4203; fax number: (202) 564–0085; email: *stevenson.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Producers of pesticides and pesticide devices must maintain certain records with respect to their operations and make such records available for inspection and copying as specified in Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and in regulations at 40 CFR part 169. This information collection is mandatory under FIFRA Section 8. It is used by the Agency to determine compliance with FIFRA.

Form Numbers: None.

Respondents/affected entities: Producers of pesticides and pesticide devices for sale or distribution in or exported to the United States.

Respondent's obligation to respond: Mandatory (40 CFR 169).

Estimated number of respondents: 28,566 (total).

Frequency of response: Annually.

Total estimated burden: 57,132 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,545,424 (per year), which includes no annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 28,238 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an adjustment in the estimates of the number of respondents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–18954 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2018–0420; FRL–9983–12–OW]

Public Listening Session; Stakeholder Input on Peak Flows Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is interested in the views of the public on possible approaches to updating the National Pollutant Discharge Elimination System (NPDES) regulations related to the management of peak wet weather flows at Publicly Owned Treatment Works (POTWs) treatment plants serving separate sanitary sewer collection systems. Consequently, EPA is inviting interested members of the public to three planned listening sessions on: October 16, 2018 at EPA Headquarters in Washington, DC, October 24, 2018 at EPA Region 7 in Lenexa, Kansas, and October 30, 2018 to be held online. EPA welcomes oral or written information at the listening sessions as well as any other information the public may wish to provide EPA through the docket (Docket ID No. EPA–HQ–OW–2018–0420).

DATES: The in-person listening sessions will be held at EPA Headquarters in Washington, DC on October 16, 2018 from 9:00 a.m. to 2:00 p.m. EDT; and in EPA Region 7 in Lenexa, Kansas on October 24, 2018 from 9:00 a.m. to 2:00 p.m. CDT. In addition to the in-person listening sessions, EPA will hold an online listening session on October 30, 2018 from 11:00 a.m. to 4:00 p.m. EDT.

For those who intend to submit written statements to the docket, EPA is asking that this information be provided before October 31, 2018.

ADDRESSES: The in-person listening sessions will be held at the following locations:

- *For the EPA Headquarters in Washington, DC listening session:* US EPA Headquarters, William Jefferson Clinton East Building, Room 1153, 1201 Constitution Avenue NW, Washington, DC 20004;
- *For the EPA Region 7 listening session:* 11201 Renner Blvd., Lenexa, KS 66219.

The online listening session will be accessible though *https://www.epa.gov/npdes/peak-flows-sewage-treatment-plants.*

To register for any of the listening sessions go to: https://www.epa.gov/npdes/peak-flows-sewage-treatment-plants.

To submit written information to EPA: Submit any written statements or input, identified by Docket ID No. EPA–HQ–OW–2018–0420, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commentingepa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jamie Piziali, Water Permits Division, Office of Water, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–1709; or email: *peakflowsrule@epa.gov.* Also see the following website for additional information regarding the rulemaking: *https://www.epa.gov/npdes/municipal-wastewater.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Public Listening Session

i. *Public Listening Sessions:* EPA will hold two public listening sessions to gather feedback from interested members of the public on the issues and concerns that the Agency should be aware of during this rulemaking. The public listening sessions will begin with EPA providing a brief background on peak flows management issues and EPA's goals for this rulemaking. This will then be followed by an opportunity for the public to provide input on these issues. EPA is asking that oral statements be limited to three minutes or less and is welcoming written statements at the sessions. Each listening session will begin at 9:00 a.m. local time and continue until all those wishing to speak have had a chance to provide comments, or until 2:00 p.m., whichever comes first. A transcript of oral remarks made during the listening sessions will be at *https://www.epa.gov/npdes/municipal-wastewater* and included in the rulemaking docket.

ii. *Online Listening Session:* In addition to the in-person listening sessions, EPA will also hold a ''virtual'' listening session via a webcast on October 30, 2018, from 11:00 a.m. to 4:00 p.m. EDT. The same format will be followed as that for the in-person listening session. After a presentation from EPA, members of the public may call in and give brief (three-minute or less) statements. Audience members will be able to listen to the webcast and all public statements through their computer speakers. A transcript of oral remarks made during the listening sessions will be at *https://www.epa.gov/npdes/peak-flows-sewage-treatment-plants* and included in the rulemaking docket.

B. Additional Information and Public Meeting Registration

Prior to each listening session, EPA will post any relevant materials to the following website: *https://www.epa.gov/npdes/peak-flows-sewage-treatment-plants.* Information posted to the website will include any handouts that may be provided at the meeting as well as a web link that participants may use to register for the public meeting in advance. Advanced registration is not required, but is requested so that EPA can ensure there is sufficient space and time allotted for those who wish to participate. The listening session will continue until all speakers in attendance have had a chance to provide comments, or the listed end time, whichever comes first. If you choose not to pre-register to speak, it is recommended that you arrive at the start of the listening session to register in person in order to ensure the opportunity to participate.

II. Background

EPA is providing the following background information to assist the public in preparing for the listening sessions. Under the Clean Water Act (CWA), municipal sewage treatment plants or Publicly Owned Treatment Works (POTWs) treatment plants are required to comply with prescribed restrictions on their discharges to a water of the United States. Specifically, each POTW must obtain an NPDES permit that will require, at a minimum, that the treatment plant's discharge meet effluent limitations for secondary treatment. See CWA § 1311(b)(1)(B) and § 1342(a), 40 CFR 133 and 40 CFR 122.44(a)(1). The permit will also require meeting any more stringent effluent limitations that are necessary to meet applicable water quality standards. See CWA § 1311(b)(1)(C), § 1342(a), and 40 CFR 122.44(d). The permit will also require the POTW operator to comply with other terms and conditions based on the NPDES regulations at 40 CFR 122. These include, for example, requirements regarding monitoring and reporting of discharges and proper operation and maintenance of POTW facilities and systems of treatment.

Many sewage treatment processes may be used to comply with these effluent requirements. Most municipalities use a series of unit processes to treat wastewater prior to discharge including the following:

- Preliminary treatment or screening to remove large solids,
- primary clarification (or preliminary sedimentation) to remove floating and settleable solids,
- biological treatment (also referred to as secondary treatment) to remove biodegradable organic pollutants and suspended solids, and
- disinfection to deactivate pathogens.

Some facilities also provide more advanced treatment, which is designed to reduce constituents, such as nitrogen and phosphorus, that are not removed in any significant quantity by traditional biological treatment processes.

Sanitary sewer collection systems are designed to remove wastewater from homes and other buildings and convey it to a wastewater treatment plant. The collection system is a critical element in the successful performance of the POTW's wastewater treatment operation. Collection systems are designed in one of two ways. Combined sewer systems are designed to collect both stormwater and sanitary wastewater for delivery to the treatment plant. By contrast, separate sanitary sewers are designed to carry only sanitary wastewater (separate sanitary sewers typically are built with some allowance, however, for higher flows that occur during storm events in order to handle minor and non-excessive amounts of stormwater or groundwater that enter the system through infiltration and inflow or ''I/I''). EPA notes that, at this time, it contemplates the scope of the rulemaking would be limited to peak flows at POTWs with separate sanitary sewer systems.

Significant increases in flows at a treatment facility can create operational challenges and potentially adversely affect the treatment efficiencies. Biological treatment components at treatment plants are particularly vulnerable to high-volume peak flows. Where peak influent flows during periods of wet weather exceed the treatment capacity of existing biological or advanced treatment units, POTWs must consider ways in which to prevent damage to their treatment plant, while maintaining effective operation of the system to meet applicable NPDES permit limitations. Under these conditions, POTW operators use several different strategies which may include a combination of alternative treatment approaches, storage, and sewer maintenance and rehabilitation work to minimize the amount of stormwater that enters the collection system through I/I.

Among the peak flow management approaches that have been used or considered are those involving the diversion of a portion of the peak flows around biological or advanced treatment units. The diverted flow is then recombined with flows from the biological treatment units. Other alternatives include the installation of various treatment processes at the POTW that supplement the plant's ability to process and treat peak flows. Refer to EPA's *Draft Summary of Blending Practices and the Discharge of Pollutants for Different Blending Scenarios* (EPA, June 2014) at *https://www.epa.gov/sites/production/files/2015-10/documents/sso_lit_review_draft.pdf.* These approaches have been the subject of previous EPA policymaking efforts that have not been adopted. See 68 FR 63042 (November 7, 2003), and 70 FR 76013 (December 22, 2005). EPA has also looked at the potential public health implications of these different approaches. See *Summary of June 19–20, 2014, Experts Forum on Public Health Impacts of Blending* (EPA, May 2015) at *https://*

www.epa.gov/sites/production/files/2015-10/documents/experts_forum_summary.pdf.

POTWs with separate sanitary sewer systems can also lessen the impact of peak flows by implementing a variety of strategies to minimize the introduction of stormwater into the collection system. While virtually every separate sanitary sewer system has some groundwater infiltration and stormwater-derived I/I, it may be considered excessive when it is the cause of overflows or causes disruptions in the treatment system. POTWs with excessive I/I have a number of different methods for identifying the largest sources of I/I in their sewer system. These include system mapping, flow monitoring, conducting smoke or dye tests, sensor technology, and using optical devices to view sections of the system. Developing plans for correcting and rehabilitating the highest priority sources of I/I into the collection system may involve such strategies as repairing manholes, replacing and repairing private building lateral pipes, ensuring building downspouts are not connected to the sewer system, sealing sewer joints, inserting sewer liners, or even replacing sections of the sewer line. Other strategies may focus on maximizing existing collection system capacity through real-time controls to optimize flows within the system, or building additional storage within the collection system or treatment plant.

EPA acknowledges the significant expertise that exists among states, tribes, POTWs and municipal officials, engineering firms, public health agencies, and the public related to these issues. These listening sessions are designed to take advantage of this information from a variety of perspectives to help provide a complete picture of the considerations that should go into any rulemaking to address permitting requirements for the management of peak flows at POTWs with separate sanitary sewer systems.

III. Areas of Feedback Requested for Public Listening Sessions

Interested members of the public who plan to provide oral or written testimony at the listening sessions, or to submit written material to EPA separately as detailed in the instructions provided in the **ADDRESSES** section of this notice, are welcome to provide their input on any issue related to the topic of peak flow management at POTW treatment plants with separate sanitary sewer systems. But EPA particularly welcomes feedback from the public on the following specific questions.

- What strategies have you found to be successful in reducing peak flow volumes at the POTW treatment plant?
- What permitting or other regulatory approaches are you aware of that in your opinion provide a good basis for any rulemaking in this area?
- What treatment technologies have POTWs with separate sanitary sewer systems used successfully to manage peak excess flows during wet weather? How effective are these technologies at meeting effluent limitations? What are examples of technologies addressing other pollutants not typically subject to discharge requirements in NPDES permits (*e.g.,* pathogens)? Related to these questions, do you have supporting treatment efficacy data that you would be willing to share with EPA for this rulemaking?
- What are your specific suggestions regarding conditions that could be included in NPDES permits to allow diversions of some peak flows around biological treatment units to protect the treatment plant? Considerations could include:

—What information might the NPDES permitting authority need in order to determine whether such diversions are necessary to protect the treatment plant?

—Should the number of times such diversions are permitted to occur be limited or reported?

—Are there any requirements that should be considered for ensuring that the treatment plant is operated and maintained in an effective manner to minimize the number of peak flow diversions that occur?

—What requirements would be appropriate for ensuring that maintenance of the collection system to minimize the introduction of stormwater into the sanitary system through inflow and infiltration is occurring?

—What monitoring and reporting requirements would be important to demonstrate that applicable effluent limits are still being met?

—How may the permit ensure that public and ecological health is protected?

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: August 24, 2018.

Martha Shimkin,

Acting Director, Office of Wastewater Management.

[FR Doc. 2018–19016 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9041–1]

Environmental Impact Statements; Notice of Availability

AGENCY: Office of Federal Activities, EPA.

General Information (202) 564–7156 or *https://www2.epa.gov/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 08/20/2018 Through 08/24/2018

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20180192, Draft, BLM, AZ, Ten West Link 500kV Transmission Line Project Draft Environmental Impact Statement and Draft Resource Management Plan Amendments, Comment Period Ends: 11/29/2018, Contact: Joseph Incardine 801–560–7135.

EIS No. 20180193, Final, DOI, AK, Liberty Development and Production Plan Beaufort Sea, Alaska Final Environmental Impact Statement, Review Period Ends: 10/01/2018, Contact: Lauren Boldrick 907–334–5200.

EIS No. 20180194, Draft, FERC, OR, Swan Lake North Pumped Storage Project, Comment Period Ends: 10/15/2018, Contact: Dianne Rodman 202–502–6077.

EIS No. 20180195, Draft, BLM, WY, Leavitt Reservoir Expansion Project, Comment Period Ends: 10/15/2018, Contact: Holly Elliott 307–347–5100.

EIS No. 20180196, Final, BLM, AK, Alpine Satellite Development Plan for the Proposed Greater Mooses Tooth 2 Development Project, Review Period Ends: 10/01/2018, Contact: Stephanie Rice 907–271–3202.

EIS No. 20180197, Draft, BLM, WY, Lost Creek Uranium In-Situ Recovery Project Modifications, Comment Period Ends: 10/15/2018, Contact: Annette Treat 307–328–4314.

EIS No. 20180199, Draft, USFWS, IA, Draft Environmental Impact Statement for Proposed Habitat Conservation Plan and Incidental Take Permit, Comment Period Ends: 10/15/2018, Contact: Kraig McPeek 309–757–5800.

EIS No. 20180199, Final Supplement, TVA, KY, Shawnee Fossil Plant Coal

Combustion Residual Management, Review Period Ends: 10/01/2018, Contact: Ashley Pilakowski 865–632–2256.

EIS No. 20180200, Draft, BLM, WY, Alkali Creek Reservoir Project, Comment Period Ends: 10/15/2018, Contact: Holly Elliott 307–347–5100.

EIS No. 20180201, Final, USFS, CA, Mammoth Base Area Land Exchange, Review Period Ends: 10/15/2018, Contact: Janelle Walker 760–924–5523.

EIS No. 20180202, Final, FAA, AZ, Tucson International Airport—Airfield Safety Enhancement Project, Review Period Ends: 10/01/2018, Contact: David Kessler 424–405–7315.

Dated: August 28, 2018.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2018–18932 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0578; FRL–9982–38]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before October 1, 2018.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

III. New Active Ingredients

1. *File Symbol:* 82074–RA. *Docket ID number:* EPA–HQ–OPP–2016–0079. *Applicant:* LAM International Corp., 117 South Parkmont St., Butte, MT 59701. *Product name:* Biostat 10% WP. *Active ingredient:* Nematocide—*Purpureocillium lilacinum* strain PL11 at 10.0%. *Proposed use:* The proposed product is a wettable powder formulation containing spores of a soil fungus that parasitizes many species of plant-parasitic nematodes and is to be applied in agricultural settings.

2. *File Symbol:* 82074–RL. *Docket ID number:* EPA–HQ–OPP–2016–0079. *Applicant:* LAM International Corp., 117 South Parkmont St., Butte, MT 59701. *Product name:* Biostat 2% WP. *Active ingredient:* Nematocide—*Purpureocillium lilacinum* strain PL11 at 2.0%. *Proposed use:* The proposed product is a wettable powder formulation containing spores of a soil fungus that parasitizes many species of plant-parasitic nematodes and is to be applied in agricultural settings.

3. *File Symbol:* 82074–RU. *Docket ID number:* EPA–HQ–OPP–2016–0079. *Applicant:* LAM International Corp., 117 South Parkmont St., Butte, MT 59701. *Product name:* PL11 Technical. *Active ingredient:* Nematocide—*Purpureocillium lilacinum* strain PL11 at 100.0%. *Proposed use:* For manufacturing of *Purpureocillium lilacinum* strain PL11 pesticide products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 14, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–19015 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2018–0209; FRL–9983–17–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Cross-State Air Pollution Rule and Texas SO_2 Trading Programs (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''Cross-State Air Pollution Rule and Texas SO_2 Trading Programs (EPA ICR No. 2391.05, OMB Control No. 2060–0667) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through October 31, 2018. Public comments were previously requested via the **Federal Register** on April 16, 2018 during a 60-day comment period. The public comment period was extended for an additional 29 days via the **Federal Register** on June 14, 2018. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 1, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number No. EPA–HQ–OAR–2018–0209, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Karen VanSickle, Clean Air Markets Division, Office of Air and Radiation, (6204M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–343–9220; fax number: 202–343–2361; email address: *vansickle.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA is renewing an ICR for the Cross-State Air Pollution Rule (CSAPR) trading programs to allow for continued implementation of the programs. The information collection requirements under all five CSAPR trading programs are reflected in the existing ICR as most recently revised in 2016. In 2017, Texas sources were removed from two CSAPR trading programs and EPA promulgated the Texas SO_2 Trading Program using the CSAPR trading programs as a model. This ICR renewal reflects the 2017 termination of information collection requirements for Texas sources under the two CSAPR trading programs and the 2019 re-establishment of some of the same requirements for some of the same sources under the Texas trading program. Most affected sources under the CSAPR and Texas trading programs are also subject to the Acid Rain Program (ARP). The information collection requirements under the CSAPR and Texas trading programs, which consist primarily of requirements to monitor and report emissions data in accordance with 40 CFR part 75, substantially overlap and are fully integrated with ARP information collection requirements. The burden and costs of overlapping requirements are accounted for in the ARP ICR (OMB Control Number 2060–0258). This ICR accounts for information collection burden and costs under the CSAPR and Texas trading programs that are incremental to the burden and costs already accounted for in the ARP ICR. All data received by EPA will be treated as public information.

Form Numbers: Agent Notice of Delegation #5900–172, Certificate of Representation #7610–1, General Account Form #7610–5, Allowance Transfer Form #7610–6, Retired Unit Exemption #7610–20, Allowance Deduction #7620–4.

Respondents/affected entities: Industry respondents are stationary, fossil fuel-fired boilers and combustion turbines serving electricity generators subject to the CSAPR and Texas trading programs, as well as non-source entities voluntarily participating in allowance trading activities. Potential state respondents are states that can elect to submit state-determined allowance allocations for sources located in their states.

Respondents' obligation to respond: Industry respondents: voluntary and mandatory (Sections 110(a) and 301(a) of the Clean Air Act). State respondents: voluntary.

Estimated number of respondents: 1,028 industry respondents, including 978 affected sources and 50 non-source entities participating in allowance trading activities, and 27 potential state respondents.

Frequency of response: On occasion, quarterly, and annually.

Total estimated burden: 134,423 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $18,563,878 (per year), which includes $8,207,545 annualized capital or operation & maintenance costs.

Changes in Estimates: There is decrease of 40,699 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due almost entirely to adjustments in the estimated numbers of respondents and transactions and the time required to complete certain activities. Changes in programs—*i.e.,* the removal of Texas units from two CSAPR trading programs and the start of the Texas SO_2 Trading Program—together are responsible for approximately 574 hours of the overall decrease.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–18952 Filed 8–30–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the

assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 27, 2018.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Summit Bancshares, Inc., Chesterfield, Missouri;* to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Houston, Houston, Missouri.

Board of Governors of the Federal Reserve System, August 28, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–18997 Filed 8–30–18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 19, 2018.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Brian Solsrud, individually and as trustee of the Descendant's Separate Trust fbo Brian K. Solsrud under the Glenn A. Solsrud Augusta Irrevocable Trust dated December 28, 2012 and the Descendant's Separate Trust fbo Brian K. Solsrud under the Ardath K. Solsrud Augusta Irrevocable Trust dated December 28, 2012, all of North Oaks, Minnesota; and Rachel Goodell, Augusta, Wisconsin; Corinne Solsrud, Mosinee, Wisconsin; and Gregory Solsrud, Dunwoody, Georgia, each individually;* to acquire voting shares of Augusta Financial Corporation and thereby indirectly acquire shares of Unity Bank, both of Augusta, Wisconsin.

2. *Brian Solsrud, individually and as trustee of the Descendant's Separate Trust fbo Brian K. Solsrud under the Glenn A. Solsrud Caprice Irrevocable Trust dated December 28, 2012 and the Descendant's Separate Trust fbo Brian K. Solsrud under the Ardath K. Solsrud Caprice Irrevocable Trust dated December 28, 2012, all of North Oaks, Minnesota; and Rachel Goodell, Augusta, Wisconsin; Corinne Solsrud, Mosinee, Wisconsin; and Gregory Solsrud, Dunwoody, Georgia, each individually;* to acquire voting shares of Caprice Corporation, Augusta, Wisconsin, and thereby indirectly acquire shares of Unity Bank North, Red Lake Falls, Minnesota.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Kevin Stacy Garn, Layton, Utah, Courtney Allphin, Layton, Utah, Gabe Garn, Syracuse, Utah, Jake Garn, Layton, Utah, Jordan Garn, Farmington, Utah, Talmage Garn, Salt Lake City, Utah, and Taylee Goff, Farmington, Utah;* to retain voting shares of FNB Bancorp, and thereby indirectly retain voting shares of First National Bank of Layton, both of Layton, Utah.

Board of Governors of the Federal Reserve System, August 28, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–18996 Filed 8–30–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–0743]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Monitoring Breastfeeding-Related Maternity Care—U.S. hospitals to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 22, 2017, to obtain comments from the public and affected agencies. CDC received 12 comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202)

395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Monitoring Breastfeeding-Related Maternity Care—U.S. Hospitals (OMB Control No. 0920–0743, Exp. 9/30/2016)—Reinstatement with Change—Division of Nutrition, Physical Activity, and Obesity, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Substantial evidence demonstrates the social, economic, and health benefits of breastfeeding for both the mother and infant as well as for society in general. Breastfeeding mothers have lower risks of breast and ovarian cancers and type 2 diabetes, and breastfeeding better protects infants against infections, chronic diseases like diabetes and obesity, and even childhood leukemia and sudden infant death syndrome (SIDS). However, the groups that are at higher risk for diabetes, obesity, and poor health overall persistently have the lowest breastfeeding rates.

Health professionals recommend at least 12 months of breastfeeding, and Healthy People 2020 establishes specific national breastfeeding goals. In addition to increasing overall rates, a significant public health priority in the United States is to reduce variation in breastfeeding rates across population subgroups. Although CDC surveillance data indicate that breastfeeding initiation rates in the United States are climbing, rates for duration and exclusivity continue to lag, and significant disparities persist between African American and white women in breastfeeding rates.

The health care system is one of the most important and effective settings to improve breastfeeding. Recognition of the hospital stay as a crucial influence in later breastfeeding outcomes led to the addition of two objectives in Healthy People 2020 to allow national monitoring of improvements in support for breastfeeding during this time. In 2007, CDC conducted the first national survey of Maternity Practices in Infant Nutrition and Care (known as the mPINC Survey) in health care facilities (hospitals and free-standing childbirth centers). This survey was designed to provide baseline information and to be repeated every two years. The survey was conducted again in 2009, 2011, 2013, and 2015. The survey inquired about patient education and support for breastfeeding throughout the maternity stay as well as staff training and maternity care policies.

Prior to the fielding of the 2009 iteration, CDC was requested to provide a report to OMB on the results of the 2007 collection. In this report, CDC provided survey results by geographic and demographic characteristics and a summary of activities that resulted from the survey. A summary of mPINC findings was also the anchor of all activities related to the CDC August 2011 Vital Signs activity, marking the first time that CDC highlighted improving hospital maternity practices as the CDC-wide public health priority. A summary of mPINC findings provided the basis of the CDC October 2015 Vital Signs report, which updated the 2011 Vital Signs report and concluded that although maternity care policies and practices supportive of breastfeeding are improving nationally; more work is needed to ensure all women receive optimal breastfeeding support during the birth hospitalization.

The planned methodology for the 2018 and 2020 national survey of Maternity Practices in Infant Nutrition and Care (mPINC) will closely match that of the previously administered mPINC surveys in 2007, 2009, 2011, 2013, and 2015. Changes described in this Reinstatement with change include: (1) Deployment of 2018 and 2020 Surveys; (2) data collection via web-survey only (no paper surveys); (3) surveying hospitals only (not birth centers); (4) requesting contact information for two individuals per facility (previously only one); (5) an updated American Hospital Association (AHA) database will be acquired to identify hospitals not currently on the list for recruitment in the 2018 survey. This process will not occur for the 2020 survey, but additional hospitals identified from the new database for 2018 will be included in the 2020 survey; (6) 2018 and 2020 survey content has been updated.

A major strength of the mPINC survey is its structure as an ongoing national census, which does not employ sampling methods. Facilities are identified by using the American Hospital Association (AHA) Annual Survey of Hospitals. Facilities that will be invited to participate in the survey include hospitals that participated in previous iterations and those that were invited but did not participate in the previous iterations, as well as those that have become eligible since the most recent mPINC survey. All hospitals with ≥1 registered maternity bed will be screened via a brief phone call to assess their eligibility, identify additional satellite locations, and identify the appropriate point of contact. The high response rates to the previous iterations of the mPINC survey (82–83% in 2007, 2009, 2011, 2013, and 2015) indicate that the methodology is appropriate and also reflects high interest among the study population.

As with the initial surveys, a major goal of the 2018 and 2020 follow-up surveys is to be fully responsive to hospitals' needs for information and technical assistance. CDC will provide direct feedback to hospital respondents in a customized benchmark report of their results. CDC will use information from the mPINC surveys to identify, document, and share information related to incremental changes in practices and care processes over time at the hospital, state, and national levels. Data are also used by researchers to better understand the relationships between hospital characteristics, maternity-care practices, state level factors, and breastfeeding initiation and continuation rates. Participation in the survey is voluntary, and responses may be submitted through a Web-based system. The total estimated annual Burden Hours are 855. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Maternity Hospital	Screening Call Script Part A	1,952	1	1/60
Maternity Hospital	Screening Call Script Part B	1,672	1	4/60
Maternity Hospital	mPINC Facility Survey	1,421	1	30/60

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–19012 Filed 8–30–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–18–16JO; Docket No. CDC–2018–0077]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Pregnancy Risk Assessment Monitoring System (PRAMS). PRAMS provides an important supplement to vital records data by providing state-specific information not available through birth certificate data on maternal behaviors and experiences before, during and after pregnancy on health conditions, prenatal care, postpartum care, access to care, and health insurance status.

DATES: CDC must receive written comments on or before October 30, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–201x–xxxx by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

The Pregnancy Risk Assessment Monitoring System (PRAMS)—Existing Collection in Use without an OMB Control Number—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) seeks OMB approval to collect information through the Pregnancy Risk Assessment Monitoring System (PRAMS) for three years as a generic clearance. OMB approval for new modules will be submitted through the part of generic clearance mechanism.

PRAMS supplements vital records data by providing state-specific information on maternal behaviors and experiences before, during and after pregnancy. Every month, in each participating state, a sample of women who have recently given birth to a live born or stillborn infant is selected from birth certificates or fetal death files. The sample is stratified based on the state's population of interest to ensure high-risk populations are represented in the data. PRAMS is a state customized mail and telephone survey conducted in 51 sites and covers 83% of all live births in the United States. Information is collected by self-administered mail survey with telephone follow-up for non-responders. Because PRAMS uses standardized data collection methods, it allows data to be compared among states.

The PRAMS survey instrument is based on a core set of questions common across all states. Core questions request information that is not available from vital records; information about health conditions, prenatal care, postpartum care, access to care, or health insurance status; information about contraception, health habits or risk behaviors; and information about other topics such as breastfeeding. In addition, CDC provides participating states with standard questions from optional modules that states may use to customize survey content for their specific needs at the beginning of each Phase of data collection. In addition, on occasion, states may be funded to address emerging topics of interest to collect supplemental data on optional modules of interest. These questions can be used to address state-specific priorities and special topics such as, for example, substance use, including prescription and illicit opioid use, disease epidemics, or other topics related to healthy pregnancy; these supplements can be administered to women identified in the usual manner or via hospital records. States not intending to implement the survey on an ongoing basis, can instead employ a point-in-time survey. Because PRAMS infrastructure was developed to access a specific and vulnerable subpopulation, the PRAMS infrastructure can be

rapidly adapted for targeted information collection that would not be feasible with other surveillance methods.

The burden estimate for PRAMS includes two types of information collection: (1) Information collection associated with the PRAMS core questions and predetermined standard questions from optional modules, and (2) information collection associated with optional modules for emerging issues. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Types of respondents	Form name	Number of respondents	Number of responses per respondent	Average hours per response (in hours)	Total burden hours
Women who recently delivered a live birth.	PRAMS Phase 8 Core Questions	62,514	1	25/60	26,048
	PRAMS Standard Questions on optional modules—predetermined.	62,514	1	10/60	10,419
	Estimated burden hours for additional optional modules—emerging.	32,530	1	7/60	3,795
Total	.....	.....	.....	.....	40,262

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–19014 Filed 8–30–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–18–0800]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Focus Group Testing to Effectively Plan and Tailor Cancer Prevention and Control Communication Campaigns to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 13, 2017 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Focus Group Testing to Effectively Plan and Tailor Cancer Prevention and Control Communication Campaigns—(OMB No. 0920–0800, exp. 12/31/2017)—Reinstatement without Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC requests a reinstatement of the information collection with OMB Control Number 0920–0800. The mission of the CDC's Division of Cancer Prevention and Control (DCPC) is to reduce the burden of cancer in the United States through cancer prevention, reduction of risk, early detection, better treatment, and improved quality of life for cancer survivors. Toward this end, the DCPC supports the scientific development and implementation of various health communication campaigns with an emphasis on specific cancer burdens.

This process requires testing of messages, concepts, and materials prior to their final development and dissemination, as described in the second step of the health communication process. The health communication process is a scientific model developed by the U.S. Department of Health and Human Services' National Cancer Institute to guide sound campaign development. The communication literature supports various data collection methods, one of which is focus groups, to conduct credible formative, concept, message, and materials testing. The purpose of focus groups is to ensure that the public and other key audiences, like health professionals, clearly understand cancer-specific information and concepts, are motivated to take the desired action, and do not react negatively to the messages. CDC is currently approved to collect information needed to plan and tailor cancer communication campaigns (OMB No. 0920–0800, exp. 12/31/2017), and seeks OMB approval to reinstate this generic clearance.

Information collection will involve focus groups to assess numerous

qualitative dimensions of cancer prevention and control messages including, but not limited to, cancer knowledge, attitudes, beliefs, behavioral intentions, information needs and sources, clinical practices (among healthcare providers), and compliance with recommended cancer screening. Insights gained from the focus groups will assist in the development and/or refinement of future campaign messages and materials. Respondents will include healthcare providers as well as members of the general public. Communication campaigns and messages will vary according to the type of cancer, the qualitative dimensions of the message described above, and the type of respondents.

DCPC plans to conduct or sponsor up to 80 focus groups per year over a three-year period. An average of 10 respondents will participate in each focus group discussion. DCPC has developed a set of example questions that can be used to develop a discussion guide for each focus group activity. The average burden for response for each focus group will be two hours. DCPC has also developed a set of example questions that can be tailored to screen for targeted groups of respondents. The average burden per response for screening and recruitment is three minutes. A separate information collection request will be submitted to OMB for approval of each focus group activity. The request will describe the purpose of the activity and include the customized information collection instruments.

OMB approval is requested for three years. There are no changes to information collection purpose or methodology. Annual estimated Burden Hours are 1,680. Participation is voluntary and there are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
General Public	Screening Form	960	1	3/60
General Public	Focus Group Guide	480	1	2
Health Care Professionals	Screening Form	640	1	3/60
Health Care Professionals	Focus Group Guide	320	1	2

Jeffrey M. Zirger,

Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2018–19013 Filed 8–30–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7051–N]

Medicare & Medicaid Programs, and Other Program Initiatives, and Priorities; Meeting of the Advisory Panel on Outreach and Education (APOE), September 26, 2018

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning CMS programs, initiatives and priorities. This meeting is open to the public.

DATES:

Meeting Date: Wednesday, September 26, 2018 8:30 a.m. to 4 p.m. eastern daylight time (e.d.t).

Deadline for Meeting Registration, Presentations, Special Accommodations and Comments: Wednesday, September 12, 2018, 5 p.m., e.d.t.

ADDRESSES:

Meeting Location: U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Room 502A, Conference Room, Washington, DC 20201.

Presentations and Written Comments: Presentations and written comments should be submitted to: Lynne Johnson, Acting Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–05–06, Baltimore, MD 21244–1850 or via email at *Lynne.Johnson@cms.hhs.gov.*

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the website *https://www.regonline.com/apoe2018sept26meeting/* or by contacting the Acting DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the Acting DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Acting Designated Federal Official, Office of Communications, CMS, 7500 Security Boulevard, Mail Stop S1–05–06, Baltimore, MD 21244–1850, 410–786–0090, email *Lynne.Johnson@cms.hhs.gov.* Additional information about the APOE is available on the internet at: *http://www.cms.gov/Regulations-and-guidance/Guidance/FACA/APOE.html.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory

Panel on Medicare Education [1] (the predecessor to the APOE) on January 21, 1999 (64 FR 7899, February 17, 1999) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105–33).

The Medicare Modernization Act of 2003 (MMA) (Pub. L. 108–173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. We have had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Affordable Care Act (Patient Protection and Affordable Care Act, Pub. L. 111–148, and Health Care and Education Reconciliation Act of 2010, Pub. L. 111–152) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and the Children's Health Insurance Program (CHIP). Qualified individuals and qualified employers are now able to purchase private health insurance coverage through a competitive marketplace, called an Affordable Insurance Exchange (also called Health Insurance Marketplace SM, or Marketplace SM). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through the MarketplaceSM. The APOE (the Panel) allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this Panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 19, 2017, and will terminate on January 19, 2019 unless renewed by appropriate action.

Under the current charter, the APOE will advise the Secretary and the Administrator on optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, and the CHIP; or coverage available through the Health Insurance MarketplaceSM, and other CMS programs.
- Enhancing the federal government's effectiveness in informing Health Insurance Marketplace SM, Medicare, Medicaid, and CHIP consumers, issuers, providers, and stakeholders, through education and outreach programs, on issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Health Insurance MarketplaceSM, Medicare, Medicaid, and CHIP education programs, and other CMS programs.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel are: Kellan Baker, Associate Director, Center for American Progress; Robert Blancato, President, National Association of Nutrition and Aging Services Programs; Deborah Britt, Executive Director of Community & Public Relations, Piedmont Fayette Hospital; Deena Chisolm, Associate Professor of Pediatrics & Public Health, The Ohio State University, Nationwide Children's Hospital; Robert Espinoza, Vice President of Policy, Paraprofessional Healthcare Institute; Louise Scherer Knight, Director, The Sidney Kimmel Comprehensive Cancer Center at Johns Hopkins; Roanne Osborne-Gaskin, M.D., Senior Medical Director, MDWise, Inc.; Cathy Phan, Outreach and Education Coordinator, Asian American Health Coalition DBA HOPE Clinic; Kamilah Pickett, Litigation Support, Independent Contractor; Alvia Siddiqi, Medicaid Managed Care Community Network (MCCN) Medical Director, Advocate Physician Partners, Carla Smith, Executive Vice President, Healthcare Information and Management Systems Society (HIMSS); Tobin Van Ostern, Vice President and Co-Founder, Young Invincibles Advisors; and Paula Villescaz, Senior Consultant, Assembly Health Committee, California State Legislature.

II. Provisions of This Notice

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the September 26, 2018 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (March 21, 2018 and September 13, 2017) meetings
- CMS programs, initiatives, and priorities
- An opportunity for public comment
- Meeting summary, review of recommendations, and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES**

[1] We note that the Citizen's Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR 4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

III. Security, Building, and Parking Guidelines

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice. This meeting will be held in a federal government building, the Hubert H. Humphrey (HHH) Building; therefore, federal security measures are applicable.

The REAL ID Act of 2005 (Pub. L. 109–13) establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits federal agencies from accepting an official driver's license or ID card from a state for any official purpose unless the Secretary of the Department of Homeland Security determines that the state meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a state or territory not in compliance with the Real ID Act will not be accepted as identification to enter federal buildings. Visitors from these states/territories will need to provide alternative proof of identification (such as a valid passport) to gain entrance into federal buildings. The current list of states from which a federal agency may accept driver's licenses for an official purpose is found at *http://www.dhs.gov/real-id-enforcement-brief.*

We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of a government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into HHH Building, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.

IV. Collection of Information

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. Chapter 35).

Dated: August 22, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–18961 Filed 8–30–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0003]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 1, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 4040–0003–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Application for Federal Domestic Assistance—Short Organizational.

Type of Collection: Extension.

OMB No.: 4040–0003.

Abstract: Application for Federal Domestic Assistance—Short Organizational is an OMB-approved collection (4040–0003). This information collection is used by grant applicants. This IC expires on January 31, 2019. We are requesting a three-year clearance of this collection.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grant Applicant	936	1	1	936
Total	936			936

Terry Clark,

Asst. Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2018–18970 Filed 8–30–18; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–4040–0007]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 1, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 4040–0007–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Assurances for Non-Construction Programs (SF–424B).

Type of Collection: Extension.

OMB No.: 4040–0007.

Abstract: Assurances for Non-Construction Programs (SF–424B) is an OMB-approved collection (4040–0007). This information collection is used by grant applicants. This IC expires on January 31, 2019. We are requesting a three-year clearance of this collection.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Total burden hours
Grant Applicant	9,772	1	0.5	4,886
Total	9,772			4,886

Terry Clark,

Asst. Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2018–18971 Filed 8–30–18; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–4040–0006]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 1, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 4040–0006–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Budget Information for Non-Construction Programs (SF–424A).

Type of Collection: Extension.

OMB No.: 4040–0006.

Abstract: Budget Information for Non-Construction Programs (SF–424A) is an OMB-approved collection (4040–0006). This information collection is used by grant applicants. This IC expires on January 31, 2019. We are requesting a three-year clearance of this collection.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Grant Applicant	12,775	1	1	12,775
Total		12,775		12,775

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–18963 Filed 8–30–18; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–4040–0013]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 1, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 4040–0013–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Disclosure of Lobbying Activities (SF–LLL) and Certification Regarding Lobbying.

Type of Collection: Extension.

OMB No.: 4040–0013.

Abstract: Disclosure of Lobbying Activities (SF–LLL) and Certification Regarding Lobbying are OMB-approved collections (4040–0013). These information collections are used by grant applicants. This IC expires on January 31, 2019. We are requesting a three-year clearance of these collections.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Disclosure of Lobbying Activities (SF–LLL).	Grant Applicant	12,675	1	1	12,675
Certification Regarding Lobbying	Grant Applicant	3,952	1	0.5	1,976
Total		12,675			14,651

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–18973 Filed 8–30–18; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–4040–0009]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 1, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 4040–0009–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Assurances for Construction Programs (SF–424D).

Type of Collection: Extension.

OMB No.: 4040–0009.

Abstract: Assurances for Construction Programs (SF–424D) is an OMB-approved collection (4040–0009). This information collection is used by grant applicants. This IC expires on January 31, 2019. We are requesting a three-year clearance of this collection.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grant Applicant	353	1	1	353
	353			353

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–18972 Filed 8–30–18; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–4040–0010]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 1, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 4040–0010–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Project Abstract Summary.

Type of Collection: Extension.

OMB No.: 4040–0010.

Abstract: Project Abstract Summary is an OMB-approved collection (4040–0010). This information collection is used by grant applicants. This IC expires on January 31, 2019. We are requesting a three-year clearance of this collection.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Grant Applicant	3,467	1	0.5	3,467
Total		3,467		3,467

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–18965 Filed 8–30–18; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made on the part of Li Wang, Ph.D., Professor of Physiology and Neurobiology, University of Connecticut (UConn) (Respondent). Dr. Wang engaged in research misconduct in research included in National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH), grant applications 1 R01 DK118645–01A1, 1 R01 DK116203–01, 1 R01 DK114804–01, and 2 R01 DK080440–09A1 and National Institute of General Medical Sciences (NIGMS), NIH, grant applications 1 R01 GM125140–01 and 1 R01 GM126685–01. The administrative actions, including supervision for a period of one (1) year, were implemented beginning on August 14, 2018, and are detailed below.

FOR FURTHER INFORMATION CONTACT:

Wanda K. Jones, Dr.P.H., Interim Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Li Wang, Ph.D., University of Connecticut: Based on an assessment by UConn, an admission by Respondent and additional documents providing clarifying information, and analysis conducted by ORI in its oversight review, ORI found that Dr. Li Wang, Professor of Physiology and Neurobiology, UConn, engaged in research misconduct by recklessly including false data in NIDDK, NIH, grant applications 1 R01 DK118645–01A1, 1 R01 DK116203–01, 1 R01 DK114804–01, and 2 R01 DK080440–09A1 and NIGMS, NIH, grant applications 1 R01 GM125140–01 and 1 R01 GM126685–01. None of the applications received funding, and three were withdrawn before review (1 R01 DK114804–01, 1 R01 DK116203–01, and 1 R01 DK118645–01A1).

In addition to making an admission, Respondent cooperated fully with UConn and ORI, has expressed remorse for her actions, and took full responsibility for her reckless behavior.

Specifically, ORI finds that:

• Respondent mislabeled figure images in four grant applications, as follows:

—in Figure 3D in 1 R01 DK116203–01, Figure 4D in 1 R01 GM125140–01, and Figure 4D in 1 R01 DK114804–01, mislabeled Western blot bands showing the effect of alcohol-induced liver injury in mice on HMGB2 gene reactivation

—in Figure 9A in 1 R01 DK116203–01, Figure 10A in 1 R01 GM125140–01, Figure 10A in 1 R01 DK114804–01, and Figure 11A in 1 R01 DK080440–09A1, labeled Western blot bands showing the knockdown of HMGB2 protein using shHMGB2 in human stellate cells (LX2) as the effect on tumor initiating cells (TIC)

—in Figure 13A in 1 R01 DK116203–01, Figure 13A in 1 R01 GM125140–01, Figure 13A in 1 R01 DK114804–01, and Figure 14A in 1 R01 DK080440–09A1, mislabeled confocal images showing the activation of α-SMA in primary HSCs as the activation of GFAP

• in Figure 10 in 1 R01 DK118645–01A1, Respondent used Western blot

bands labeled as miR181c in five previous grant applications (1 R01 DK114804–01, 1 R01 DK116203–01, 1 R01 DK080440–09A1, 1 R01 GM125140–01, 1 R01 GM126685–01) to represent a negative control without specifying that miR–181c was the negative control and explaining why it was used as the negative control

• in Figure 13C in 1 R01 DK114804–01 and Figure 14C in 2 R01 DK080440–09A1, Respondent presented Western blot data showing decreased HMGB2 expression over time in primary HSCs when she knew these preliminary data were not sufficiently robust Dr. Wang entered into a Voluntary Settlement Agreement and voluntarily agreed for a period of one (1) year, beginning on August 14, 2018:

(1) To have her research supervised; Respondent agrees that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agrees that she shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that any institution employing her shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript or abstract; and

(3) to exclude herself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

Wanda K. Jones,

Interim Director, Office of Research Integrity.

[FR Doc. 2018–19019 Filed 8–30–18; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–4040–0008]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before October 1, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 4040–0008–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Budget Information for Construction Programs (SF–424C).

Type of Collection: Extension.

OMB No.: 4040–0008.

Abstract: Budget Information for Construction Programs (SF–424C) is an OMB-approved collection (4040–0008). This information collection is used by grant applicants. This IC expires on January 31, 2019. We are requesting a three-year clearance of this collection.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grant Applicant	239	1	1	239
Total	239			239

Terry Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2018–18964 Filed 8–30–18; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Support of Competitive Research (SCORE) Award Applications.

Date: October 15, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikebr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 27, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18904 Filed 8–30–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Medical Imaging Study Section.

Date: September 27–28, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Xiang-Ning Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301–435–1744, *lixiang@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Food Choice and Health.

Date: September 27, 2018.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue NW, Washington, DC 20037.

Contact Person: Karin F Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 254–9975, *helmersk@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 24, 2018.

Sylvia L. Neal,

Program Analyst, Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18900 Filed 8–30–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; NIAAA–NIDA Training Grant Reviews.

Date: October 15–16, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Richard A Rippe, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Biomedical Research Review Subcommittee.

Date: October 16, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5625 Fishers Lane, 5th Floor Conference Room, Rockville, MD 20852.

Contact Person: Philippe Marmillot, Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2118, Bethesda, MD 20892, 301–443–2861, *marmillotp@mail.nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: October 29, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, A, B Conference Room, Bethesda, MD 20817.

Contact Person: Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Extramural Project Review Branch, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Room 2120, Rockville, MD 20852, 301–443–4032, *anna.ghambaryan@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 27, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18905 Filed 8–30–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; MIDAS U24 Coordination Center Review.

Date: October 19, 2018.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Suite 3AN18, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikebr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: August 27, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18906 Filed 8–30–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Community Influences on Health Behavior Study Section.

Date: September 27–28, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurotransporters, Receptors, and Calcium Signaling Study Section.

Date: September 27, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington DC, 923 16th Street NW, Washington, DC 20006.

Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–18–011: Cutting Edge Informatics Tools for Illuminating the Druggable Genome (U01).

Date: September 27, 2018.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Craig Giroux, Ph.D., Scientific Review Officer, BST IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, Bethesda, MD 20892, 301–435–2204, *girouxcn@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 27, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18899 Filed 8–30–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ''Drug Repositioning and Combination Therapy for AD''.

Date: September 27, 2018.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Ave., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 27, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18902 Filed 8–30–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

Date: September 24–25, 2018.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Seattle Downtown, 612 2nd Avenue, Seattle, WA 98104.

Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301.326.9721, *Lorangd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–17–245: Mammalian Models for Translational Research.

Date: September 26, 2018.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Careen K Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301)435–3504, *tothct@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 27, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18901 Filed 8–30–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Neuroscience of Aging Review Committee NIA–N.

Date: September 27–28, 2018.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 27, 2018.

David D. Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–18903 Filed 8–30–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation (Pasadena, TX), as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation (Pasadena, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation (Pasadena, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of February 7, 2018.

DATES: Inspectorate America Corporation (Pasadena, TX) was accredited and approved, as a commercial gauger and laboratory as of February 7, 2018. The next triennial inspection date will be scheduled for February 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 141 N. Pasadena Blvd., Pasadena, TX 77506 has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Inspectorate America Corporation is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
5	Metering.
7	Temperature Determination.
8	Sampling.
12	Calculations.
14	Natural Gas Fluids Measurement.
17	Marine Measurement.

Inspectorate America Corporation is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27–14	D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.

CBPL No.	ASTM	Title
27–46	D 5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: August 6, 2018.

Dave Fluty,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018–18920 Filed 8–30–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0041]

Agency Information Collection Activities: Designation of Attorney in Fact; Extension, Without Change, of Currently Approved Collection

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for sixty days until October 30, 2018.

ADDRESSES: Written comments and suggestions regarding items contained in this notice and especially regarding the estimated public burden and associated response time should be directed to the Office of the Chief Information Office, PRA Clearance, U.S. Immigration and Customs Enforcement by one of the following methods:

(1) *Email.* Submit comments to *icepra@ice.dhs.gov;*

(2) *Mail.* Submit written comments to DHS, USICE, PRA Clearance Officer, 801 I Street NW, Washington, DC 20536–5800.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension, without change, of an existing information collection.

(2) *Title of the form/collection:* Designation of Attorney in Fact/Revocation of Attorney in Fact.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (I–312/I–312A); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Section § 103.6, the Immigration and Nationality Act (INA), provides for the posting of surety or cash bonds. All bonds posted in immigration cases shall be executed on Form I–352, Immigration Bond, and secured with some form of collateral by an Obligor. In the case of a cash bond, the Obligor will deposit with U.S. Immigration and Customs Enforcement (ICE) the face value of the bond. The Obligor can designate a third party as an Attorney in Fact to accept on their behalf the return of the collateral security deposited to secure the surety bond upon cancellation of the bond or performance of the Obligor. The Form I–312, Designation of Attorney in Fact, is the instrument used by the Obligor to officially designate their Attorney in Fact. Upon receipt of a properly executed Form I–312, ICE Financial Operations will remit to the Attorney in Fact the principal and interest on the security deposit in the event of a bond cancellation, or the interest on the security deposit in the event of a bond breach. Immigration bonds might remain in place for years, and Obligors might choose to appoint a new Attorney in Fact as circumstances change. To ensure that ICE Financial Operations properly executes its fiduciary duties to the Obligor under the Form I–352 bond contract, and exercises due diligence in ensuring that remittances are made to the proper person, ICE uses Form I–312A as the document by which the Obligor could expressly indicate that a previously valid Form I–312 Attorney in Fact designation had been revoked.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,250 annual burden hours.

Dated: August 27, 2018.

Scott Elmore,

Program Manager, PRA Clearance, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2018–18877 Filed 8–30–18; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0037]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Refugee/Asylee Relative Petition

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until October 30, 2018.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0037 in the body of the letter, the agency name and Docket ID USCIS–2007–0030. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0030; (2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0030 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Refugee/Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–730; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, local or Tribal Government. This form will allow U.S. Citizenship and Immigration Services (USCIS) to obtain verification from the courts that a person claiming to be a naturalized citizen has, in fact, been naturalized.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–730 is 13,000 and the estimated hour burden per response is .667 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 8,671 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,592,500.

Dated: August 27, 2018.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–18875 Filed 8–30–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0016]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of

1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 1, 2018.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number [1615–0016] in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on May 14, 2018, at 83 FR 22286, allowing for a 60-day public comment period. USCIS did receive one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0070 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the form/collection:* Application for Relief under Former Section 212(c) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–191; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS and EOIR use the information on the form to properly assess and determine whether the applicant is eligible for a waiver under former section 212(c) of INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–191 is 240 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 360 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $30,300.

Dated: August 27, 2018.

Samantha L Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–18876 Filed 8–30–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6125–N–01]

Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program, and Other Programs Fiscal Year 2019

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Fiscal Year (FY) 2019 Fair Market Rents (FMRs) and response to public comments on the use of FMR surveys in the calculation of renewal funding inflation factors.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 (USHA), as amended by the Housing Opportunity Through Modernization Act of 2016 (HOTMA), requires the Secretary to publish FMRs not less than annually, adjusted to be effective on October 1 of each year. This notice describes the methods used to calculate the FY 2019 FMRs and enumerates the procedures for Public Housing Agencies (PHAs) and other interested parties to request reevaluations of their FMRs, as required by HOTMA. To help inform PHAs' decisions concerning reevaluation requests, this notice briefly addresses HUD's May 30, 2018 notice regarding the use of FMR surveys in the calculation of Renewal Funding Inflation Factors.

DATES:

Comment Due Date: October 1, 2018.

Effective Date: The Fair Market Rents are effective October 1, 2018 unless HUD receives a request for reevaluation of specific area FMRs as described below.

ADDRESSES: HUD invites interested persons to submit comments regarding the FMRs and to request reevaluation of the FY 2019 FMRs to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the ''Request for Comments/Request for Reevaluation'' section. There are two methods for submitting public comments.

1. *Submission of Comments by Mail.* Comments or requests for reevaluation may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–

0500. Often, submission of comments by mail results in delayed delivery. To ensure timely receipt of comments or reevaluation requests, HUD recommends that comments or requests submitted by mail be submitted at least 2 weeks in advance of the deadline. HUD will make all comments or reevaluation requests received by mail available to the public at *http://www.regulations.gov.*

2. *Electronic Submission of Comments.* Interested persons may submit comments or reevaluation requests electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments or reevaluation requests electronically. Electronic submission of comments or reevaluation requests allows the author maximum time to prepare and submit a comment or reevaluation request, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments or reevaluation requests submitted electronically through the *http://www.regulations.gov* website can be viewed by other submitters and interested members of the public. Commenters or reevaluation requestors should follow instructions provided on that site to submit comments or reevaluation requests electronically.

Note: To receive consideration as public comments or reevaluation requests, comments or requests must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments or Reevaluation Requests. Facsimile (FAX) comments or requests for FMR reevaluation are not acceptable.

Public Inspection of Public Comments and Reevaluation Requests. All properly submitted comments and reevaluation requests and communications regarding this notice submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments and reevaluation requests must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (toll-free number). Copies of all comments and reevaluation requests submitted are available for inspection and downloading at *http://www.regulations.gov.*

Electronic Data Availability. This **Federal Register** notice will be available electronically from the HUD User page at *https://www.huduser.gov/portal/datasets/fmr.html.* **Federal Register** notices also are available electronically at *https://www.federalregister.gov/* the U.S. Government Printing Office website. Complete documentation of the methods and data used to compute each area's FY 2019 FMRs is available at *https://www.huduser.gov/portal/datasets/fmr.html#2019_query.* FY 2019 FMRs are available in a variety of electronic formats at *https://www.huduser.gov/portal/datasets/fmr.html.* FMRs may be accessed in PDF as well as in Microsoft Excel. Small Area FMRs for all metropolitan FMR areas are available in Microsoft Excel format at: *http://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.*

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER website at *http://www.huduser.gov/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2019 FMR documentation system at *https://www.huduser.gov/portal/datasets/fmr.html#2019_query* and 50th percentile rents for all FMR areas will be published at *http://www.huduser.gov/portal/datasets/50per.html.*

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys may be addressed to Marie L. Lihn or Peter B. Kahn of the Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research at HUD headquarters, 451 7th Street SW, Room 8208, Washington, DC 20410; telephone number 202–402–2409 (this is not a toll-free number), or via email at *emad-hq@hud.gov.* Persons with hearing or speech impairments may access HUD numbers through TTY by calling the Federal Relay Service at 800–877–8339 (toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the Housing Choice Voucher (HCV) program, the FMR is the basis for determining the ''payment standard amount'' used to calculate the maximum monthly subsidy for an assisted family. See 24 CFR 982.503. HUD also uses the FMRs to determine initial renewal rents for some expiring project-based Section 8 contracts, initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, rent ceilings for rental units in both the HOME Investment Partnerships program and the Emergency Solution Grants program, calculation of maximum award amounts for Continuum of Care recipients and the maximum amount of rent a recipient may pay for property leased with Continuum of Care funds, and calculation of flat rents in Public Housing units. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities and is typically set at the 40th percentile of the distribution of gross rents. HUD's FMR calculations represent HUD's best effort to estimate the 40th percentile gross rent paid by recent movers into standard quality units in each FMR area. In addition, all rents subsidized under the HCV program must meet reasonable rent standards.

As of October 2, 2000, HUD required FMRs to be set at the 50th percentile for areas where HUD determined higher FMRs were needed to help families assisted under certain HUD programs find and lease decent and affordable housing (65 FR 58870). On November 16, 2016, HUD published a Final Rule entitled ''Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in the Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs'' (Small Area FMR final rule) (81 FR 80567), with an effective date of January 17, 2017. The Small Area FMR final rule eliminates the 50th percentile FMR provisions in the FMR regulations (24 CFR 888.113) [1] and provides that areas

[1] Separately from the Small Area FMR regulations, HUD also calculates and posts 50th percentile rent estimates for the purposes of Success Rate Payment Standards, as defined at 24 CFR 982.503(e) (estimates available at: *http://www.huduser.gov/portal/datasets/50per.html*), which policy was not changed by the Small Area FMR rule.

currently designated as 50th percentile areas remain 50th percentile areas until their current 3-year eligibility period expires. At the end of the 3-year eligibility period, these areas revert to 40th percentile FMR status. If PHAs in areas converting from 50th percentile FMRs to 40th percentile FMRs meet the deconcentration criteria specified in 24 CFR 982.503(f), available at: *https://www.gpo.gov/fdsys/pkg/CFR-2016-title24-vol4/pdf/CFR-2016-title24-vol4-sec982-503.pdf,* they may petition HUD to maintain payment standards based on 50th percentile rents on that basis.

The following areas completed their 3 years of 50th percentile eligibility in FY 2018 and will revert to 40th percentile FMR status in FY 2019:

FY 2018 50TH-PERCENTILE FMR AREAS REVERTING TO 40TH PERCENTILE FMRS IN FY 2019

Baltimore-Columbia-Towson, MD MSA.	Philadelphia-Camden-Wilmington, PA-NJ-DE-MD.
Washington, DC-VA-MD HUD Metro FMR Area.	West Palm Beach-Boca Raton, FL HUD Metro FMR Area.

The following is a list of FMR areas that retain 50th percentile FMRs for FY 2019, along with the year that they will revert to 40th percentile status:

FY 2019 50TH-PERCENTILE FMR AREAS WITH YEAR OF REVERSION TO 40TH PERCENTILE FMRS

Bergen-Passaic, NJ HUD Metro FMR Area	2020
Spokane, WA HUD Metro FMR Area	2020
San Diego-Carlsbad-San Marcos, CA MSA	2020

II. Procedures for the Development of FMRs

Section 8(c)(1) of the USHA, as amended by the Housing Opportunity Through Modernization Act of 2016 (HOTMA) (Pub. L. 114–201, approved July 29, 2016), requires the Secretary of HUD to publish FMRs not less than annually. Section 8(c)(1)(A) states that each FMR ''shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply . . .'' Section 8(c)(1)(B) requires that HUD publish, not less than annually, new FMRs on the World Wide Web or in any other manner specified by the Secretary, and that HUD must also notify the public of when it publishes FMRs by **Federal Register** notice. After notification, the FMRs ''shall become effective no earlier than 30 days after the date of such publication,'' and HUD must provide a procedure for the public to comment and request a reevaluation of the FMRs in a jurisdiction before the FMRs become effective. Consistent with the statute, HUD is issuing this notice to notify the public that FY 2019 FMRs are available at *https://www.huduser.gov/portal/datasets/fmr.html* and will become effective on October 1, 2018. This notice also provides procedures for FMR reevaluation requests.

III. FMR Methodology

This section provides a brief overview of how HUD computes the FY 2019 FMRs. HUD is making no changes to the estimation methodology for FMRs as used by HUD for the FY 2018 FMRs. The only difference is the use of more recent data. For complete information on how HUD determines FMR areas, and on how HUD derives each area's FMRs, see the online documentation at *https://www.huduser.gov/portal/datasets/fmr.html#2019_query.*

In conjunction with the use of 2016 American Community Survey (ACS) data, HUD has implemented the following geography changes: Effective May 1, 2016, Garfield County, Oklahoma became the metropolitan area of Enid, OK metropolitan statistical area (MSA). In addition, HUD changed from two separate county-based HUD Metro FMR Areas (HMFA) (Kalawao County, HI HMFA and Maui County, HI HMFA) to a two county MSA, the Kahului-Wailuku-Lahaina, HI MSA due to extremely limited data available for Kalawao County, HI.

A. Base Year Rents

For FY 2019 FMRs, HUD uses the U.S. Census Bureau's 5-year ACS data collected between 2012 and 2016 (released in December 2017) as the base rents for the FMR calculations. In order to improve the statistical reliability of the ACS data used in the FMR calculations, HUD pairs a ''margin of error'' test [2] with an additional test based on the number of survey observations supporting the estimate, beginning with the FY 2018 FMRs and continuing with the FY 2019 FMRs. The Census Bureau does not provide HUD with an exact count of the number of observations supporting the ACS estimate; rather, the Census Bureau provides HUD with categories of the number of survey responses underlying the estimate, including whether the estimate is based on more than 100 observations. Using these categories, HUD requires that, in addition to the ''margin of error'' test, ACS rent estimates must be based on at least 100 observations in order to be used as base rents.

For areas in which the 5-year ACS data for two-bedroom, standard quality gross rents do not pass the statistical reliability tests (*i.e.,* have a margin of error ratio greater than 50 percent or fewer than 100 observations), HUD will use an average of the base rents over the three most recent years (provided that there is data available for at least two of these years),[3] or if such data is not available, using the two-bedroom rent data within the next largest geographic area, which for a non-metropolitan area would be the state non-metro area rent data.

Since FY 2012, HUD has updated base rents each year based on new 5-year data, for which HUD used 2005–2009 ACS data. HUD is also updating base rents for Puerto Rico FMRs using data collected through the Puerto Rico Community Surveys (PRCS) between 2012 and 2016. HUD first updated the Puerto Rico base rents in FY 2014 based on 2007–2011 PRCS data collected through the ACS program.

HUD historically based FMRs on gross rents for recent movers (those who have moved into their current residence in the last 24 months) measured directly from decennial census long form survey responses. However, due to the way the 5-year ACS data are constructed, HUD developed a new method for calculating recent-mover FMRs in FY 2012, which HUD continues to use in FY 2019: HUD assigns all areas a base rent, which is the two-bedroom standard quality 5-year gross rent estimate from the ACS; then, because HUD's regulations mandate that FMRs must be published as recent mover gross rents, HUD applies a recent mover factor to the base rents assigned from the 5-year ACS data.[4] The calculation of the recent mover factor is described below.

[2] HUD's margin of error test requires that the margin of error of the ACS estimate is less than half the size of the estimate itself.

[3] For FY 2019, the three years of ACS data in question are 2014, 2015 and 2016. The 2014 data are adjusted to be denominated in 2016 dollars using the growth in CPI-based gross rents measured between 2014 and 2016. Similarly, the 2015 gross rent data is adjusted to 2016 denominated dollars using the growth in CPI-based gross rents measured between 2015 and 2016.

[4] HUD's regulations incorporate recent mover data into FMR calculations because the gross rents of those who most recently moved into their units likely depicts the most current market conditions observable through the ACS. Rents paid by renters renewing existing leases may not reflect the most current market conditions, in part because these renters may have clauses within their leases that

B. Recent Mover Factor

Following the assignment of the standard quality two-bedroom rent described above, HUD applies a recent mover factor to these rents. HUD calculates the recent mover factor as the change between the 5-year 2012–2016 standard quality two-bedroom gross rent and the 1-year 2016 recent mover gross rent for the recent mover factor area. HUD does not allow recent mover factors to lower the standard quality base rent; therefore, if the 5-year standard quality rent is larger than the comparable 1-year recent mover rent, the recent mover factor is set to 1.

The calculation of the recent mover factor for FY 2019 continues with the modifications first applied to the FY 2018 FMRs. Similar to the statistical reliability requirements for base rents, for a recent mover gross rent estimate to be considered statistically reliable, the estimate must have a margin of error ratio that is less than 50 percent, and the estimate must be based on 100 or more observations.

When an FMR area does not have statistically reliable two-bedroom recent mover data, the ''all-bedroom'' [5] 1-year recent mover ACS data for the FMR area is tested for statistical reliability. An ''all-bedroom'' recent mover factor from the FMR area will be used, if statistically reliable, before substituting a two-bedroom recent mover factor from the next larger geography. Incorporating ''all-bedroom'' rents into the recent mover factor calculation when statistically reliable two-bedroom data is not available preserves the use of local information to the greatest extent possible.

However, where statistically reliable ''all-bedroom'' data is not available, HUD will continue to base FMR areas' recent mover factors on larger geographic areas, following the same procedures used historically: HUD tests data from differently sized geographic areas from small to large, and bases the recent mover factor on the first statistically reliable recent mover rent estimate in the geographic hierarchy listed below.

- For metropolitan areas that are subareas of larger metropolitan areas, the order is the FMR area, metropolitan area, aggregated metropolitan parts of the state, and state.
- For metropolitan areas that are not divided, the order is the FMR area, aggregated metropolitan parts of the state, and the state.
- In non-metropolitan areas, the order is the FMR area, aggregated non-metropolitan parts of the state, and the state.

The process for calculating each area's recent mover factor is detailed in the FY 2019 FMR documentation system available at: *https://www.huduser.gov/portal/datasets/fmr.html#2019_query.* Applying the recent mover factor to the standard quality base rent produces an ''as of'' 2016 recent mover two-bedroom gross rent for the FMR area.

C. Other Rent Survey Data

HUD calculated base rents for the insular areas using the 2010 decennial census of American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands beginning with the FY 2016 FMRs.[6] This 2010 base year data is updated through 2016 for the FY 2019 FMRs using national ACS data.

HUD does not use ACS data to establish the base rent or recent mover factor for 10 areas where the FY 2018 FMR was adjusted based on the following survey data:

- Survey data from 2016 is used to adjust the FMR for Portland, ME.
- Survey data from 2017 is used to adjust the FMRs for Santa Rosa, CA; Seattle-Bellevue, WA HMFA; Hood River County, OR; Wasco County, OR; Hawaii County, HI; Jonesboro, AR HMFA; Urban Honolulu, HI MSA; and Santa Maria-Santa Barbara, CA MSA.
- Survey data from 2018 is used to adjust the FMR for Santa Cruz-Watsonville, CA MSA.

For larger metropolitan areas that have valid ACS one-year recent mover data, survey data may not be any older than the midpoint of the calendar year for the ACS one-year data. Since the ACS one-year data used for the FY 2019 FMRs is from 2016, larger areas may not use survey data collected before June 30, 2016, for the FY 2019 FMRs. Smaller areas without 1-year ACS data, may continue to use local survey data until the mid-point of the 5-year ACS data is more recent than the local survey.[7]

D. Updates From 2016 to 2017 and Forecast to FY 2019

HUD updates the ACS-based ''as of'' 2016 rent through the end of 2017 using the annual change in gross rents measured through the Consumer Price Index (CPI) from 2016 to 2017 (CPI update factor). As in previous years, HUD uses local CPI data coupled with Consumer Expenditure Survey data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. In FMR areas that do not meet this criterion, including Class B and C size metropolitan areas and non-metropolitan areas, HUD uses CPI data aggregated at the Census region level. Additionally, HUD is using CPI data collected locally in Puerto Rico as the basis for CPI adjustments from 2016 to 2017 for all Puerto Rico FMR areas.

Following the application of the appropriate CPI update factor, HUD trends the gross rent estimate from 2017 to FY 2019 using a national forecast of expected growth in gross rents. This forecast produces ''as of'' FY 2019 FMRs.

E. Bedroom Rent Adjustments

HUD updates the bedroom ratios used in the calculation of FMRs annually. The bedroom ratios which HUD used in the calculation of FY 2019 FMRs have been updated using average data from three 5-year ACS data series (2010–2014, 2011–2015, and 2012–2016). The bedroom ratio methodology used in this update is unchanged from previous calculations using 2000 Census data. HUD only uses estimates with a margin of error ratio of less than 50 percent. If an area does not have reliable estimates in at least two of the previous three ACS releases, bedroom ratios for the area's larger parent geography are used.

HUD uses two-bedroom units for its primary calculation of FMR estimates. This is generally the most common size of rental unit and, therefore, the most reliable to survey and analyze. After estimating two-bedroom FMRs, HUD calculates bedroom ratios for each FMR area which relate the prices of smaller and larger units to the cost of two-bedroom units. To prevent illogical results in particular FMR areas, HUD establishes bedroom interval ranges which set upper and lower limits for bedroom ratios nationwide, based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations.

predetermine the annual increases in rents paid (*i.e.,* rent escalator clauses).

[5] ''All-bedroom'' refers to estimates aggregated together regardless of the number of bedrooms in the dwelling unit.

[6] The ACS is not conducted in the Pacific Islands (Guam, Northern Marianas and American Samoa) or the US Virgin Islands. As part of the 2010 Decennial Census, the Census Bureau conducted ''long-form'' sample surveys for these areas. The results gathered by this long form survey have been incorporated into the FY 2019 FMRs.

[7] The 2013–2017 5-Year ACS data and the 2017 1-Year ACS data will be used to calculate the FY 2020 FMRs. We did discontinue the use of survey in Kauai and Maui counties in HI and in Vallejo-Fairfield, CA even though these surveys did not meet the age requirements because the data provided did not meet our current tighter statistical standards enacted for the FY 2018 FMRs. In all cases the FMRs for FY 2019 would have been lower than for FY 2018 and in some cases, much lower.

In the calculation of FY 2019 FMR estimates, HUD set the bedroom interval ranges as follows: Efficiency FMRs are constrained to fall between 0.64 and 0.85 of the two-bedroom FMR; one-bedroom FMRs must be between 0.76 and 0.87 of the two-bedroom FMR; three-bedroom FMRs (prior to the adjustments described below) must be between 1.15 and 1.33 of the two-bedroom FMR; and four-bedroom FMRs (again, prior to adjustment) must be between 1.26 and 1.63 of the two-bedroom FMR. Given that these interval ranges partially overlap across unit bedroom counts, HUD further adjusts bedroom ratios for a given FMR area, if necessary, to ensure that higher bedroom-count units have higher rents than lower bedroom-count units within that area. The bedroom ratios for Puerto Rico follow these constraints.

HUD also further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units.[8] This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates.

HUD derives FMRs for units with more than four bedrooms by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. Similarly, HUD derives FMRs for single-room occupancy units by subtracting 25 percent from the zero-bedroom FMR (*i.e.,* they are set at 0.75 times the zero-bedroom (efficiency) FMR).[9]

F. Limit on FMR Decreases

Within the Small Area FMR final rule published on November 16, 2016, HUD amended 24 CFR 888.113 to include a limit on the amount that FMRs may annually decrease. The current year's FMRs resulting from the application of the bedroom ratios, as discussed in section (E) above, may be no less than 90 percent of the prior year's FMRs for units with the same number of bedrooms. Accordingly, if the current year's FMRs are less than 90 percent of the prior year's FMRs as calculated by the above methodology, HUD sets the current year's FMRs equal to 90 percent of the prior year's FMRs. For areas where use of Small Area FMRs in the administration of their voucher programs is required, the FY 2019 Small Area FMRs may be no less than 90 percent of the FY 2018 Small Area FMRs. For all other metropolitan areas, for which Small Area FMRs are calculated so that they may be used for other allowable purposes if desired (*e.g.,* exception payment standards, public housing flat rents), the FY 2019 Small Area FMRs may be no less than 90 percent of the greater of the FY 2018 metropolitan area-wide FMRs or the applicable FY 2018 Small Area FMR.

G. Other Limits on FMRs

All FMRs are subject to a state or national minimum. HUD calculates a population-weighted median two-bedroom 40th percentile rent across all non-metropolitan portions of each state, which, for the purposes of FMRs, is the state minimum rent. State-minimum rents for each FMR area are available in the FY 2019 FMR Documentation System, available at *https://www.huduser.gov/portal/datasets/fmr.html#2019_query.* HUD also calculates the population-weighted median two-bedroom 40th percentile rent across all non-metropolitan portions of the country, which, for the purposes of FMRs, is the national minimum rent. For FY 2019, the national minimum rent is $700. The applicable minimum rent for a particular area is the *lower* of the state or national minimum. Each area's two-bedroom FMR must be no less than the applicable minimum rent.

As in prior years, Small Area FMRs are subject to a maximum limit. HUD limits each two-bedroom Small Area FMR to be no more than 150 percent of the two-bedroom FMR for the metropolitan area where the ZIP code is located.

IV. Manufactured Home Space Surveys

HOTMA changed the manner in which vouchers are used to subsidize manufactured home units. Please see HUD's Notice from January 18, 2017 (82 FR 5458) for more detailed information concerning the use of vouchers for manufactured home units. Due to the nature of these changes, HUD will no longer be publishing exception rents for Manufactured Home Space pad rents.

V. Small Area FMRs

PHAs operating the Housing Choice Voucher (HCV) program in the 24 metropolitan areas identified in the November 16, 2016 **Federal Register** notice ''Small Area Fair Market Rents in Housing Choice Voucher Program Values for Selection Criteria and Metropolitan Areas Subject to Small Area Fair Market Rents'' (81 FR 80678) are required to use Small Area FMRs unless the PHA has received a temporary exemption from such use; HUD has suspended the Small Area FMR designation for the metropolitan area under 24 CFR 888.113(c)(4); or the PHA is a Moving to Work PHA with an approved alternative payment standard policy. For more information on the process of obtaining a temporary exemption or area-wide suspension, please see PIH Notice 2018–01: Guidance on Recent Changes in Fair Market Rent (FMR), Payment Standard, and Rent Reasonableness Requirements in the Housing Choice Voucher Program, item (9) beginning on page 13, available at: *https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-01.pdf.* Small Area FMRs for all metropolitan areas are listed in the Schedule B addendum. Other metropolitan PHAs interested in using Small Area FMRs in the operation of their Housing Choice Voucher program must contact their local HUD field office to request approval from HUD.

In the FY 2018 FMR **Federal Register** notice (82 FR 41637), HUD announced changes in the way Small Area FMRs are calculated and continues this change for the FY 2019 Small Area FMRs. HUD calculates Small Area FMRs directly from the standard quality gross rents provided to HUD by the Census Bureau for ZIP Code Tabulation Areas (ZCTAs), when such data is statistically reliable, instead of using the current rent ratio calculation. The ZCTA two-bedroom equivalent 40th percentile gross rent is analogous to the standard quality base rents set for metropolitan areas and non-metropolitan counties. For each ZCTA with statistically reliable gross rent estimates, using the expanded test of statistical reliability first used in FY 2018 (*i.e.,* estimates with margins of error ratios below 50 percent and based on at least 100 observations), HUD will calculate a two-bedroom equivalent 40th percentile gross rent using the first statistically reliable gross rent distribution data from the following data sets (in this order): Two-bedroom gross rents, one-bedroom gross rents, and three-bedroom gross rents. If either the one-bedroom or three-bedroom gross rent data is used because the two-

[8] As mentioned above, HUD applies the interval ranges for the three-bedroom and four-bedroom FMR ratios prior to making these adjustments. In other words, the adjusted three- and four-bedroom FMRs can exceed the interval ranges, but the unadjusted FMRs cannot.

[9] As established in the interim rules implementing the provisions of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub. L. 105–276). In 24 CFR 982.604.

bedroom gross rent data is not statistically reliable, the one-bedroom or three-bedroom 40th percentile gross rent will be converted to a two-bedroom equivalent rent using the bedroom ratios for the ZCTA's parent metropolitan area. To increase stability to these Small Area FMR estimates, HUD averages the latest three years of gross rent estimates.[10]

For ZCTAs without usable gross rent data by bedroom size, HUD will continue to calculate Small Area FMRs using the rent ratio method similar to that which HUD has used in past Small Area FMR calculations. To calculate Small Area FMRs using a rent ratio, HUD divides the median gross rent across all bedrooms for the small area (a ZIP code) by the similar median gross rent for the metropolitan area of the ZIP code. In small areas where the median gross rent is not statistically reliable, HUD substitutes the median gross rent for the county containing the ZIP code in the numerator of the rent ratio calculation. HUD multiplies this rent ratio by the current two-bedroom rent for the metropolitan area containing the small area to generate the current year two-bedroom rent for the small area.

HUD continues to use a rolling average of ACS data in calculating the Small Area FMR rent ratios. HUD believes coupling the most current data with previous year's data minimizes excessive year-to-year variability in Small Area FMR rent ratios due to sampling variance. Therefore, for FY 2019 Small Area FMRs, HUD has updated the rent ratios to use an average of the rent ratios calculated from the 2010–2014, 2011–2015, and 2012–2016 5-year ACS estimates.

VI. Request for Public Comments and FMR Reevaluations

Although HUD has not changed the FMR estimation method for FY 2019, HUD will continue to accept public comments on the methods HUD uses to calculate FY 2019 FMRs, including Small Area FMRs, and the FMR levels for specific areas. Due to its current funding levels, HUD no longer has sufficient resources to conduct local surveys of rents to address comments filed regarding the FMR levels for specific areas. PHAs may continue to fund such surveys independently, as specified below, using administrative fees if they so choose. HUD continually strives to calculate FMRs that meet the statutory requirement of using ''the most recent available data'' while also serving as an effective program parameter.

PHAs or other interested parties interested in requesting HUD reevaluation of their area's FY 2019 FMRs, as provided for under section 8(c)(1)(B) of USHA, must follow the following procedures:

1. By the end of the comment period, such reevaluation requests must be submitted publicly through *www.regulations.gov* or directly to HUD as described above. The area's PHA or, in multijurisdictional areas, PHA(s) representing at least half of the voucher tenants in the FMR area, must agree that the reevaluation is necessary.

2. In order for a reevaluation to occur, the requestor(s) must supply HUD with data more recent than the 2016 American Community Survey data used in the calculation of the FY 2019 FMRs. HUD requires data on gross rents paid in the FMR area for standard quality rental housing units. The data delivered must be sufficient for HUD to calculate a 40th and 50th percentile two-bedroom rent. Should this type of data not be available, requestors may gather this information using the survey guidance available at *https://www.huduser.gov/portal/datasets/fmr/NoteRevisedAreaSurveyProcedures.pdf* and *https://www.huduser.gov/portal/datasets/fmr/PrinciplesforPHA-ConductedAreaRentSurveys.pdf*.

3. On or about October 2, HUD will post a list, at *https://www.huduser.gov/portal/datasets/fmr.html* of the areas requesting reevaluations and where FY 2018 FMRs remain in effect.

4. Data for reevaluations must be supplied to HUD no later than Friday, January 11, 2019. On Monday January 14, 2018, HUD will post at *https://www.huduser.gov/portal/datasets/fmr.html* a listing of the areas failing to deliver data and making the FY 2019 FMRs effective in these areas.

5. HUD will use the data delivered by January 11, 2019, to reevaluate the FMRs and following the reevaluation, will post revised FMRs with an accompanying **Federal Register** notice stating the revised FMRs are available, which will include HUD responses to comments filed during the comment period.

6. Any data supporting a change in FMRs supplied after January 11, 2019, will be incorporated into FY 2020 FMRs.

7. PHAs operating in areas where the calculated FMR is lower than the published FMR (*i.e.,* those areas where HUD has limited the decrease in the annual change in the FMR to 10 percent) may request payment standards below the basic range (24 CFR 982.503(d)) and reference the ''unfloored'' rents (*i.e.,* the unfinalized FMRs calculated by HUD prior to application of the 10-percent-decrease limit) depicted in the FY 2019 FMR Documentation System available at: *https://www.huduser.gov/portal/datasets/fmr.html#2019_query.*

Questions on how to conduct FMR surveys may be addressed to Marie L. Lihn or Peter B. Kahn of the Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research at HUD headquarters, 451 7th Street SW, Room 8208, Washington, DC 20410; telephone number 202–402–2409 (this is not a toll-free number), or via email at *emad-hq@hud.gov.*

For small metropolitan areas without one-year ACS data and non-metropolitan counties, HUD has developed a method using mail surveys that is discussed on the FMR web page: *https://www.huduser.gov/portal/datasets/fmr.html#survey_info.* This method allows for the collection of as few as 100 one-bedroom, two-bedroom and three-bedroom recent mover (tenants that moved in last 24 months) units.

While HUD has not developed a specific method for mail surveys in areas with 1-year ACS data or in areas not covered by ACS data, HUD will apply the standard established for Random-Digit Dialing (RDD) telephone rent surveys. HUD will evaluate these survey results to determine whether to establish a new FMR statistically different from the current FMR, which means that the survey confidence interval must not include the FMR. The survey should collect results based on 200 one-bedroom and two-bedroom eligible recent mover units to provide a small enough confidence interval for significant results in large market mail surveys. Areas with statistically reliable 1-year ACS data are not considered to be good candidates for local surveys due to the size and completeness of the ACS process.

Other survey methods are acceptable in providing data to support reevaluation requests if the survey method can provide statistically reliable, unbiased estimates of the gross rent of the entire FMR area. In general, recommendations for FMR changes and supporting data must reflect the rent levels that exist within the entire FMR area and should be statistically reliable.

PHAs in non-metropolitan areas may, in certain circumstances, conduct surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned

[10] For example, for FY 2019 Small Area FMRs, HUD averages the gross rents from 2014, 2015 and 2016 5-Year ACS estimates. The 2014 and 2015 gross rent estimates would be adjusted to 2016 dollars using the metropolitan area's gross rent CPI adjustment factors.

that the resulting FMRs may not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that in counties where FMRs are based on the combined rents in the cluster of FMR areas, HUD will not revise their FMRs unless the grouped survey results show a revised FMR statistically different from the combined rent level.

Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The current 5-year ACS data should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

HUD has developed guidance on how to provide data-supported comments on Small Area FMRs using HUD's special tabulations of the distribution of gross rents by unit bedroom count for ZIP Code Tabulation Areas. This guidance is available at *https://www.huduser.gov/portal/datasets/fmr.html* in the FY 2019 FMR section and should be used by interested parties in commenting on whether or not the level of Small Area FMRs are too high or too low (*i.e.,* Small Area FMRs that are larger than the gross rent necessary to make 40 percent of the units accessible for an individual ZIP code or that are smaller than the gross rent necessary to make 40 percent of the units accessible for a given ZIP code). HUD will post revised Small Area FMRs after confirming commenters' calculations.

As stated earlier in this notice, HUD is required to use the most recent data available when calculating FMRs. Therefore, in order to reevaluate an area's FMR, HUD requires more current rental market data than the 2016 ACS. HUD encourages a PHA or other interested party that believes the FMR in their area is incorrect to file a comment even if they do not have the resources to provide market-wide rental data. In these instances, HUD will use the comments, should survey funding be restored, when determining the areas HUD will select for HUD-funded local area rent surveys.

VII. Information Regarding Public Comments on May 30, 2018 Renewal Funding Inflation Factor Federal Register Notice

HUD received 10 comments addressing the use of FMR surveys in the calculation of Renewal Funding Inflation Factors (RFIFs). Most of the comments received directed HUD to continue using FMR surveys in the calculation of RFIFs. Consequently, HUD does not have current plans to discontinue use of FMR surveys in the rent change component of RFIF calculations. HUD is still determining the exact methods to use when incorporating surveys in RFIF calculations. Public comments will be discussed in greater detail, and HUD's responses will be provided, in the 2019 Renewal Funding Inflation Factor notice. HUD provides the above information in this notice for the awareness of PHAs that are considering undertaking a survey to reevaluate their FY 2019 FMRs.

VIII. Environmental Impact

This Notice involves the establishment of FMR schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are available at *https://www.huduser.gov/portal/datasets/fmr.html.*

Dated: *August 27, 2018.*

Todd M. Richardson,

General Deputy Assistant Secretary, Office of Policy Development and Research.

Fair Market Rents for the Housing Choice Voucher Program

Schedule B—General Explanatory Notes

1. Geographic Coverage

a. **METROPOLITAN AREAS**—Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD is using the metropolitan core-based statistical areas (CBSAs), which are made up of one or more counties, as defined by OMB, with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas.

b. **MODIFICATIONS TO OMB DEFINITIONS**—Following OMB guidance, the estimation procedure for the FY 2019 FMRs incorporates OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data and updated by the 2010 Census in February 28, 2013, including incremental adjustments through July 15, 2015. The adjustments made to the 2000 definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly are continued. To follow HUD's policy of providing FMRs at the smallest possible area of geography, no counties were added to existing metropolitan areas due to recent updates in metropolitan area definitions. All counties added to metropolitan areas by the CBSA will still be treated as separate counties for FMR calculations; that is, the rents from a county that is a sub-area will not be used in the remaining metropolitan sub-area rent determination. All metropolitan areas that have been subdivided by HUD will use ACS data which conforms to HUD's area definition if statistically reliable information exists. If statistically reliable data for a HUD defined area is not available, HUD uses information from larger encompassing geographies, as described elsewhere in this notice.

Specific counties and New England towns and cities within each state in MSAs and HMFAs were not changed by the February 28, 2013 OMB metropolitan area definitions. These areas are listed in Schedule B, available online at *https://www.huduser.gov/portal/datasets/fmr.html.*

2. Unit Bedroom Count Adjustments

Schedule B, available at *https://www.huduser.gov/portal/datasets/fmr.html,* shows the FMRs for zero-bedroom through four-bedroom units. The Schedule B addendum shows Small Area FMRs for all metropolitan areas. FMRs for unit sizes larger than four bedrooms may be calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. FMR areas in online Schedule B are listed alphabetically by metropolitan FMR area and by non-metropolitan county within each state and are available at *https://www.huduser.gov/portal/datasets/fmr.html.*

b. Constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two non-metropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a non-metropolitan county are listed immediately following the county name.

[FR Doc. 2018–19090 Filed 8–29–18; 4:15 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–47]

30-Day Notice of Proposed Information Collection: Local Appeals to Single-Family Mortgage Limits

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:* October 1, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA__Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

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 January 16, 2018 at 83 FR 2174.

A. Overview of Information Collection

Title of Information Collection: Local Appeals to Single-Family Mortgage Limits.

OMB Approval Number: 2502–0302.

Type of Request: Extension.

Form Number: None.

Description of the need for the information and proposed use: Any interested party may submit a request for the mortgage limits to be increased in a particular area if they believe that the present limit does not accurately reflect the higher sales prices in that area. Any request for an increase must be accompanied by sufficient housing sales price data to justify higher limits. This allows HUD the opportunity to examine additional data to confirm or adjust the set loan limit for a particular area.

Respondents: (i.e., affected public): Business or other for-profit.

Estimated Number of Respondents: 14.

Estimated Number of Responses: 14.

Frequency of Response: 1.

Average Hours per Response: 7.

Total Estimated Burdens: 98.

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: August 21, 2018.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–19002 Filed 8–30–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–48]

30-Day Notice of Proposed Information Collection: Survey To Assess Operational and Capacity Status of Housing Counseling Agencies After a Disaster

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:* October 1, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Inez C. Downs, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Inez.C.Downs@hud.gov,* or telephone 202–402–8046. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Downs.

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 May 22, 2018 at 83 FR 23719.

A. Overview of Information Collection

Title of Information Collection: Survey to Assess Operational and Capacity Status of Housing Counseling Agencies after a Disaster.

OMB Approved Number: 2502–0615.

Type of Request: Reinstatement without change of a previously approved collection.

Form Number: None.

Description of the need for the information and proposed use: This Disaster Survey collects post-disaster information needed for the Office of Housing Counseling to determine the ability of the housing counseling agencies to perform their required functions during the disaster recovery period. Responses are required from HUD participating housing counseling agencies for HUD to assess the operating and capacity status of HUD participating housing counseling agencies in the aftermath of major disasters. The information collected will help HUD to identify and provide recovery support and assistance to HUD participating housing counseling agencies and their clients. Response is mandatory.

Respondents (i.e. affected public): Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 100.00.

Estimated Number of Responses: 200.00.

Frequency of Response: 200.00.

Average Hours per Response: 0.50.

Total Estimated Burdens: 100.00.

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: August 22, 2018.

Inez C. Downs,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–19001 Filed 8–30–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R3–ES–2018–0037; FXES11130300000–189–FF03E00000]

Draft Environmental Impact Statement and Draft Habitat Conservation Plan; Receipt of an Application for an Incidental Take Permit for Midwestern Bat and Bird Species; MidAmerican Energy Company, Iowa

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Endangered Species Act, as amended (ESA), and the National Environmental Policy Act (NEPA), we, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft habitat conservation plan (HCP) in support of an application from MidAmerican Energy Company (applicant) for an incidental take permit (ITP) for the federally endangered Indiana bat, federally threatened northern long-eared bat, and federally protected bald eagle; also included in the permit would be the little brown bat and tricolored bat. The take is expected to result from operation of wind turbines in 22 counties in Iowa. Also available for review is the Service's draft environmental impact statement (DEIS), which was prepared in response to the application. We are seeking public comments on the draft HCP and DEIS.

DATES:

Submitting Comments: We will accept hardcopy comments received or postmarked on or before October 1, 2018. Comments submitted online at *https://www.regulations.gov/* (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on October 15, 2018.

Public Involvement: The Service will announce future meetings and any other public involvement activities at least 15 days in advance through public notices, media releases, mailings, and/or online postings at *https://www.fws.gov/midwest/rockisland/te/MidAmericanHCP.html.*

ADDRESSES: *Obtaining Documents for Review:* The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R3–ES–2018–0037 at *http://www.regulations.gov.*

Submitting Comments: You may submit comments by one of the following methods:

- *Online: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R3–ES–2018–0037.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R3–ES–2018–0037; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post online any personal information that you provide (see Public Availability of Comments under **SUPPLEMENTARY INFORMATION**). We request that you send comments by only the methods described above.

Reviewing EPA comments on the draft HCP and DEIS: See EPA's Role in the EIS Process under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Amber Schorg or Kraig McPeek, by phone at 309–757–5800.

SUPPLEMENTARY INFORMATION: The Service has received an incidental take permit (ITP) application from the MidAmerican Energy Company in accordance with the requirements of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant has prepared a draft habitat conservation plan (HCP) in support of the ITP application and is seeking authorization for take of the federally endangered Indiana bat, federally threatened northern long-eared bat, and federally protected bald eagle, in addition to the little brown bat and tricolored bat. Little brown bat and tricolored bat are not federally protected, but they are currently being evaluated for protection under ESA. The applicant has chosen to include these as covered species, and they will be treated as if they were ESA listed. The ITP, if issued, would authorize incidental take of these species that may occur as a result of the operation of wind facilities in 22 Iowa counties over a 30-year permit term. The draft HCP describes how impacts to the covered species will be minimized and mitigated. The draft HCP also describes the covered species' life history and ecology, biological goals

and objectives, the estimated take and its potential impact on covered species' populations, adaptive management and monitoring, and mitigation measures.

The Service has prepared a draft environmental impact statement (DEIS) in response to the ITP application in accordance with requirements of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We are making the draft HCP and the DEIS available for public review and comment.

Background

Section 9 of the ESA and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. *Take* is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538). Under section 10(a)(1)(B) of the ESA, the Service may issue permits to authorize incidental take of listed species. *Incidental take* is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

Section 10(a)(1)(B) of the ESA contains provisions for issuing incidental take permits to non-Federal entities for the incidental take of endangered and threatened species, provided the following criteria are met: (a) The taking will be incidental; (b) the applicant will minimize and mitigate, to the maximum extent practicable, the impact of such taking; (c) the applicant will develop an HCP and ensure that adequate funding for the plan will be provided; (d) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (e) the applicant will carry out any other measures that the Secretary of the Interior may require as being necessary or appropriate for the purposes of the HCP. An applicant may choose to cover nonlisted species in the HCP, and these species will be treated as ESA-listed species.

Proposed Action

We propose to issue a 30-year permit for incidental take of the Indiana bat, northern long-eared bat, bald eagle, little brown bat, and tricolored bat if the MidAmerican HCP meets all the section 10(a)(1)(B) permit issuance criteria. The permit would authorize the take of these species incidental to the applicant's operation of wind projects.

Applicant's Project

MidAmerican Energy currently operates 22 Projects in Iowa, consisting of 2,021 turbines that vary by type and project. Detailed descriptions of the projects are found in section 2.0 of the HCP. All projects and turbines are within the range of the northern long-eared bat, little brown bat, tricolored bat, and eagle. Four projects have turbines within Indiana bat range (375 turbines). MidAmerican has developed a conservation program to avoid, minimize, and mitigate for impacts to covered species. Bald eagle-specific avoidance and minimization measures will include carrion removal in the vicinity of projects and livestock operator outreach. Reductions in scavenging opportunities are expected to reduce eagle use near wind projects. Bat-specific minimization measures were informed by extensive species presence-absence surveys, migration telemetry studies, and mortality monitoring. Minimization measures will include blade feathering below manufacturer's cut-in speed at all projects from March 15 through November 15 from sunset to sunrise. Additionally, 4 projects (265 turbines) that are expected to have the highest risk to covered bat species and all bats will be feathered below 5.0 meters per second (m/s) July 15 through September 30 from sunset to sunrise when temperatures are below 10 degrees Celsius (50 degrees Fahrenheit). Blade feathering consists of turning turbine blades parallel to the prevailing wind direction to reduce rotation of the turbine rotors, which in turn reduces the likelihood of bat-turbine collisions. MidAmerican will conduct an annual monitoring program at each project throughout the life of the permit to confirm take permit compliance.

MidAmerican has committed to fully offsetting the impacts of the taking for all covered bat species through habitat restoration, preservation, and enhancement, as well as restoration and preservation of at-risk occupied artificial roost structures. Measures to offset the impacts to taking of bald eagles will include funding local or regional eagle rehabilitation, a toxic substance education and abatement program, and protection of key eagle nesting or foraging habitat.

National Environmental Policy Act

In compliance with NEPA (42 U.S.C. 4321 *et seq.*), the Service has prepared a DEIS, in which we analyze the proposed action and a reasonable range of alternatives to the proposed action.

Seven alternatives are analyzed in the DEIS.

- *No-action alternative:* No permit would be issued, and no HCP would be implemented.
- *Alternative A:* 5.0 m/s cut-in speed across all turbines for the entire bat active season.
- *Alternative B:* 5.0 m/s cut-in speed during fall bat migration at all turbines and at turbines within 1,000 ft of suitable habitat for Indiana and northern long-eared bats during the entire bat active season.
- *Alternative C:* 5.0 m/s cut-in speed during fall bat migration.
- *Alternative D:* Manufacturer's cut-in speed for the entire bat active season.
- The applicant's HCP alternative.
- Participation in the Midwest Wind MSHCP alternative.

The environmental consequences of each alternative were analyzed to determine if significant environmental impacts would occur.

EPA's Role in the EIS Process

The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions in EISs. Therefore, EPA is publishing a notice in the **Federal Register** announcing this DEIS, as required under section 309 of the Clean Air Act. The publication date of EPA's notice of availability is the official beginning of the public comment period. EPA's notices are published on Fridays.

EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. All EISs must be filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**. You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

Public Availability of Comments

We will post on *http://regulations.gov* all public comments and information received electronically or via hardcopy. Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be

made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Charles M. Wooley,

Acting Regional Director, Midwest Region.

[FR Doc. 2018–18989 Filed 8–30–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 18X]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. The surveys, which were executed at the request of the U.S. Forest Service and the BLM, are necessary for the management of these lands.

DATES: Unless there are protests of this action, the plats described in this notice will be filed on October 1, 2018.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven 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 plat and field notes of the dependent resurvey in Township 14 South, Range 99 West, Sixth Principal Meridian, Colorado, were accepted on July 5, 2018.

The plat, in 4 sheets, incorporating the field notes of the dependent resurvey in Township 2 South, Range 73 West, Sixth Principal Meridian, Colorado, was accepted on July 9, 2018.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and subdivision of section 23 in Township 41 North, Range 2 East, New Mexico Principal Meridian, Colorado, was accepted on July 23, 2018.

The plat, in 2 sheets, incorporating the field notes of the dependent resurvey and subdivision of section 27 in Township 4 South, Range 72 West, Sixth Principal Meridian, Colorado, was accepted on August 9, 2018.

A person or party who wishes to protest any of the above surveys must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Randy A. Bloom,

Chief Cadastral Surveyor.

[FR Doc. 2018–18991 Filed 8–30–18; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC01000.L19200000.ET0000; LRORF1709600; MO# 4500124053]

Public Land Order No. 7873; Withdrawal of Public Land for Land Management Evaluation Purposes; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 694,838.84 acres of public land in Churchill, Lyon, Mineral, Nye, and Pershing Counties, Nevada from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, and leasing under the mineral and geothermal leasing laws, subject to valid existing rights, for four years for land management evaluation purposes. In addition, 68,809.44 acres of Federal land in the Dixie Valley area (Churchill County, Nevada) are withdrawn from leasing under the mineral leasing laws. Including the 8,722.47 acres of Department of the Navy (DON) lands, the total Federal land withdrawn by this Public Land Order is 772,370.75 acres. Non-Federal lands totaling 66,160.53 acres are described within the withdrawal area. Any current or future Federal estate interest in these non-Federal lands are subject to this withdrawal.

DATES: This Public Land Order takes effect on August 31, 2018.

FOR FURTHER INFORMATION CONTACT: Colleen Dingman, BLM, Carson City District Office, 775–885–6168; address: 5665 Morgan Mill Rd., Carson City, NV 89701; email: *cjdingman@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: This withdrawal keeps the lands identified below from the specified forms of appropriation in order to maintain the current environmental baseline, relative to mineral exploration and development for land management evaluation, subject to valid existing rights, to allow the DON time to complete its environmental evaluations under the National Environmental Policy Act (NEPA). The DON's environmental evaluations and NEPA analysis are for a potential legislative withdrawal of these acres of land at Naval Air Station Fallon that the DON intends to propose to Congress to withdraw and reserve for military use.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby

withdrawn from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, and leasing under the mineral and geothermal leasing laws, to maintain current environmental baseline conditions; excluding those public lands within Tps. 15 and 16 N., Rs. 34 and 35 E., that are subject to the following unpatented mining claims and millsites. Should any of these unpatented mining claims or millsites be forfeited or relinquished, the public lands would be subject to this withdrawal Order:

Mining Claim Nos: NMC1025588 thru NMC1025706, NMC108333 thru NMC1083361, NMC139460, NMC139462 thru NMC139464, NMC139486 thru NMC 139491, NMC144261, NMC144262, NMC186865, NMC186866, NMC3100915, NMC310918, NMC44931 thru NMC449940, and NMC804403; Millsite Nos: NMC1090926 thru NMC1090931.

Mount Diablo Meridian, Nevada

Lands Adjoining the Naval Air Station Fallon's B–16 Training Range

Bureau of Land Management

T. 16 N, R. 26 E,
Sec. 1, lots 1 thru 4;
Sec. 2, lots 1 and 2.
T. 17 N, R. 26 E, partly unsurveyed,
Secs. 1, 2, and 11 thru 13;
Sec. 14, E½;
Sec. 23, E½;
Secs. 24 and 25;
Sec. 26, E½;
Sec. 35, E½;
Sec. 36.
T. 18 N, R. 26 E,
Sec. 35, S½;
Sec. 36.
T. 16 N, R. 27 E,
Sec. 1, lots 1 thru 5, SW¼NE¼, S½NW¼, N½SW¼, and SW¼SW¼;
Secs. 2 and 3;
Sec. 4, lots 1 thru 4, S½NE¼, S½NW¼, N½SW¼, and N½SE¼;
Sec. 5, lots 1 thru 4, S½NE¼, S½NW¼, SW¼, and N½SE¼;
Sec. 6, lots 1 thru 5, S½NE¼, NE¼SE¼, and E½SE¼SE¼.
T. 17 N, R. 27 E, partly unsurveyed,
Secs. 4 thru 10;
Sec. 11, W½;
Sec. 14, W½;
Secs. 15 thru 22 and 27 thru 34.
T. 18 N, R. 27 E,
Secs. 27 thru 34;
Sec. 35, W½.
T. 16 N, R. 28 E, partly unsurveyed,
Sec. 5, lots 1 thru 4, S½NE¼ and S½NW¼;
Sec. 6, lots 1 thru 5, SE¼NW¼ and S½NE¼.

The area described for lands adjoining the Naval Air Station Fallon's B–16 aggregates 32,201.17 acres in Churchill and Lyon Counties.

Lands Adjoining the Naval Air Station Fallon's B–17 Training Range

Bureau of Land Management

T. 13 N, R. 32 E,
Sec. 1, except patented lands.
T. 14 N, R. 32 E, unsurveyed,
Secs. 1 thru 3, 10 thru 15, 22 thru 26, 35, and 36.
T. 15 N, R. 32 E, unsurveyed,
Secs. 25, 26, 35, and 36.
T. 12 N, R. 33 E,
Secs. 1 thru 8;
Sec 9, N½, N½SW¼, SW¼SW¼, N½SE¼, and SE¼SE¼;
Secs. 10 thru 15;
Sec 16, W½SW¼;
Secs. 17, 18, and 20 thru 24.
Tps. 13 and 14 N, R. 33 E, unsurveyed.
T. 15 N, R. 33 E, partly unsurveyed,
Sec. 6, that portion west of the easterly right-of-way boundary for State Route 839;
Sec. 7, that portion west of the easterly right-of-way boundary for State Route 839;
Sec. 18, that portion west of the easterly right-of-way boundary for State Route 839;
Sec. 19, that portion west of the easterly right-of-way boundary for State Route 839;
Secs. 29 thru 34.
T. 11 N, R. 34 E,
Secs. 1 thru 3;
Sec. 4, lot 4, S½SE¼, SW¼NW¼, NW¼SW¼ and S½SW¼;
Sec. 5;
Sec. 6, lots 1 and 2, S½NE¼ and SE¼;
Secs. 9 thru 12;
Sec. 13, N½;
Sec. 14, N½;
Sec. 15, N½;
Sec. 16, N½.
T. 12 N, R. 34 E,
Secs. 1 thru 5;
Sec. 6, lots 1 and 3 thru 7, SE¼NE¼, SE¼NW¼, E½SW¼, and S½SE¼;
Sec. 7, lots 1, 2, and 4, E½, E½NW¼, and SE¼SW¼;
Secs. 8 thru 27;
Sec. 28, NE¼, N½NW¼, SW¼NW¼, S½SW¼, and E½SE¼;
Sec. 29, N½, SW¼, W½SE¼, and SE¼SE¼;
Sec. 30;
Sec. 31, E½;
Sec. 32;
Sec. 33, E½NE¼ and NW¼;
Secs. 34 thru 36;
Tps. 13 and 14 N, R. 34 E, unsurveyed.
T. 15 N, R. 34 E, partly unsurveyed,
Secs. 1 thru 3;
Sec. 4, lots 1 thru 3, E½SW¼, and SE¼;
Sec. 9, E½, E½NW¼, and E½SW¼;
Secs. 10 thru 15;
Sec. 16, E½, E½NW¼, and E½SW¼;
Sec. 21, E½, E½NW¼, E½SW¼, and SW¼SW¼;
Secs. 22 thru 28 and 32 thru 36.
T. 16 N, R. 34 E, partly unsurveyed,
Sec. 15, lots 1 and 2, N½, SE¼, and E½SW¼;
Sec. 16, lots 1 thru 8 and 13, NE¼NE¼, and SW¼SE¼;
Sec. 21, lot 1, E½NE¼, SW¼NE¼, and SE¼;
Secs. 22, 23 and 25 thru 27;
Sec. 28, E½;
Sec. 33, E½;
Secs. 34 thru 36.
T. 11 N, R. 35 E,
Sec. 4, lots 3 and 4, SW¼ and S½NW¼;
Secs. 5 thru 7;
Sec. 8, W½.
T. 12 N, R. 35 E,
Secs. 1 thru 12;
Sec. 13, W½;
Secs. 14 thru 23;
Sec. 26, N½;
Secs. 27 thru 33;
Sec. 34, N½.
T. 13 N, R. 35 E, unsurveyed,
Secs. 1 thru 3;
Sec. 4, W½ and E½;
Secs. 5 thru 8;
Sec. 9, NE¼, NW¼, and S½;
Secs. 10 thru 36;
T. 14 N, R. 35 E, unsurveyed,
Sec. 2, W½;
Sec, 3;
Sec. 4, W½ and E½;
Secs. 5 thru 11;
Sec. 13, W½;
Secs. 14 thru 27;
Sec. 28, W½NE¼, E½NE¼, W½, W½SE¼, and E½SE¼;
Secs. 29 thru 32;
Sec. 33, W½NE¼, W½, W½SE¼, E½NE¼ and E½SE¼;
Secs. 34 thru 36.
T. 15 N, R. 35 E, unsurveyed,
Secs. 6 thru 8 and 17 thru 20;
Sec. 28, W½ and SE¼;
Secs. 29 thru 32;
Sec. 33, W½ and E½;
Sec. 34.
T. 16 N, R. 35 E,
Sec. 31.
T. 12 N, R. 36 E,
Sec. 6, lots 3 thru 7, SE¼NW¼ and E½SW¼.
T. 13 N, R. 36 E, unsurveyed,
Sec. 6, W½;
Sec. 7;
Secs. 18 and 19;
Sec. 30;
Sec. 31, W½.
T. 14 N, R. 36 E, unsurveyed,
Sec. 31, W½.

The area described for lands adjoining the Naval Air Station Fallon's B–17 training range aggregates 253,089.11 acres in Churchill, Nye, and Mineral Counties.

Lands Adjoining the Naval Air Station Fallon's B–20 Training Range

Bureau of Land Management

T. 24 N, R. 31 E,
Secs. 2, 4, 8, 10, 12, 14, 16, 18, 20, 22, 28, and 30.
T. 25 N, R. 31 E,
Secs. 34 and 36.
T. 24 N, R. 32 E,
Secs. 2, 4, 6, 8, 10, 12, 14, 16, and 18.
T. 25 N, R. 32 E,
Secs. 10, 12, and 14;
Sec. 15, SE¼NE¼, NE¼SE¼, and SE¼SE¼;
Secs. 16, 20, 22, 24, 26, 28, 32, 34, and 36.
T. 22 N, R. 33 E,
Secs. 4, 5, and 8.
T. 23 N, R. 33 E,
Secs. 2, 4, 10, 11, 14 thru 16, 21, 22, 27, 28, and 32 thru 34.
T. 24 N, R. 33 E,
Secs. 2, 4, 6, 8, 10, 12, 14, 16, 18, 22, 24, 26, 28, 34, and 36.
T. 25 N, R. 33 E,

Secs. 6, 8, 16, 18, 20, 22, 26, 28, 30, 32, and 34.

The area described for lands adjoining the Naval Air Station Fallon's B–20 training range aggregates 49,986.79 acres in Churchill and Pershing Counties.

Bureau of Reclamation

T. 22 N, R. 30 E,
Secs. 12 and 24.
T. 23 N, R. 30 E,
Secs. 25, 35, and 36.
T. 22 N, R. 31 E,
Secs. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32 thru 34, and 36.
T. 23 N, R. 31 E,
Secs. 1 thru 4;
Sec. 5, S½;
Secs. 6 thru 36.
T. 24 N, R. 31 E,
Secs. 24, 26, 32, 34, and 36.
T. 22 N, R. 32 E,
Secs. 1, 2, 4, 6, and 8;
Sec. 9, E½;
Secs. 10 thru 16, 18, and 20 thru 36.
T. 23 N, R. 32 E,
Secs. 32, and 34 thru 36.
T. 22 N, R. 33 E,
Secs. 6, 7, and 18.
T. 23 N, R. 33 E,
Sec. 31.

The area described for lands adjoining the Naval Air Station Fallon's B–20 training range aggregates 65,375.88 acres in Churchill County.

Fish and Wildlife Service

T. 22 N, R. 30 E,
Secs. 2, 10, 14, 22, and 26.

The area described for lands adjoining the Naval Air Station Fallon's B–20 training range aggregates 3,201.00 acres in Churchill County.

Lands Adjoining the Naval Air Station Fallon's Dixie Valley Training Area

Bureau of Land Management

T. 13 N, R. 32 E,
Sec. 2;
Sec. 3, lots 1 thru 4, S½NE¼, S½NW¼, and SE¼;
Sec. 4, lots 1 and 2 and S½NE¼;
Sec. 11;
Sec. 12, except patented lands;
Secs. 13 and 24.
T. 14 N, R. 32 E, unsurveyed,
Secs. 4, 5, 8, 9, and 16;
Sec. 21, E½;
Sec. 27;
Sec. 28, E½;
Sec. 33, E½;
Sec. 34.
T. 15 N, R. 32 E, unsurveyed,
Secs. 1 and 2;
Sec. 3, except lands withdrawn under PLO 2771 and PLO 2834, ''Shoal Site'';
Sec. 5, except lands withdrawn under PLO 2771 and PLO 2834, ''Shoal Site'';
Sec. 8, except lands withdrawn under PLO 2771 and PLO 2834, ''Shoal Site'';
Sec. 9, except lands withdrawn under PLO 2771 and PLO 2834, ''Shoal Site'';
Sec. 10, except lands withdrawn under PLO 2771 and PLO 2834, ''Shoal Site'';
Secs. 11 thru 17, 20 thru 24, 27 thru 29, and 32 thru 34.
T. 16 N, R. 32 E,
Secs. 13 and 14, 23 thru 26, 35, and 36.
T. 17 N, R. 32 E, partly unsurveyed,
Sec. 1, E½;
Sec. 12, E½.
T. 18 N, R. 32 E, unsurveyed,
Secs. 1, 12, 13, 24, 25, and 36.
T. 19 N, R. 32 E, unsurveyed,
Secs. 13, 24, 25, and 36.
T. 16 N, R. 33 E,
Sec. 1, that portion north of the southerly right-of-way boundary and south of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 2, that portion north of the southerly right-of-way boundary and south of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 3, that portion north of the southerly right-of-way boundary and south of the northerly right-of-way boundary for U.S. Highway 50, except patented lands;
Sec. 4, that portion north of the southerly right-of-way boundary and south of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 5, that portion north of the southerly right-of-way boundary and south of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 17, that portion west of the easterly right-of-way boundary for State Route 839;
Sec. 18, that portion west of the easterly right-of-way boundary for State Route 839;
Sec. 19, that portion west of the easterly right-of-way boundary for State Route 839;
Sec. 30, that portion west of the easterly right-of-way boundary for State Route 839;
Sec. 31, that portion west of the easterly right-of-way boundary for State Route 839;
Sec. 32, that portion west of the easterly right-of-way boundary for State Route 839.
T. 17 N, R. 33 E,
Secs. 6 and 7.
T. 18 N, R. 33 E, unsurveyed,
Secs. 1 thru 8;
Sec. 9, W½;
Sec. 10, that portion north of Elevenmile Canyon Wash;
Secs. 11 and 12;
Sec. 13, that portion north of Elevenmile Canyon Wash;
Sec. 14, that portion north of Elevenmile Canyon Wash;
Sec. 16, W½;
Secs. 17 thru 20;
Sec. 29, W½;
Secs. 30 and 31.
T. 19 N, R. 33 E, unsurveyed,
Sec. 19;
Sec. 20, N½, SW¼, and SE¼;
Secs. 21 thru 27;
Sec. 28, W½ and E½;
Secs. 29 thru 36.
T. 20 N, R. 33 E, unsurveyed,
Sec. 1, N½, SW¼, and SE¼;
Secs. 2 thru 8;
Sec. 9, NE¼, NW¼, and S½;
Sec. 10, N½ and S½;
Sec. 11, NE¼, NW¼, and S½;
Sec. 12.
T. 21 N, R. 33 E,
Secs. 1 thru 3;
Sec. 9, E½;
Secs. 10 thru 16;
Sec. 20, E½;
Secs. 21 and 22;
Sec. 23, except patented lands;
Sec. 24, except patented lands;
Secs. 25 thru 29;
Sec. 31, E½;
Secs. 32 thru 36.
T. 16 N, 33 ½ E,
Sec. 1, that portion north of the southerly right-of-way boundary and south of the northerly right-of-way boundary for U.S. Highway 50;
T. 18 N, R. 33 ½ E,
Secs. 1 and 12;
Sec. 13, that portion north of Elevenmile Canyon Wash;
Sec. 24, that portion north of Elevenmile Canyon Wash.
T. 19 N, R. 33 ½ E, unsurveyed,
Secs. 24, 25, and 36.
T. 20 N, R. 33 ½ E, unsurveyed,
Sec. 1, N½ and S½;
Sec. 12.
T. 16 N, R. 34 E, partly unsurveyed,
Secs. 1 thru 3;
Sec. 4, lots 1, 2, and 9 thru 12, and SE¼;
Sec. 5, that portion north of the southerly right-of-way boundary and south of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 6, that portion north of the southerly right-of-way boundary and south of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 9, lots 2 and 6, NE¼, and E½SE¼;
Secs. 10 thru 14 and 24.
T. 17 N, R. 34 E,
Secs. 1 and 2;
Sec. 3, lots 1 and 2, S½NE¼, and SE¼;
Sec. 10, E½;
Secs. 11 thru 13;
Sec. 14, lots 1 thru 4, N½, N½SW¼, and E½SE¼;
Sec. 15, E½;
Sec. 22, E½;
Sec. 23, lots 1 thru 3, E½NE¼, SW¼NE¼, S½NW¼, and S½;
Secs. 24 thru 26;
Sec. 27, E½;
Sec. 34, E½;
Secs. 35 and 36.
T. 18 N, R. 34 E,
Secs. 1 and 2;
Sec. 4, that portion west of the easterly right-of-way boundary for State Route 121;
Secs. 5 thru 8;
Sec. 9, that portion west of the easterly right-of-way boundary for State Route 121;
Secs. 11 thru 14;
Sec. 16, that portion west of the easterly right-of-way boundary for State Route 121;
Secs. 17 and 18;
Sec. 19, that portion north of Elevenmile Canyon Wash;
Sec. 20, that portion north of Elevenmile Canyon Wash;
Sec. 21, that portion west of the easterly right-of-way boundary for State Route

121 and north of Elevenmile Canyon Wash;
Secs. 23 thru 26, 35, and 36.
T. 19 N, R. 34 E,
Secs. 1 and 2;
Sec. 4, that portion west of the easterly right-of-way boundary for State Route 121;
Secs. 5 thru 8;
Sec. 9, that portion west of the easterly right-of-way boundary for State Route 121;
Secs. 11 thru 14;
Sec. 16, that portion west of the easterly right-of-way boundary for State Route 121;
Secs. 17 thru 20;
Sec. 21, that portion west of the easterly right-of-way boundary for State Route 121;
Secs. 23 and 24;
Sec. 25, lots 1 thru 9, N½NE¼, SW¼NE¼, NW¼, and NW¼SE¼;
Sec. 26, lots 1 thru 5, N½NE¼, SE¼NE¼, and W½;
Sec. 28, that portion west of the easterly right-of-way boundary for State Route 121;
Secs. 29 thru 32;
Sec. 33, that portion west of the easterly right-of-way boundary for State Route 121;
Sec. 35, lot 1, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 36, lots 1 thru 11, SW¼NE¼, S½NW¼, and SW¼.
T. 20 N, R. 34 E, partly unsurveyed,
Sec. 1;
Sec. 2, lot 1, SE¼NE¼, and E½SE¼;
Sec. 3, lots 2 thru 4, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Secs. 4 and 5;
Sec. 6, N½ and S½;
Secs. 7 thru 9;
Sec. 10, W½NE¼, W½, and W½SE¼;
Sec. 11, E½NE¼ and E½SE¼;
Secs. 12 and 13;
Sec. 14, E½NE¼ and E½SE¼;
Sec. 15, W½NE¼, W½, and W½SE¼;
Secs. 16, 17, 20 and 21;
Sec. 22, W½NE¼, W½, and W½SE¼;
Sec. 23, E½NE¼ and E½SE¼;
Secs. 24 and 25;
Sec. 26, E½NE¼ and E½SE¼;
Sec. 28, that portion west of the easterly right-of-way boundary for State Route 121;
Secs. 29 thru 32;
Sec. 33, that portion west of the easterly right-of-way boundary for State Route 121;
Secs. 35 and 36.
T. 21 N, R. 34 E,
Sec. 1, lots 1 thru 7, SW¼NE¼, S½NW¼, and W½SE¼;
Secs. 2 thru 18
Sec. 19;
Secs. 20 thru 23 and 26;
Sec. 27, N½, N½SW¼, SW¼SW¼, N½SE¼SW¼, W½SW¼SE¼SW¼, SE¼SW¼SE¼SW¼, SE¼SE¼SW¼, and SE¼;
Secs. 28 thru 33;
Sec. 34, W½.
T. 22 N, R. 34 E, unsurveyed,
Secs. 34, 35, and 36.
T. 15 N, R. 35 E, unsurveyed,
Sec. 5.
T. 16 N, R. 35 E,
Secs. 5 thru 8, 17 thru 20, 29, 30, and 32.
T. 17 N, R. 35 E,
Secs. 2 thru 10;
Sec. 11, W½;
Sec. 15, N½;
Secs. 16 thru 20;
Sec. 21, N½ and SW¼;
Secs. 29 thru 32.
T. 18 N, R. 35 E, unsurveyed,
Secs. 1 thru 3;
Sec. 4, except patented lands;
Sec. 5, except patented lands;
Sec. 6, except patented lands;
Sec. 7;
Sec. 8, except patented lands;
Sec. 9, except patented lands;
Secs. 10 thru 24 and 26 thru 35.
T. 19 N, R. 35 E,
Sec. 2;
Sec. 3, lots 1 thru 4, S½NE¼, S½NW¼, SW¼, N½SE¼, NE¼SW¼SE¼, N½NW¼SW¼SE¼, E½SE¼SE¼, NW¼SE¼SE¼, N½SW¼SE¼SE¼, and SE¼SW¼SE¼SE¼;
Secs. 4 thru 9;
Sec. 10, S½SW¼NE¼NE¼, S½SE¼NE¼NE¼, S½NE¼NW¼NE¼, S½NW¼NW¼NE¼, S½NW¼NE¼, S½NE¼, W½, and SE¼;
Sec. 11, NE¼, E½SE¼NE¼NW¼, NW¼NW¼NW¼, S½SW¼NW¼NW¼, S½SE¼NW¼NW¼, SW¼NW¼, NE¼NE¼SW¼, SE¼NW¼NE¼SW¼, N½SE¼NE¼SW¼, SE¼SE¼NE¼SW¼, W½SW¼, S½NE¼SE¼SW¼, S½NW¼SE¼SW¼, S½SE¼SW¼, N½NE¼SE¼, N½SW¼NE¼SE¼, N½SE¼NE¼SE¼, N½NW¼SE¼, W½SW¼NW¼SE¼, N½SE¼NW¼SE¼, S½SW¼SE¼ and S½SE¼SE¼;
Sec. 12, S½SW¼SW¼;
Secs. 13 thru 29;
Sec. 30, lots 1 thru 6, E½, and E½NW¼;
Sec. 31, lots 1 thru 7, NE¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 32, lots 1 thru 8, NW¼, and N½SW¼;
Sec. 33, lots 1 thru 9, E½NE¼, and SE¼;
Secs. 34 thru 36.
T. 20 N, R. 35 E, unsurveyed,
Secs. 2 thru 11, 14 thru 23, and 26 thru 35.
T. 21 N, R. 35 E,
Secs. 1 thru 3;
Sec. 4, lots 3 thru 8 and S½NW¼;
Sec. 5, lots 1 thru 4, S½NE¼, and S½NW¼;
Secs. 6 and 7;
Sec. 10, N½;
Sec. 11, W½;
Sec. 12;
Sec. 13, all that portion north of the southerly line of a dirt road, running NE and SW through lot 16;
Sec. 14, NE¼ and S½;
Sec. 15, S½NE¼, S½NW¼ and SE¼;
Sec. 16, SE¼;
Sec. 19, lots 5 thru 15;
Sec. 20, W½ and SE¼SE¼;
Sec. 21, E½ and SW¼;
Sec. 22, E½ and SW¼;
Sec. 23;
Sec. 24, those portions of lots 1 and 2 lying north of the southerly line of a dirt road, and lots 3 thru 6, 11, and 14.
Sec. 25, lots 3 thru 6 and 11 thru 14;
Secs. 26 thru 35;
Sec. 36, lots 3 thru 6 and 9 thru 12.
T. 22 N, R. 35 E,
Secs. 31 thru 36.
T. 19 N, R. 36 E,
Sec. 19, lots 1 thru 4, E½NW¼, E½SW¼ and E½;
Sec. 30, lots 1 thru 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 31, lot 4, E½, and E½SW¼.
T. 21 N, R. 36 E,
Secs. 2 thru 9;
Secs. 16 thru 18, those portions lying north of the southerly line of a dirt road running northwesterly through Secs. 16 thru 18 and turning southwesterly in Sec. 18.
T. 22 N, R. 36 E,
Secs. 31 thru 35.

The area described for lands adjoining the Dixie Valley Training Area aggregates 290,984.89 acres in Churchill and Mineral Counties.

DON Lands Not Withdrawn From the Public Domain

T. 20 N, R. 34 E,
Sec. 14, W½NE¼, W½, and W½SE¼;
Sec. 15, E½NE¼ and E½SE¼;
Sec. 22, E½NE¼ and E½SE¼;
Sec. 23, W½NE¼, W½ and W½SE¼.
T. 21 N, R. 34 E,
Sec. 1, SW¼;
Sec. 24;
Sec. 25, lots 3 and 4, SW¼, and W½SE¼;
Sec. 34, E½;
Secs. 35 and 36.
T. 19 N, R. 35 E,
Sec. 3, S½NW¼SW¼SE¼, S½SW¼SE¼, and SW¼SW¼SE¼SE¼;
Sec. 10, N½NE¼NE¼, N½SW¼NE¼NE¼, N½SE¼NE¼NE¼, N½NE¼NW¼NE¼, and N½NW¼NW¼NE¼;
Sec. 11, N½NE¼NW¼, SW¼NE¼NW¼, W½SE¼NE¼NW¼, NE¼NW¼NW¼, N½SW¼NW¼NW¼, N½SE¼NW¼NW¼, SE¼NW¼, N½NW¼NE¼SW¼, SW¼NW¼NE¼SW¼, SW¼NE¼SW¼, N½NE¼SE¼SW¼, N½NW¼SE¼SW¼, S½SW¼NE¼SE¼, S½SE¼NE¼SE¼, E½SW¼NW¼SE¼, S½SE¼NW¼SE¼, N½SW¼SE¼, N½SE¼SE¼, and SW¼SE¼NE¼SW¼.
T. 21 N, R. 35 E,
Sec. 4, W½SW¼, SE¼SW¼, and SE¼;
Sec. 5, S½;
Sec. 8, N½, NW¼SW¼, and SE¼;
Sec. 9, N½, SW¼, N½NE¼SE¼, N½NW¼SE¼, SW¼NW¼SE¼, W½SE¼NW¼SE¼, W½NE¼SW¼SE¼, SE¼NE¼SW¼SE¼, W½SW¼SE¼, SE¼SW¼SE¼, S½NE¼SE¼SE¼, S½NW¼SE¼SE¼, and S½SE¼SE¼;
Sec. 10, S½;
Sec. 14, NW¼;

Sec. 15, N½NE¼, N½NW¼, and SW¼;
Sec. 16, N½ and SW¼;
Sec. 17, E½;
Sec. 18, lots 1 thru 4, E½NW¼, E½SW¼, W½SE¼, and NE¼SE¼ except Parcel 1 of Logan Turley Parcel Map, filed in the office of the County Recorder of Churchill County of July 9, 1979, under filing number 165908;
Sec. 19, lots 1 and 2, NW¼NE¼, and E½NW¼;
Sec. 20, NE¼, N½SE¼, and SW¼SE¼;
Sec. 21, NW¼;
Sec. 22, NW¼.

The area described for lands adjoining the Dixie Valley Training Area aggregates 8,722.47 acres in Churchill and Mineral Counties.

2. Subject to valid existing rights, the following described public lands are hereby withdrawn from leasing under the mineral leasing laws to maintain current environmental baseline conditions:

Mount Diablo Meridian, Nevada

Lands Within the Naval Air Station Fallon's Dixie Valley Training Area

Bureau of Land Management

T. 16 N, R. 33 E,
Sec. 1, that portion north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 2, that portion north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 3, that portion north of the northerly right-of-way boundary for U.S. Highway 50, except patented lands;
Sec. 4, that portion north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 5, that portion north of the northerly right-of-way boundary for U.S. Highway 50.
T. 17 N, R. 33 E,
Secs. 1 thru 5, 8 thru 17, 20 thru 29 and 32 thru 36.
T. 18 N, R. 33 E, unsurveyed,
Sec. 9, E½;
Sec. 10, that portion south of Elevenmile Canyon Wash;
Sec. 13, that portion south of Elevenmile Canyon Wash;
Sec. 14, that portion south of Elevenmile Canyon Wash;
Sec. 15;
Sec. 16, E½;
Secs. 21 thru 28;
Sec. 29, E½;
Secs. 32 thru 36.
T. 16 N, R. 33 ½ E, unsurveyed,
Sec. 1, that portion north of the northerly right-of-way boundary for U.S. Highway 50.
T. 17 N, R. 33 ½ E.
T. 18 N, R. 33 ½ E,
Sec. 13, that portion south of Elevenmile Canyon Wash;
Sec. 24, that portion south of Elevenmile Canyon Wash;
Secs. 25 and 36.
T. 16 N, R. 34 E, partly unsurveyed,
Sec. 4, lots 3 and 5;
Sec. 5, that portion north of the northerly right-of-way boundary for U.S. Highway 50;
Sec. 6, that portion north of the northerly right-of-way boundary for U.S. Highway 50.
T. 17 N, R. 34 E,
Sec. 3, lots 3 and 4, S½NW¼ and SW¼;
Secs. 4 thru 9;
Sec. 10, W½;
Sec. 15, W½;
Secs. 16 thru 21;
Sec. 22, W½;
Sec. 27, W½;
Secs. 28 thru 33;
Sec. 34, W½.
T. 18 N, R. 34 E,
Sec. 3;
Sec. 4, that portion east of the easterly right-of-way boundary for State Route 121;
Sec. 9, that portion east of the easterly right-of-way boundary for State Route 121;
Secs. 10 and 15;
Sec. 16, that portion east of the easterly right-of-way boundary for State Route 121;
Sec. 19, that portion south of Elevenmile Canyon Wash;
Sec. 20, that portion south of Elevenmile Canyon Wash;
Sec. 21, that portion east of the easterly right-of-way boundary for State Route 121 and that portion south of Elevenmile Canyon Wash;
Sec. 22;
Secs. 27 thru 34.
T. 19 N, R. 34 E,
Sec. 3;
Sec. 4, that portion east of the easterly right-of-way boundary for State Route 121;
Sec. 9, that portion east of the easterly right-of-way boundary for State Route 121;
Secs. 10 and 15;
Sec. 16, that portion east of the easterly right-of-way boundary for State Route 121;
Sec. 21, that portion east of the easterly right-of-way boundary for State Route 121;
Secs. 22 and 27;
Sec. 28, that portion east of the easterly right-of-way boundary for State Route 121;
Sec. 33, that portion east of the easterly right-of-way boundary for State Route 121;
Sec. 34.
T. 20 N, R. 34 E, partly unsurveyed,
Sec. 2, lots 2 thru 4, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 3, lot 1, SE¼NE¼ and E½SE¼;
Sec. 10, E½NE¼ and E½SE¼;
Sec. 11, W½NE¼, W½SE¼ and W½;
Sec. 26, W½NE¼, W½SE¼ and W½;
Sec. 27;
Sec. 28, that portion east of the easterly right-of-way boundary for State Route 121;
Sec. 33, that portion east of the easterly right-of-way boundary for State Route 121;
Sec. 34.
T. 21 N, R. 34 E,
Sec. 25, lots 1 and 2, W½NE¼ and NW¼.
T. 21 N, R. 35 E,
Sec. 17, W½;
Sec. 18, lots 5 thru 11 and E½SE¼SE¼NE¼.

The area described for Dixie Valley Training Area aggregates 68,809.44 acres in Churchill County.

3. Subject to valid existing rights, the following described non-Federal lands are hereby withdrawn from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, and leasing under the mineral and geothermal leasing laws to maintain current environmental baseline conditions:

Mount Diablo Meridian, Nevada

Non-Federally Owned Lands

Lands Adjoining the Naval Air Station Fallon's B–17 Training Range

T. 13 N, R. 32 E, partly unsurveyed,
A portion of M.S. No. 4773 (Viking's Daughter, Turtle, Tungsten, and Don).
T. 12 N, R. 33 E,
Sec. 9, SE¼SW¼ and SW¼SE¼;
Sec. 16, N½, E½SW¼, and SE¼.
T. 11 N, R. 34 E,
Sec. 4, lots 1 thru 3, S½NE¼, SE¼NW¼, N½SE¼ and NE¼SW¼;
T. 12 N, R. 34 E,
Sec. 6, lot 2, SW¼NE¼, and N½SE¼;
Sec. 7, lot 3 and NE¼SW¼;
Sec. 28, SE¼NW¼, W½SE¼, and N½SW¼;
Sec. 29, NE¼SE¼;
Sec. 33, W½NE¼ and S½.
T. 16 N, R. 34 E, partly unsurveyed,
A portion of M.S. No. 4184 (Eva B, Eva B No.2, Argel No. 1, Argel No. 2, Argel No. 3, and Prince Albert Lodes);
A portion of M.S. No. 3927 (Lookout No. 11 Lode).

The area described for lands adjoining the Naval Air Station Fallon's B–17 training range aggregates 2,037.37 acres in Churchill, Nye, and Mineral Counties.

Lands Adjoining the Naval Air Station Fallon's B–20 Training Range

T. 22 N, R. 30 E,
Secs. 1, 11, 13, 15, 23, and 25.
T. 22 N, R. 31 E,
Secs. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, and 35.
T. 23 N, R. 31 E,
Sec. 5, lots 1 thru 4, S½NE¼ and S½NW¼.
T. 24 N, R. 31 E,
Secs. 1, 3, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, and 35.
T. 25 N, R. 31 E,
Sec. 35.
T. 22 N, R. 32 E,
Secs. 3, 5, and 7;
Sec. 9, W½;
Secs. 17 and 19.
T. 23 N, R. 32 E,
Secs. 31 and 33.
T. 24 N, R. 32 E,
Secs. 1, 3, 5, 7, 9, 11, 13, 15, and 17.
T. 25 N, R. 32 E,
Secs. 1, 11 and 13;
Sec. 15, N½NE¼, SW¼NE¼, W½ and W½SE¼;
Secs. 21, 23, 25, 27, 29, 31, 33 and 35.

T. 23 N, R. 33 E,
Secs. 3 and 9.
T. 24 N, R. 33 E,
Secs. 1, 3, 5, 7, 9, 11, 13, 15, 17, 21, 23, 25, 27, 33, and 35.
T. 25 N, R. 33 E,
Secs. 5, 7, 15, 17, 19, 21, 27, 29, 31, 33, and 35.

The area described for lands adjoining the Naval Air Station Fallon's B–20 training range aggregates 61,764.88 acres in Churchill and Pershing Counties.

Lands Adjoining the Naval Air Station Fallon's Dixie Valley Training Area

T. 13 N, R. 32 E,
A portion of M.S. No. 4773A (Don and Tungsten No. 1 Lodes).
T. 16 N, R. 33 E,
Sec. 3, the right-of-way for U.S. Highway 50, as described in deed recorded July 27, 1934, Book 20, Deed Records, page 353, Doc. No. 48379 of Churchill County, NV.
T. 21 N, R. 33 E,
M.S. No. 1877 (IXL, 1st Ext. IXL, Black Prince, 1st Ext. Black Prince, Twin Sister and Twin Sister No. 2 Lodes);
M.S. No. 1936 A (Bonanza);
M.S. No. 1937 (Spring Mine).
T. 16 N, R. 34 E,
A portion of M.S. No. 3630 (Kimberly No. 3 and Kimberly No. 4 Lodes).
T. 17 N, R. 34 E,
M.S. No. 4180 (Copper King, Central and Horn Silver Lodes).
T. 19 N, R. 34 E,
M.S. No. 3064 (Spider, Wasp, Tony Pah, Long Nel and Last Chance Lodes);
A portion of M.S. No. 3122 (Great Eastern No. 1, Great Eastern No. 3 and Great Eastern No. 4 Lodes);
A portion of M.S. No. 3398 (Nevadan, Little Witch, Silver Tip, Valley View and Panhandle Lodes);
M.S. No. 3424 (Bumblebee, Grey Horse, Grey Horse No. 2, Grey Horse No. 1, Triangle Fraction and Kingstone Lodes);
M.S. No. 3885 (Last Chord, King Midas, King Midas No. 1, King Midas No. 2 and King Midas No. 3 Lodes).
T. 21 N, R. 34 E,
Sec. 27, NE¼SW¼SE¼SW¼ (Dixie Cemetery).
T. 18 N, R. 35 E, unsurveyed,
M.S. No. 2954 (Blue Jay Lode);
M.S. No. 3070 (Mars Lode);
M.S. No. 3071 (Scorpion Lode);
M.S. No. 3072 (B. and S. Lode);
M.S. No. 3078 (Nevada Wonder Lode);
M.S. No. 3079 (Ruby No. 1 Lode);
M.S. No. 3123 (Last Chance Lode);
M.S. No. 3124 (Last Chance No. 1 Lode);
M.S. No. 3325 (Nevada Wonder No. 2 Lode);
M.S. No. 3326 (Last Chance No. 2 Lode);
M.S. No. 3327 (Nevada Wonder No. 1, Ruby and Ruby No. 2 Lodes);
M.S. No. 3416 (Starr Lode);
M.S. No. 3417 (Moss Fraction Lode);
A portion of M.S. No. 3671 (Gold Dawn No. 1, Gold Dawn No. 2, Gold Dawn No. 3 and Gold Dawn No. 6 Lodes);
A portion of M.S. No. 3750 (Hercules, Jackrabbit, Hilltop and Hercules No. 2 Lodes);
M.S. No. 4225 (Nevada Wonder No. 3 Lode);
M.S. No. 4226 (Hidden Treasure, Hidden Treasure No. 1 and Hidden Treasure No. 2 Lodes);
M.S. No. 4227 (North Star, Rose No. 1, Twilight No. 2 and Twilight No. 3 Lodes);
Wonder Townsite, (Patent No. 214499, July 3, 1911);
Wonder Townsite, Blocks 31 and 42.
T. 19 N, R. 35 E,
M.S. No. 2826 (Jackpot and Grand View Lodes);
A portion of M.S. No. 3122 (Great Eastern, Great Eastern No. 1, Great Eastern No. 3, Great Eastern No. 4 and Great Eastern Fraction Lodes);
A portion of M.S. No. 3398 (Little Witch, Silver Tip, Valley View, Pan Handle and Yellow Jacket Lodes);
M.S. No. 3671 (Gold Dawn No. 1, Gold Dawn No. 2 and Gold Dawn No. 3 Lodes);
M.S. No. 3732 (Gold Bar No. 4, New York No. 2 and Blister Foot Lodes);
A portion of M.S. No. 3750 (Hilltop Fraction, Hercules, Hercules No. 2, Hercules No. 3, Hilltop, Jackrabbit, Worm, Beauty, Lizard No. 1 and Grand View Fraction Lodes);
M.S. No. 3786 (Queen, Queen No. 1, Queen No. 4, Queen No. 5, Queen No. 7, Queen No. 8, Queen No. 9, Queen No. 10, Queen No. 11, Queen Bee and Great Bend Lodes).
T. 21 N, R. 35 E,
Sec. 4, NE¼SW¼;
Sec. 8, E½SW¼ and SW¼SW¼;
Sec. 9, S½NE¼SE¼, E½SE¼NW¼SE¼, NE¼NE¼SW¼SE¼, N½NE¼SE¼SE¼, and N½NW¼SE¼SE¼;
Sec. 11, E½;
Sec. 18, a portion of NE¼SE¼ being Parcel 1 of Logan Turley Parcel Map, filed in the office of the County Recorder of Churchill County of July 9, 1979, under filing number 165908.
T. 19 N, R. 36 E,
Sec. 30, lot 4, SE¼SW¼, and SW¼SE¼;
Sec. 31, lots 1 thru 3 and E½NW¼.

The area described for lands adjoining the Dixie Valley Training Area aggregates 2,358.28 acres in Churchill and Mineral Counties.

4. The withdrawal made by this Order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining or mineral leasing laws.

5. This withdrawal will expire four years from the effective date of this order, unless, as a result of a review conducted pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: August 23, 2018.

Joseph R. Balash,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 2018–18998 Filed 8–30–18; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[18X 1109AF LLUT930000 L16100000.DS0000.LXSSJ0640000]

Notice of Error in Draft Resource Management Plans and Associated Environmental Impact Statement for the Grand Staircase-Escalante National Monument-Grand Staircase, Kaiparowits, and Escalante Canyon Units and Federal Lands Previously Included in the Monument That Are Excluded From the Boundaries; Extension of Public Comment Period, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of error and extension of public comment period.

SUMMARY: This action corrects an error related to potential disposal of Federal lands under the Federal Land Policy and Management Act, as amended (FLPMA), within a notice published in the **Federal Register** on August 17, 2018. The Bureau of Land Management (BLM) Grand Staircase-Escalante National Monument (GSENM) and Kanab Field Office published in the **Federal Register** the availability of Draft Resource Management Plans (RMPs) and an associated Environmental Impact Statement (EIS) for the Grand Staircase-Escalante National Monument-Grand Staircase, Kaiparowits, and Escalante Canyon Units and Federal lands previously included in the Monument that are excluded from the boundaries. The BLM is modifying the Draft RMPs and EIS so that it does not include any Federal lands identified as available for potential disposal under FLPMA.

DATES: The BLM is extending the public comment period by 15 days to provide for notice of and opportunity to comment on the modified Draft RMPs and EIS. Comments should be submitted by November 30, 2018.

ADDRESSES: You may submit comments on the modified Draft RMPs and EIS by either of the following methods:

- *Website: https://goo.gl/EHvhbc.*
- *Mail:* 669 S Hwy. 89A Kanab, UT 84741, Attn: Matt Betenson.

Copies of the modified Draft RMPs and EIS are available at the following locations:

• Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah.

• Escalante Interagency Visitor Center, 755 West Main, Escalante, Utah.

• Kanab Field Office, 669 South Highway 89A, Kanab, Utah.

The modified Draft RMPs and EIS and accompanying errata sheet are available on the ePlanning website at: *https://goo.gl/EHvhbc.*

FOR FURTHER INFORMATION CONTACT: Matt Betenson, Associate Monument Manager, telephone (435) 644–1200; address 669 S Hwy. 89A, Kanab, UT 84741; email *BLM_UT_CCD_monuments@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 for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: On December 4, 2017, President Trump signed Presidential Proclamation 9682 modifying the boundaries of the GSENM as established by Proclamation 6920 to exclude from designation and reservation approximately 861,974 acres of land. Lands that are excluded from the Monument boundaries are now referred to as the Kanab-Escalante Planning Area and are managed in accordance with the BLM's multiple-use mandate.

The Draft EIS noticed in the **Federal Register** on August 17, 2018 (83 FR 41108), includes three alternatives that identify Federal lands as available for potential disposal under FLPMA. In accordance with direction issued by the Deputy Secretary of the Interior in an August 17, 2018, Memorandum, the BLM is modifying the Draft RMPs and EIS so that the range of alternatives does not identify any lands as available for potential disposal under FLPMA. The BLM has made a limited number of corresponding changes to sections included in the Draft RMPs and EIS, including the Executive Summary, Chapter 2 (Alternatives), Chapter 3 (Affected Environment and Environmental Consequences), Appendix A (Map 35), Appendix G (Best Management Practices), Appendix H (Stipulations and Exceptions, Modifications and Waivers), and Appendix K (Lands Identified for Disposal). These modifications do not substantially change the alternatives in the Draft RMPs and EIS or the analysis of effects on the human environment, but they do remove the identification of Federal lands as available for potential disposal under FLPMA.

The modified Draft RMPs and EIS and an accompanying errata sheet that includes a summary of all of the changes made will be distributed to stakeholders and is available on the BLM's ePlanning website at: *https://goo.gl/EHvhbc.*

The BLM is soliciting comments on the entire modified Draft RMPs and EIS. All comments received by the BLM subsequent to the notice of availability for the Draft RMPs and EIS on August 17, 2018, but prior to publication of this notice, will be included in the project record and considered by the agency in preparation of the Final RMPs and EIS. Please note that public comments and information submitted, including names, street addresses, and email addresses of persons who submit comments, will be available for public review and disclosure at the addresses provided in the **ADDRESSES** section of this notice during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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 may request that the BLM withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, and 43 CFR 1610.2.

Edwin L. Roberson,

State Director.

[FR Doc. 2018–19000 Filed 8–30–18; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ920000 18X L51010000.ER0000 LVRWA18A3240]

Notice of Availability for the Draft Environmental Impact Statement for the Proposed Ten West Link 500-Kilovolt Transmission Line Project and Draft Amendments to the Yuma Field Office Resource Management Plan and the California Desert Conservation Area Plan; Maricopa and La Paz Counties, Arizona, and Riverside County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM), Arizona State Office, Phoenix, Arizona, has prepared a Draft Environmental Impact Statement (EIS) for the proposed Ten West Link 500-kilovolt (kV) Transmission Line Project (Project) and Draft Resource Management Plan (RMP) Amendments to the Yuma Field Office RMP and the California Desert Conservation Area Plan. By this notice, the BLM is announcing the opening of the public comment period on the Draft EIS/Draft RMP Amendments.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft EIS and Draft RMP Amendments within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The date(s) and location(s) of public meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM website at: *http://www.blm.gov/az/st/en.html.*

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

• *Website: http://www.blm.gov/az/st/en.html.*

• *Email: TenWestLink@blm.gov.*

• *Fax:* 602–417–9452.

• *Mail:* BLM, Arizona State Office, Attention: Lane Cowger/Ten West Link Project, One North Central Avenue, Suite 800, Phoenix, AZ 85004.

Copies of the Draft EIS/Draft RMP Amendments are available at the BLM's eplanning website: *https://go.usa.gov/xU6Be.* Hardcopies of the documents can be reviewed at the BLM Arizona State Office, at the address above, and at the locations listed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lane Cowger, Project Manager, telephone: 602–417–9612; address: BLM, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004; email: *lcowger@blm.gov.* Contact Lane Cowger to add your name to our mailing list. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 800–877–8339 during normal business hours to contact the BLM Project Manager listed above. The FRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: DCR Transmission, LLC, has filed a right-of-way (ROW) application with the BLM pursuant to Title V of FLPMA, proposing to construct, operate, maintain, and decommission a single-circuit alternating current 500-kV overhead transmission line. The Project would provide a connection between the existing Delaney Substation in Tonopah, Arizona, and the existing Colorado River Substation in Blythe, California. The project purpose is to strengthen the electrical grid and improve reliability.

DCR Transmission has filed an application for a Certificate of Public Convenience and Necessity (CPCN) with the California Public Utilities Commission (CPUC) to site the transmission infrastructure in California. The CPUC approval or denial of the CPCN application is a discretionary decision. Under California law, the CPUC would be required to comply with the California Environmental Quality Act (CEQA) before issuing the CPCN. The CPUC is currently a cooperating agency in the BLM's NEPA analysis. Pursuant to the California Code of Regulations Title 14 Section 15121, the CPUC will rely upon this EIS to comply with CEQA.

An interdisciplinary approach was used to develop the Draft EIS. The issues addressed in the Draft EIS that shaped the Project's scope and alternatives include, but are not limited to: Air and climate, biological resources, cultural resources, CEQA, health and safety, noise, land use (including farmlands and military operations), recreation, socioeconomics and environmental justice, special designations, wilderness and wilderness characteristics, trails, visual resources, and transportation.

Based on feedback from cooperating agencies, stakeholders, and public scoping, the BLM developed and analyzed a suite of alternatives, which are detailed in the Draft EIS. The BLM has identified Alternative 2: BLM Utility Corridor Route, with minor route modifications near the Town of Quartzsite, Arizona, as the Agency-Preferred Alternative route for the proposed transmission line. This route is 124.9 miles long and primarily located within existing BLM utility corridors or parallel to existing infrastructure. This route is responsive to stakeholder input, by minimizing impacts to the Yuma Proving Ground, avoiding the Kofa National Wildlife Refuge, Johnson Canyon, the Colorado River Indian Tribes Reservation, the Long Term Visitor Area (recreation area), and the Ehrenberg Sandbowl area; avoiding residential and other development south of the City of Blythe and minimize use of private land in California; avoiding an area of dense cultural resources south of the City of Blythe; and crossing a majority of Visual Resource Management (VRM) Class III land. This route also provides interconnections for potential future energy development opportunities in Arizona.

The Agency-Preferred Alternative would require an amendment to the Yuma RMP to: (1) Designate approximately 13.5 miles of 200-foot wide ROW on public lands managed by the BLM outside of designated utility corridors; and (2) Change the existing VRM Class designations from Class III to Class IV within 0.3-mile either side of centerline of 18.4 miles, for a total of 6,803.2 acres. The Agency-Preferred Alternative would also require an amendment to the California Desert Conservation Area Plan to authorize construction within 0.25-mile of occurrences of Harwood's eriastrum, a BLM special status plant species.

Hardcopies of the documents can be reviewed at the Arizona State Office (see **ADDRESSES**) and at the following locations:

BLM, Palm Springs South Coast Field Office

1201 Bird Center Drive, Palm Springs, CA 92262

BLM, Yuma Field Office

7341 East 30th Street, Yuma, AZ 85365

Parker Public Library

1001 South Navajo Avenue, Parker, AZ 85344

Palm Springs Public Library

300 South Sunrise Way, Palm Springs, CA 92262

Palo Verde Valley District Library

125 West Chanslor Way, Blythe, CA 92225

Quartzsite Public Library

465 North Plymouth, Quartzsite, AZ 85346

Buckeye Public Library—Downtown

310 North 6th Street, Buckeye, AZ 85326

The BLM will use the NEPA public participation requirements to assist the agency in satisfying the public-involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) pursuant to 36 CFR 800.2(d)(3).

The information about historic and cultural resources within the area potentially affected by the Project will assist the BLM in identifying and evaluating impacts to such resources in the context of both the NEPA and Section 106 of the NHPA.

The BLM will continue consultation with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

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

Authority: 40 CFR 1506.6(b) and 43 CFR 1610.2.

Raymond Suazo,

Arizona State Director.

[FR Doc. 2018–18721 Filed 8–30–18; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–26302; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before August 18, 2018, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by September 17, 2018.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before August 18, 2018. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the

significance of the nominated properties under the National Register criteria for evaluation.

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

Nominations submitted by State Historic Preservation Officers:

ARIZONA

Maricopa County

Our Lady of Perpetual Help Mission Church, 3817 N Brown Ave., Scottsdale, SG100002979

Stout's Hotel, 133 E Pima St., Gila Bend, SG100002980

Pima County

West University Historic District (Boundary Increase), S side o E 5th St. between N 5th & N 7th Aves., Tucson, BC100002981

GEORGIA

Fulton County

Fort Peace, 87 15th St., Atlanta, SG100002982

IOWA

Clayton County

Farmers' State Bank, 502 Washington St., Volga vicinity, SG100002983

PENNSYLVANIA

Philadelphia County

Carroll, Charles, Public School (Public Schools in Philadelphia, Pennsylvania, 1938–1980 MPS), 2700 E Auburn St., Philadelphia, MP100002986

Stanton, M. Hall, Public School (Public Schools in Philadelphia, Pennsylvania, 1938–1980 MPS), 2539 N 16th St., Philadelphia, MP100002987

York County

Whiteford, Hugh and Elizabeth Ross, House, 306 Broad St., Delta, SG100002988

VIRGINIA

Bath County

Warm Springs and West Warm Springs Historic District, Jct. of US 220 & VA 39, W Warm Springs Dr with adjoining rds., Warm Springs, SG100002991

A request for removal has been made for the following resource:

TEXAS

Sabine County

Toole Building, 202 Main St., Hemphill, OT02001568

Additional documentation has been received for the following resources:

MINNESOTA

Meeker County

Litchfield Commercial Historic District, 134 N Sibley Ave., Litchfield, AD96000192

VERMONT

Rutland County

Hubbardton Battlefield, Address Restricted, Hubbardton vicinity, AD71000059

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the property in the National Register of Historic Places.

VIRGINIA

Harrisonburg Independent City

United States Post Office and Court House, 116 N Main St., Harrisonburg (I), SG100002992

Authority: Section 60.13 of 36 CFR part 60.

Dated: August 21, 2018.

Julie H. Ernstein,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program and Deputy Keeper of the National Register of Historic Places.

[FR Doc. 2018–18938 Filed 8–30–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0020; DS63644000 DR2000000.CH7000 189D0102R2; OMB Control Number 1012–0004]

Agency Information Collection Activities: Royalty and Production Reporting

AGENCY: Office of the Secretary, Office of Natural Resources Revenue, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Natural Resources Revenue (ONRR), are proposing to renew an information collection.

DATES: You must submit your written comments on or before October 30, 2018.

ADDRESSES: You may submit comments on this ICR to ONRR by using one of the following three methods (please reference ''ICR 1012–0004'' in the subject line of your comments):

1. Electronically go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ''ONRR–2011–0020'' and then click ''Search.'' Follow the instructions to submit public comments. ONRR will post all comments.

2. Mail comments to Mr. Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 64400B, Denver, Colorado 80225–0165.

3. Hand-carry or mail comments, using an overnight courier service, to ONRR. Our courier address is Building 85, Entrance N–1, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Ms. Lee-Ann Martin, Program Manager, Reference and Reporting Management, ONRR, telephone (303) 231–3313, or email *LeeAnn.Martin@onrr.gov.* For other questions, contact Mr. Armand Southall, Regulatory Specialist, ONRR, telephone (303) 231–3221, or email to *Armand.Southall@onrr.gov.* You may also contact Mr. Southall to obtain copies (free of charge) of (1) the ICR, (2) any associated forms, and (3) the regulations that require us to collect the information.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues mentioned in the OMB regulations at 5 CFR 1320.8(d)(1): (1) Is the collection necessary to the proper functions of ONRR; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might ONRR enhance the quality, utility, and clarity of the information to be collected; and (5) how might ONRR minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. ONRR will post all comments, including names and addresses of respondents at *http://www.regulations.gov.* We will include or summarize each comment in our request to the Office of Management and

Budget (OMB) to approve this ICR. Before including your Personally Identifiable Information (PII), such as your address, phone number, email address, or other personal identifying information in your comment(s), you should be aware that your entire comment, including PII, may be made available to the public at any time. While you can ask us, in your comment, to withhold your PII from public view, we cannot guarantee that we will be able to do so. We also will post the ICR at *https://www.onrr.gov/Laws_R_D/FRNotices/ICR0139.htm.*

Abstract: The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibility is to manage mineral resources production on Federal and Indian lands and the OCS, collect royalties due, and distribute the funds collected. The Secretary also has trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands. Public laws pertaining to mineral leases on Federal and Indian lands are available at *http://www.onrr.gov/Laws_R_D/PubLaws/index.htm.*

Information collections that we cover in this ICR are found at title 30 CFR part 1210, subparts B, C, and D, which pertain to reporting oil, gas, and geothermal resources royalties and oil and gas production; and part 1212, subpart B, which pertains to recordkeeping.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee, or its designee, must report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling such minerals. The information that ONRR collects includes data necessary to ensure that the lessee accurately values and appropriately pays all royalties and other mineral revenues due.

Reporters submit information into the ONRR financial accounting system that includes royalty, rental, bonus, and other payment information; sales volumes and values; and other royalty values. ONRR uses the accounting system to compare production volumes with royalty volumes to verify that companies reported and paid proper royalties for the minerals produced. Additionally, we share the data electronically with the Bureau of Safety and Environmental Enforcement, Bureau of Ocean Energy Management, Bureau of Land Management, Bureau of Indian Affairs, and Tribal and State governments so that they can perform their land and lease management responsibilities.

We use the information collected in this ICR to ensure that companies properly pay royalties based on accurate production accounting on oil, gas, and geothermal resources that they produce from Federal and Indian leases. Production data is also used to determine whether a lease is producing in paying quantities and therefore has not expired, and to track total production from Federal and Indian lands by lease, communitization agreement, unit, field or area, State, reservation, and nationally. The requirement to report accurately and timely is mandatory. Please refer to the chart for all reporting requirements and associated burden hours.

Royalty Reporting

Payors (Reporters) must report, according to various regulations, and remit royalties on oil, gas, and geothermal resources that they produced from leases on Federal and Indian lands. The reporters use the following form for royalty reporting:

Form ONRR–2014, Report of Sales and Royalty Remittance. Reporters submit this form monthly to report royalties on oil, gas, and geothermal leases. On a royalty report, reporters submit a line of data for each type of product produced from each Federal or Indian property. A royalty report is also used to report certain rents. Each line contains the royalty owed and the basic elements necessary to calculate the royalty. For example, each line of a royalty report will include the volume produced from the lease, the value of that production, and any allowances claimed by the reporter which reduced the royalty owed.

Production Reporting

Operators (Reporters) must submit, according to various regulations, production reports if they operate a Federal or Indian onshore or offshore oil and gas lease or federally approved unit or communitization agreement. We use the ONRR financial accounting system to track minerals produced from Federal and Indian lands, from the point of production to the point of disposition or royalty determination and/or point of sale. The reporters use the following forms for production accounting and reporting:

Form ONRR–4054, Oil and Gas Operations Report (OGOR). Reporters submit this form monthly for all production reporting for Outer Continental Shelf, Federal, and Indian leases. On part A of the OGOR production report, reporters submit a line of data indicating the volumes produced from each Federal or Indian well. On part B, reporters submit a line of data for each commodity, indicating the disposition of the volumes. On part C, reporters submit a line of data for each Federal or Indian property indicating any change in the volume of the inventory remaining on the property. ONRR compares the production information with sales and royalty data that reporters submit on form ONRR–2014 to ensure that the reporters paid and reported the proper royalties on the oil and gas production reported to ONRR. ONRR uses the information from OGOR parts A, B, and C to track all oil and gas from the point of production to the point of first sale or other disposition.

Form ONRR–4058, Production Allocation Schedule Report (PASR). Reporters submit this form monthly to provide allocation information for Federal offshore production. This reporting is required when a facility operator manages a measurement point where they commingle the production from an offshore Federal lease or metering point with production from other sources (*i.e.,* State lease production) before the production is measured for a royalty determination. On each PASR, the reporter submits a line of data containing the volume of commingled oil or gas. ONRR uses the data to determine if the payors reported accurate sales volumes on the OGOR. Reporters also use the PASR to corroborate data reflected on the OGOR that the OCS lease operators submit.

OMB Approval

We are requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the loss of royalty payments. ONRR protects the proprietary information that it receives, and does not collect items of a sensitive nature. It is mandatory that the reporters submit forms ONRR–2014, ONRR–4054, and ONRR–4058.

II. Data

Title of Collection: Royalty and Production Reporting, 30 CFR parts 1210 and 1212.

OMB Control Number: 1012–0004.

Form Numbers: ONRR–2014, ONRR–4054, and ONRR–4058.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 3,870 oil, gas, and geothermal reporters.

Total Estimated Number of Annual Responses: 12,873,046 lines of data.

Estimated Completion Time per Response: Varies between 1 and 7 minutes per line, depending on the activity. The average completion time is 1.96 minutes per line. The average completion time is calculated by first multiplying the estimated annual burden hours from the table below (420,241) by 60 to obtain the total annual burden minutes. Then the total annual burden minutes (25,214,460) is divided by the estimated annual number of lines submitted from the table below (12,873,046).

Total Estimated Number of Annual Burden Hours: 420,241 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Monthly.

Total Estimated Annual Non-Hour Burden Cost: We have identified no ''non-hour cost'' burden associated with this collection of information.

We have not included in our estimates certain requirements that companies perform in the normal course of business that ONRR considers usual and customary. We display the estimated annual burden hours by CFR section and paragraph in the following chart.

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Respondents' Estimated Annual Burden Hours

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses (lines of data)	Annual Burden Hours
30 CFR 1210—FORMS AND REPORTS				
Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources				

1210.52 (a) and (b)	**1210.52 What royalty reports must I submit?** You must submit a completed form ONRR–2014, Report of Sales and Royalty Remittance, to ONRR with: (a) All royalty payments; and (b) Rents on nonproducing leases, where specified in the lease.	***Form ONRR-2014***		
		Electronic* (approximately 99.97 percent)		
		3 min. per line	6,160,687	308,034
		Manual* (approximately 0.03 percent)		

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses (lines of data)	Annual Burden Hours
1210.53 (a), (b), and (c)	**1210.53 When are my royalty reports and payments due?** (a) Completed forms ONRR–2014 for royalty payments and the associated payments are due by the end of the month following the production month (see also § 1218.50 of this chapter). (b) Completed forms ONRR–2014 for rental payments, where applicable, and the associated payments are due as specified by the lease terms (see also § 1218.50 of this chapter). (c) You may submit reports and payments early.	7 min. per line	1,702	199
1210.54 (a), (b), and (c)	**1210.54 Must I submit this royalty report electronically?** (a) You must submit form ONRR–2014 electronically unless you qualify for an exception under § 1210.55(a). (b) As of December 31, 2011, all reporters/payors must report to ONRR electronically via the eCommerce Reporting Web site. All reporters/payors also must report royalty data directly or upload files using the ONRR electronic web form located at *https://onrrreporting.onrr.gov* * * * (c) Refer to our electronic reporting guidelines in the ONRR Minerals Revenue Reporter Handbook, for the most current reporting options, instructions, and security measures. The handbook may be found on our Internet Web site or you may call your ONRR customer service representative * * *			
	* * * * *			
	SUBTOTAL FOR ROYALTY REPORTING		**6,162,389**	**308,233**
Subpart C—Production Reports—Oil and Gas				

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses (lines of data)	Annual Burden Hours
1210.102 (a)(1)(i) and (ii)	**1210.102 What production reports must I submit?** (a) Form ONRR–4054, Oil and Gas Operations Report. If you operate a Federal or Indian onshore or OCS oil and gas lease or federally approved unit or communitization agreement that contains one or more wells that are not permanently plugged or abandoned, you must submit form ONRR–4054 to ONRR: (1) You must submit form ONRR–4054 for each well for each calendar month, beginning with the month in which you complete drilling, unless: (i) You have only test production from a drilling well; or (ii) The ONRR tells you in writing to report differently.	Burden hours covered under § 1210.104(a) and (b).		
1210.102 (a)(2)(i) and (ii)	(2) You must continue reporting until: (i) The Bureau of Land Management (BLM) and [Bureau of Safety and Environmental Enforcement] approves all wells as permanently plugged or abandoned or the lease or unit or communitization agreement is terminated; and (ii) You dispose of all inventory.			

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses (lines of data)	Annual Burden Hours
1210.102 (b)(1) 1210.102 (b)(2)(i)-(vi)	(b) Form ONRR–4058, Production Allocation Schedule Report. If you operate an offshore facility measurement point (FMP) handling production from a Federal oil and gas lease or federally approved unit agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination, you must file form ONRR–4058. (1) You must submit form ONRR–4058 for each calendar month beginning with the month in which you first handle production covered by this section. (2) form ONRR–4058 is not required whenever all of the following conditions are met: (i) All leases involved are Federal leases; (ii) All leases have the same fixed royalty rate; (iii) All leases are operated by the same operator; (iv) The facility measurement device is operated by the same person as the leases/agreements; (v) Production has not been previously measured for royalty determination; and (vi) The production is not subsequently commingled and measured for royalty determination at an FMP for which form ONRR–4058 is required under this part.	Burden hours covered under § 1210.104(a) and (b).		
1210.103 (a) and (b)	**1210.103 When are my production reports due?** (a) The ONRR must receive your completed forms ONRR–4054 and ONRR–4058 by the 15th day of the second month following the month for which you are reporting. (b) A report is considered received when it is delivered to ONRR by 4 p.m. mountain time at the addresses specified in § 1210.105. Reports received after 4 p.m. mountain time are considered received the following business day.	Burden hours covered under § 1210.104(a) and (b).		

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses (lines of data)	Annual Burden Hours
1210.104 (a), (b), and (c)	**1210.104 Must I submit these production reports electronically?** (a) You must submit forms ONRR–4054 and ONRR–4058 electronically unless you qualify for an exception under § 1210.105. (b) As of December 31, 2011, all reporters/payors must report to ONRR electronically via the eCommerce Reporting Web site. All reporters/payors also must report production data directly or upload files using the ONRR electronic web form located at *https://onrrreporting.onr.gov* * * * (c) Refer to our electronic reporting guidelines in the ONRR *Minerals Production Reporter Handbook*, for the most current reporting options, instructions, and security measures. The handbook may be found on our Internet Web site or you may call your ONRR customer service representative * * *	**Form ONRR-4054 (OGOR)**		
		Electronic* (approximately 99.93 percent)		
		1 min. per line	6,699,134	111,652
		Manual* (approximately 0.07 percent)		
		3 min. per line	4,911	246
		TOTAL OGOR	**6,704,045**	**111,898**
		Form ONRR-4058 (PASR)		
		Electronic* (approximately 99.94 percent)		
		1 min. per line	6,608	110
		Manual* (approximately 0.06 percent)		
	* * * * *	3 min. per line	4	0
		TOTAL PASR	**6,612**	**110**
		SUBTOTAL FOR PRODUCTION REPORTING	**6,710,657**	**112,008**
PART 1212—RECORDS AND FILES MAINTENANCE				
Subpart B—Oil, Gas and OCS Sulphur—General				
1212.50	**1212.50 Required recordkeeping and reports.** All records pertaining to offshore and onshore Federal and Indian oil and gas leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period * * *. **[In accordance with 30 U.S.C. 1724(f), Federal oil and gas records must be maintained for 7 years from the date the obligation became due.]**	Burden hours covered under §§ 1210.54(a), (b), and (c); and 1210.104(a) and (b).		

30 CFR Part 1210	Reporting and Recordkeeping Requirement	Hour Burden	Average Number of Annual Responses (lines of data)	Annual Burden Hours
1212.51 (a) and (b)	(a) *Records.* Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, net profit shares, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders * * *. (b) Period for keeping records. Lessees, operators, revenue payors, or other persons required to keep records under this section shall maintain and preserve them for 6 years from the day on which the relevant transaction recorded occurred unless the Secretary notifies the record holder of an audit or investigation involving the records and that they must be maintained for a longer period * * *. **[In accordance with 30 U.S.C. 1724(f), Federal oil and gas records must be maintained for 7 years from the date the obligation became due.]**	Burden hours covered under §§ 1210.54(a), (b), and (c); and 1210.104(a) and (b).		
TOTAL FOR ROYALTY AND PRODUCTION REPORTING			**12,873,046**	**420,241**

* ***Note:*** *ONRR considers each line of data as one response/report.*

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.

Authority: Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

[FR Doc. 2018–18927 Filed 8–30–18; 8:45 am]

BILLING CODE 4335–30–C

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2018–0002; DS63644000 DR2000000.CH7000 189D0102R2]

RIN 1010–AC09

Market Centers for Use in Applying Royalty Valuation Regulations for Federal Oil

AGENCY: Office of the Secretary, Office of Natural Resources Revenue, Interior.

ACTION: Notice of proposed modifications; request for comments.

SUMMARY: The Office of Natural Resources Revenue (ONRR) is inviting comments on proposed modifications to the list of existing market centers that royalty payors use to value oil produced from Federal leases. This proposed modification is applicable to those valuing Federal oil production using NYMEX prices or ANS spot prices.

DATES: You must submit your written comments on or before October 1, 2018.

ADDRESSES: You may submit comments on this notice to ONRR by using one of the following three methods. Please reference ''ONRR–2018–0002'' in your comments.

- Electronically go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ''ONRR–2018–0002,'' then click ''Search.'' Follow the instructions to submit public comments. ONRR will post all comments.
- Mail comments to Mr. Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 64400B, Denver, Colorado 80225–0165.
- Hand-carry or mail comments using an overnight courier service to ONRR. Our courier address is Building 85, Entrance N–1, Denver Federal Center, West 6th Avenue and Kipling Street, Denver, Colorado 80225. Visitor parking is available in the north parking lot near Entrance N–1, which is the only

entrance on the north side of Building 85. To request service, please use the courtesy phone and call Janet Giron at (303) 231–3088.

FOR FURTHER INFORMATION CONTACT: For questions on technical issues, contact Mr. Robert Sudar, Market and Spatial Analytics, CEVA, ONRR, telephone (303) 231–3511 or email to *Robert.Sudar@onrr.gov.* For other questions, contact Mr. Armand Southall, telephone (303) 231–3221, or email to *Armand.Southall@onrr.gov.*

SUPPLEMENTARY INFORMATION: ONRR publishes a list of market centers for use in Federal oil valuation calculations under 30 CFR 1206.112. This regulation applies to payors who are applying adjustments and transportation allowances when Federal oil production is valued using NYMEX prices or ANS spot prices. Under § 1206.113, ONRR will monitor market activity and, if necessary, add to or modify the list of market centers. ONRR last published the list of market centers in the **Federal Register** on June 20, 2000 (65 FR 38299). Under § 1206.113, ONRR will consider the following factors and conditions in specifying market centers:

1. Points where ONRR-approved publications publish prices useful for index purposes;
2. Markets served;
3. Input from Industry and others knowledgeable in crude oil marketing and transportation;
4. Simplification; and
5. Other relevant matters.

ONRR is seeking comments on its proposal to modify the list of market centers and the oil types at each location as listed below:

Market center location	Oil types
Proposed New Market Centers	
Nederland, Texas	Southern Green Canyon.
Clovelly, Louisiana	Thunder Horse.
Houston, Texas	Light Sweet.
Clearbrook, Minnesota	Bakken Blend.
Guernsey, Wyoming	Bakken Blend.
Guernsey, Wyoming	Wyoming Sweet.
Existing Market Centers to be removed	
San Francisco, California	Alaska North Slope.
Saint James, Louisiana	Eugene Island.
Existing Market Centers to remain unchanged	
Cushing, Oklahoma	West Texas Intermediate.
Midland, Texas	West Texas Intermediate.
Midland, Texas	West Texas Sour.
Saint James, Louisiana	Light Louisiana Sweet.
Saint James, Louisiana	Bonito Sour.
Empire, Louisiana	Heavy Louisiana Sweet.
Clovelly, Louisiana	MARS Blend.
Houma, Louisiana	Poseidon.
Multiple locations, U.S. West Coast.	Alaska North Slope.

For supplementary information on these proposed market center locations, please visit *https://www.onrr.gov/Valuation/pdfdocs/Crude-Oil-Market-Centers-Map.pdf.*

Before making this proposal final, ONRR seeks comments. We are especially interested in comments from Industry and others knowledgeable in crude oil marketing and transportation that addresses the following issues: (1) Whether ONRR should reconsider the proposed new market centers based on the five factors specified in § 1206.113; (2) whether ONRR should reconsider removing the market centers proposed for removal based on the five factors specified in § 1206.113; (3) whether ONRR should reconsider modifying or removing the market centers proposed to remain unchanged based on the five factors specified in § 1206.113; and (4) whether ONRR should consider adding any other market centers based on the five factors specified in § 1206.113.

ONRR will post all comments, including names and addresses of respondents at *http://www.regulations.gov.* We will include or summarize each comment when finalizing any modifications to the market centers list. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authorities: 30 CFR 1206.113.

Gregory J. Gould,

Director for Office of Natural Resources Revenue.

[FR Doc. 2018–19011 Filed 8–30–18; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2015–0068]

Environmental Impact Statement on the Liberty Development and Production Plan in the Beaufort Sea Planning Area

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) is announcing the availability of the Final Environmental Impact Statement (FEIS) for the Liberty Development and Production Plan (DPP) in the Beaufort Sea Planning Area. The FEIS analyzes the potential environmental impacts of the proposed action described in the Liberty DPP and reasonable alternatives to the proposed action.

ADDRESSES: Electronic copies of the FEIS and associated information is available on BOEM's website at: *https://www.boem.gov/liberty.*

FOR FURTHER INFORMATION CONTACT: Lauren Boldrick, Project Manager, Bureau of Ocean Energy Management, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503, 907–334–5200.

SUPPLEMENTARY INFORMATION: The proposed action would recover and process oil from the Liberty oil field and transport sales-quality oil to market. To accomplish this, Hilcorp Alaska LLC would construct the Liberty Drilling and Production Island (LDPI) to recover reserves from three Federal leases (OCS–Y–1585, OCS–Y–1650, and OCS–Y–1886) in Foggy Island Bay of the Beaufort Sea. The ocean bottom footprint of the proposed LDPI is approximately 24 acres. Hilcorp would construct a new pipeline linking the LDPI to the Badami Sales Oil Pipeline (Badami pipeline). They would bury the subsea portion (approximately 5.6 miles) of the pipeline along a route running south from the LPDI to the Alaska coastline west of the Kadleroshilik River. The pipeline would transition to above-ground for approximately 1.5 miles and tie into the existing Badami pipeline. Hilcorp would produce and process oil from the LDPI, transport it through the Badami pipeline to the existing common carrier pipeline system, and from there on to the Trans-Alaska Pipeline System.

The full text of the mitigation measures which will be included in the project approval are available in the Liberty DPP FEIS. The FEIS and associated information is available on BOEM's website at: *https://www.boem.gov/liberty.*

Authority: This Notice of Availability is published pursuant to regulations (40 CFR part 1506) implementing the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.).*

Dated: August 13, 2018.

James (Jim) Kendall,

Regional Director, Alaska OCS Region, Bureau of Ocean Energy Management.

[FR Doc. 2018–19107 Filed 8–30–18; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR03042000, 18XR0680A1, RX.18786000.1501100; OMB Control Number 1006–0014]

Agency Information Collection Activities; Lower Colorado River Well Inventory

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before October 30, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) by mail to Paul Matuska, Water Accounting and Verification Group Manager, LC–4200, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 61470, Boulder City, NV 89006–1470; or by email to *pmatuska@usbr.gov.* Please reference OMB Control Number 1006–0014 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Paul Matuska by email *pmatuska@usbr.gov* or by telephone at (702) 293–8164.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of Reclamation; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might Reclamation enhance the quality, utility, and clarity of the information to be collected; and (5) how might Reclamation minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Pursuant to the Boulder Canyon Project Act (43 U.S.C. 617, Pub. L. 642–70th Congress, 45 Stat. 1057), all diversions of mainstream Colorado River water must be in accordance with a Colorado River water entitlement. The Consolidated Decree of the United States Supreme Court in *Arizona* v. *California,* 547 U.S. 150 (2006) requires the Secretary of the Interior to account for all diversions of mainstream Colorado River water along the lower Colorado River, including water drawn from the mainstream by underground pumping. To meet the water entitlement and accounting obligations, an inventory of wells and river pumps is required along the lower Colorado River, and the gathering of specific information concerning these wells.

Title of Collection: Lower Colorado River Well Inventory.

OMB Control Number: 1006–0014.

Form Number: Form LC–25.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Well owners and operators along the lower Colorado River in Arizona, California, and Nevada. Each diverter (including well pumpers) must be identified and their diversion locations and water use determined.

Total Estimated Number of Annual Respondents: 150.

Total Estimated Number of Annual Responses: 150.

Estimated Completion Time per Response: Approximately 20 minutes is required to interview individual well and river-pump owners or operators.

Total Estimated Number of Annual Burden Hours: 50 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: These data are collected only once for each well or river-pump owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements, are not made. A respondent may request that the data for its well or river pump be updated after the initial inventory.

Total Estimated Annual Non-hour Burden Cost: 0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: May 7, 2018.

Terrance J. Fulp,

Regional Director, Lower Colorado Region.

Editorial Note: This document was received for publication by the Office of the Federal Register on August 27, 2018.

[FR Doc. 2018–18910 Filed 8–30–18; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1050]

Certain Dental Ceramics, Products Thereof, and Methods of Making the Samel; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order and cease and desist orders. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. The public version of the

complaint can be accessed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, parties are to file public interest submissions pursuant to pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on July 23, 2018. Comments should address whether issuance of a limited exclusion order and cease and desist orders in this investigation directed to respondents' LiSi Press products would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the limited exclusion order and cease and desist orders would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on September 13, 2018.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1050'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf.*) Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 27, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–18886 Filed 8–30–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: National Center for Natural Products Research NIDA MPROJECT

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before October 30, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on July 6, 2018, National Center for Natural Products Research NIDA MPROJECT, University of Mississippi, 135 Coy Waller Complex, P.O. Box 1848, University, Mississippi 38677–1848 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana Extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I

The company plans to bulk manufacture the listed controlled substances to make available to the National Institute on Drug Abuse (NIDA) a supply of bulk marihuana for distribution to research investigators in support of the national research program needs. No other activities for these drug codes are authorized for this registration.

Dated: August 22, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–18983 Filed 8–30–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Corrected Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Richard M. Osborne, Sr., et al.,* Case No. 1:11–cv–2039–CAB, was lodged with the United States District Court for the Northern District of Ohio on August 10, 2018.

This proposed Consent Decree concerns a complaint filed by the United States against Defendants Richard M. Osborne, Sr., Great Plains Exploration, LLC, Center Street Investments, Inc., Callendar Real Estate Development Company, LLC, and Osair, Inc., pursuant to Sections 301(a), 309(b), and 309(d) of the Clean Water Act, 33 U.S.C. 1311(a), 1319(b), and 1319(d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to mitigate for the harms caused by the impacted areas.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Corrected Notice. Please address comments to Phillip R. Dupré, United State Department of Justice, Environment and Natural Resources Division, Post Office Box 7611, Washington, DC 20044–7611 and refer to *United States* v. *Richard M. Osborne, Sr., et al.,* Case No. 1:11–cv–2039–CAB, DJ #90–5–1–1–18628.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Ohio, Carl B. Stokes United States Courthouse, 801 West Superior Avenue, Cleveland, OH 44113. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2018–18871 Filed 8–30–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities; Comment Request; Information Collections: Work Study Program of the Child Labor Regulations

AGENCY: Wage and Hour Division, Department of Labor,

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension to the information collection request (ICR) titled, ''Work-Study Program of the Child Labor Regulations.'' 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), 44 U.S.C. 3501 *et seq.*

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. A copy of the proposed information request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 30, 2018.

ADDRESSES: You may submit comments identified by Control Number 1235–0024, by either one of the following methods: *Email: WHDPRAComments@dol.gov; Mail, Hand Delivery, Courier:* Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Compliance Specialist, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: The Wage and Hour Division (WHD) of the Department of Labor administers the Fair Labor Standards Act (FLSA). Section 3(l) of the Act establishes a minimum age of 16 years for most nonagricultural employment, but allows the employment of 14- and 15-year olds in occupations other than manufacturing and mining if the Secretary of Labor determines such employment is confined to: (1) Periods that will not interfere with the minor's schooling; and (2) conditions that will not interfere with the minor's health and well-being. FLSA section 11(c) requires all covered employers to make, keep, and preserve records of their employees' wages, hours, and other conditions and practices of employment. Section 11(c) authorizes the Secretary of Labor to prescribe the recordkeeping and reporting requirements for these records. The regulations set forth reporting requirements that include a Work Study Program application and written participation agreement. In order to utilize the child labor work study provisions, § 570.35(b) requires a local public or private school system to file with the Wage and Hour Division Administrator an application for approval of a Work Study Program as one that does not interfere with the schooling or health and well-being of the minors involved. The regulations also require preparation of a written participation agreement for each student

participating in a Work Study Program and that the teacher-coordinator, employer, and student each sign the agreement.

II. Review Focus: The Department of Labor is particularly interested in comments which:

- 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;
- Enhance the quality, utility, and clarity of the information to be collected;
- 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;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks an approval for the extension of this information collection in order to ensure effective administration of the child labor programs.

Type of Review: Extension.

Agency: Wage and Hour Division.

Title: Work-Study Program of the Child Labor Regulations.

OMB Number: 1235–0024.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms, State, Local, or Tribal Government.

Total Respondents:

WSP Applications: 10.

Written Participation Agreements: 500.

Total Annual Responses:

WSP Applications: 10.

Written Participation Agreements: 1,000.

Estimated Total Burden Hours: 1,529.

Estimated Time per Response:

WSP Application: 121 minutes.

Written Participation Agreement: 31 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $22,440.

Dated: August 27, 2018.

Melissa Smith,

Director, Division of Regulations, Legislation and Interpretation.

[FR Doc. 2018–19022 Filed 8–30–18; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** at 83 FR 22293, and 54 comments were received 11 different organizations/institutions/individuals. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. The primary purpose of this revision is to implement changes described in the Supplementary Information section of this notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

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

Summary of Comments on the National Science Foundation Proposal and Award Policies and Procedures Guide and NSF's Responses

The draft NSF PAPPG was made available for review by the public on the NSF website at *http://www.nsf.gov/bfa/dias/policy/.* NSF received 54 responses from eleven commenters in response to the First **Federal Register** notice published on May 14, 2018, at 83 FR 22293. Please see *https://www.reginfo.gov/public/do/PRAMain* for the comments received, and NSF's responses.

Title of Collection: ''National Science Foundation Proposal & Award Policies & Procedures Guide.''

OMB Approval Number: 3145–0058.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) sets forth NSF's mission and purpose:

''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. . . .''

The Act authorized and directed NSF to initiate and support:

- Basic scientific research and research fundamental to the engineering process;
- Programs to strengthen scientific and engineering research potential;
- Science and engineering education programs at all levels and in all the various fields of science and engineering;
- Programs that provide a source of information for policy formulation; and
- Other activities to promote these ends.

NSF's core purpose resonates clearly in everything it does: Promoting achievement and progress in science and engineering and enhancing the potential for research and education to contribute to the Nation. While NSF's

vision of the future and the mechanisms it uses to carry out its charges have evolved significantly over the last six decades, its ultimate mission remains the same.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 50,000 proposals annually for new projects, and makes approximately 11,000 new awards.

Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,000 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on merit evaluations of proposals submitted to the Foundation.

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public

It has been estimated that the public expends an average of approximately 120 burden hours for each proposal submitted. Since the Foundation expects to receive approximately 50,600 proposals in FY 2019, an estimated 6,072,000 burden hours will be placed on the public.

The Foundation has based its reporting burden on the review of approximately 50,600 new proposals expected during FY 2019. It has been estimated that anywhere from one hour to 20 hours may be required to review a proposal. We have estimated that approximately 5 hours are required to review an average proposal. Each proposal receives an average of 3 reviews, resulting in approximately 759,000 hours per year.

The information collected on the reviewer background questionnaire (NSF 428A) is used by managers to maintain an automated database of reviewers for the many disciplines represented by the proposals submitted to the Foundation. Information collected on gender, race, and ethnicity is used in meeting NSF needs for data to permit response to Congressional and other queries into equity issues. These data also are used in the design, implementation, and monitoring of NSF efforts to increase the participation of various groups in science, engineering, and education. The estimated burden for the Reviewer Background Information (NSF 428A) is estimated at 5 minutes per respondent with up to 10,000 potential new reviewers for a total of 833 hours.

The aggregate number of burden hours is estimated to be 6,831,000. The actual burden on respondents has not changed.

Dated: August 28, 2017.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–18981 Filed 8–30–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of a revision to an announcement of meetings for the transaction of National Science Board business.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 83 FR 43710, published on August 27, 2018.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Thursday, August 30, 2018 from 3:00 p.m. to 4:00 p.m.

CHANGE IN THE MEETING: This meeting of the National Science Board has been postponed. Notice of the new time and place will be provided when it is rescheduled.

CONTACT PERSON FOR MORE INFORMATION: Brad Gutierrez, *bgutierr@nsf.gov,* 703/292–7000. Please refer to the National Science Board website for additional information. Meeting information and schedule updates (time, place, subject matter, and status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2018–19123 Filed 8–29–18; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Meeting of the Advisory Committee on Reactor Safeguards

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on October 4–6, 2018, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852.

Thursday, October 4, 2018, Conference Room 1C3 and 1C5, 11601 Landsdown Street, North Bethesda, MD 20852

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:00 a.m.: Draft Rule on Emergency Preparedness for Small Modular Reactors (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff regarding the subject draft rule.

10:15 a.m.–12:00 p.m.: Annual Operating Reactor Experience Briefing (Open)—The Committee will have an annual briefing on operating experience and significant events at the currently operating nuclear power plants.

1:00 p.m.–2:30 p.m.: Assessment of the Quality of Selected NRC Research Projects (Open)—The Committee will have a discussion on the assessment of the quality of the selected NRC research projects.

2:45 p.m.–6:00 p.m.: Preparation of ACRS Report (Open)—The Committee will continue its discussion of proposed ACRS report.

Friday, October 5, 2018, Conference Room 1C3 and 1C5, 11601 Landsdown Street, North Bethesda, MD 20852

8:30 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings. [NOTE: A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy]

10:15 a.m.–11:30 a.m.: Preparation of ACRS Report (Open)—The Committee will continue its discussion of proposed ACRS report.

1:00 p.m.–6:00 p.m.: Preparation of ACRS Report (Open)—The Committee will continue its discussion of proposed ACRS report.

Saturday, October 6, 2018, Conference Room 1C3 and 1C5, 11601 Landsdown Street, North Bethesda, MD 20852

8:30 p.m.–12:00 p.m.: Preparation of ACRS Report/Retreat (Open/Closed)—The Committee will continue its discussion of the ACRS report and potential retreat items. [NOTE: A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience. The bridgeline number for the meeting is 866–822–3032, passcode 8272423#.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC website at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/#ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–6702), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: August 28, 2018.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2018–18933 Filed 8–30–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334, 50–412, 50–346, and 50–440; NRC–2018–0174]

First Energy Corp.; First Energy Solutions; FirstEnergy Nuclear Generation; FirstEnergy Nuclear Operating Company

AGENCY: Nuclear Regulatory Commission.

ACTION: 10 CFR 2.206 request; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice that by petition dated March 27, 2018, Environmental Law and Policy Center (ELPC) (the petitioner) has requested that the NRC take enforcement action with regard to First Energy Corp. (FE), First Energy Solutions (FES), FirstEnergy Nuclear Generation (NG), and FirstEnergy Nuclear Operating Company (FENOC). The petitioner's requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2018–0174 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–2018–0174. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Bhalchandra K. Vaidya, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3308; email: *Bhalchandra.Vaidya@nrc.gov*; or Perry Buckberg, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1383; email: *Perry.Buckberg@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: On March 27, 2018, the petitioner requested that the NRC take enforcement action with regard to FE, FES, NG, and FENOC operations in Ohio and Pennsylvania at Beaver Valley Power Station (BVPS), Units 1 and 2; Davis-Besse Nuclear Power Station (DBNPS), Unit 1; and Perry Nuclear Power Plant (PNPP), Unit 1 (ADAMS Accession No. ML18094A642). The petitioner requested that the NRC take the following actions:

(A) Demands for Information

(1) Promptly issue a Demand for Information to FE, FES, NG, and FENOC requesting site-specific decommissioning funding plans for the BVNPS, DBNPS, and PNPP;

(2) Promptly issue a Demand for Information to FE, FES, NG, and FENOC regarding their reliance on external trust funds from FE and FES to satisfy their decommissioning financial obligations;

(3) Promptly issue a Demand for Information to FE, FES, NG, and FENOC regarding their continued reliance on Parent Guarantees from FE to satisfy decommissioning funding obligations, including the ability of FE to satisfy the Parent Guarantee financial test under title 10 of the *Code of Federal Regulations* (10 CFR) part 30, appendix A;

(4) Promptly issue a Demand for Information to FES, NG, and FENOC to the extent that they are relying on Parent Guarantees from FES to satisfy decommissioning funding obligations, including the ability of FES to satisfy the Parent Guarantee financial test under 10 CFR part 30, appendix A;

(5) Promptly issue a Demand for Information to FE, FES, NG, and FENOC regarding their proposed investment and financial contribution plans to make up the current decommissioning shortfall; and

(6) Promptly issue a Demand for Information to FE and FES, respectively, regarding each of their commitments to guarantee NG and FENOC's decommissioning shortfall in the event of bankruptcy.

(B) Notice of Violation and Penalties

(1) Promptly issue a Notice of Violation against FE, FES, NG, and FENOC for operating nuclear facilities without sufficient decommissioning funds in violation of 42 United States Code Annotated (U.S.C.A.), Section 2201(x)(1) and 10 CFR 50.75;

(2) Promptly issue civil penalties against FE, FES, NG, and FENOC for operating nuclear facilities without sufficient decommissioning funds in violation of 42 U.S.C.A. Section 2201(x)(1) and 10 CFR 50.75; and

(3) Promptly issue an Order to suspend NG, and FENOC's licenses for BVNPS, DBNPS, and PNPP.

The ELPC also urges the NRC to prohibit NG and FENOC from placing their nuclear facilities into SAFSTOR for purely financial reasons. In addition, ELPC requests that this Petition be given immediate emergency consideration in light of FE's and FES' rapidly deteriorating financial conditions.

The basis for ELPC's request is summarized below:

1. NG and FENOC's decommissioning trust amounts are insufficient on their own to provide reasonable assurance of funding.

2. FE cannot rely on rate increases forced on retail ratepayers to pay for the decommissioning trust fund shortfalls.

3. The costs, including SAFSTOR costs, may still be much higher than expected due to significantly higher shortfalls as reported by the Callan Institute and recognized flaws in the NRC's cost estimate formula.

4. On March 28, 2018, FES and FENOC announced that they would permanently retire all four of their reactors within the next 3 years. If plants close in 2020 and 2021, the funds cannot grow to levels that will pay for complete decommissioning.

5. Parent companies FE and FES filed for bankruptcy on March 31, 2018.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time.

The petitioner met with the Petition Review Board on June 19, 2018, to discuss the petition; the transcript of that meeting is a supplement to the petition (ADAMS Accession No. ML18194A395). The petition and the results of the discussion at the June 19, 2018, meeting would be considered in establishing the schedule for the review of the petition.

Dated at Rockville, Maryland, this 27th day of August 2018.

For the Nuclear Regulatory Commission.

Ho K. Nieh,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–18923 Filed 8–30–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–454 and 50–455; NRC–2018–0186]

Exelon Generation Company, LLC; Byron Station, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. NPF–37 and NPF–66, issued to Exelon Generation Company (EGC), LLC, for operation of the Byron Station, Unit Nos. 1 and 2. The proposed amendment extends the Completion Time for Technical Specification 3.8.1, ''AC Sources-Operating,'' Required Action A.2, on a one-time, temporary basis based on a risk-informed approach.

DATES: Submit comments by October 1, 2018. Requests for a hearing or petition for leave to intervene must be filed by October 30, 2018.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0186. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Joel S. Wiebe, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6606, email: *Joel.Wiebe@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0186 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–2018–0186.
- *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 ''*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 License Amendment Request for a One-Time Extension to Technical Specification 3.8.1, ''AC Sources-Operating,'' Required Action A.2 is available in ADAMS under Accession No. ML18226A097.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0186 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of amendments to Facility Operating License Nos. NPF–37 and NPF–66, issued to Exelon Generation Company (EGC), LLC, for operation of the Byron Station, Unit Nos. 1 and 2, located in Ogle County, Illinois.

The proposed amendment extends the Completion Time for Technical Specification 3.8.1, ''AC Sources-Operating,'' Required Action A.2, on a one-time, temporary basis based on a risk-informed approach.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will provide a one-time, risk-informed revision to the CT [COMPLETION TIME] for the loss of one offsite source for Byron Station, Units 1 and 2 from 72 hours to 79 days. The proposed one-time extension of the CT for the loss of one offsite power circuit does not significantly increase the probability of an accident previously evaluated. The TSs [Technical Specifications] will continue to require equipment that will power safety related equipment necessary to perform any required safety function. The one-time extension of the CT to 79 days does not affect the design of the Unit 1 SATs [station auxiliary transformers], the interface of the SATs with other plant systems, the operating characteristic of the SATs, or the reliability of the SATs.

The consequence of a loss of offsite power (LOOP) event has been evaluated in the Byron Station Updated Final Safety Analysis Report (Reference 23 [in EGC's letter dated August 10, 2018]) and the Station Blackout evaluation. Increasing the CT for one offsite power source on a one-time basis from 72 hours to 79 days does not increase the consequences of a LOOP event nor change the evaluation of LOOP events. The plant will continue to respond to a LOOP in the same manner and with the same consequences as previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not result in a change in the manner in which the electrical distribution subsystems provide plant protection. The proposed change will only affect the time allowed to restore the operability of the offsite power source through a SAT. The proposed change to extend the TS CT does not affect the configuration, or operation of the plant. The proposed change to the CT will facilitate completion of repairs which will restore plant design to its as-built configuration, and will eliminate the necessity to shut down both Units if SAT 242–1 fails or requires maintenance that goes beyond the current TS CT of 72 hours. This change will support the restoration of the long-term reliability of the 345kV offsite circuit SAT which is common to both Byron Units.

There are no changes to the SATs or the supporting systems operating characteristics or conditions. The change to the CT does not change any existing accident scenarios, nor create any new or different accident scenarios. In addition, the change does not impose any new or different requirements or eliminate any existing requirements. The change does not alter any of the assumptions made in the safety analysis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the acceptance criteria for any analyzed event nor is there a change to any safety limit. The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. Neither the safety analyses nor the safety analysis acceptance criteria are affected by this change. The proposed change will not result in plant operation in a configuration outside the current design basis. The proposed activity only increases, for a one-time unanticipated occurrence, the period when Byron Station, Units 1 and 2 may operate with one offsite power source. The margin of safety is maintained by maintaining the ability to safely shut down the plant and remove residual heat.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above evaluation, EGC concludes that the proposed amendments do not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no

significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 30, 2018. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

IV. 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.

For further details with respect to this action, see the application for license amendment dated August 10, 2018 (ADAMS Accession No. ML18226A097).

Attorney for licensee: Tamra Domeyer, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

Dated at Rockville, Maryland, this 27th day of August 2018.

For the Nuclear Regulatory Commission.

Joel S. Wiebe,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–18922 Filed 8–30–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1050; NRC–2016–0231]

Integrated Storage Partner's Waste Control Specialists Consolidated Interim Storage Facility

Correction

In notice document 2018–18758, appearing on pages 44070–44075 in the Issue of Wednesday, August 29, 2018, make the following correction:

On page 44070, in the second column, under the heading ''**DATES**'', on the third line, the entry ''August 29, 2018'' is corrected to read ''October 29, 2018''.

[FR Doc. C1–2018–18758 Filed 8–30–18; 8:45 am]

BILLING CODE 1301–00–D

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 83 FR 40095.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1 p.m., September 5, 2018.

CHANGES IN THE MEETING: OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 83, Number 156, Pages 40095–40096) on Monday, August 13, 2018. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 1 p.m., September 5, 2018, in conjunction with OPIC's September 13, 2018, Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Catherine F.I. Andrade at (202) 336–8768, or via email at *Catherine.Andrade@opic.gov.*

Dated: August 29, 2018.

Catherine F.I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2018–19129 Filed 8–29–18; 4:15 pm]

BILLING CODE 3210–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Qualified Domestic Relations Orders Submitted to PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget extend its approval (with modifications), under the Paperwork Reduction Act of 1995, of the information collection related to PBGC's booklet, Qualified Domestic Relations Orders & PBGC. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be submitted by October 30, 2018.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.*
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to OMB Control No. 1212–0054. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Copies of the collection of information may be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4040.

FOR FURTHER INFORMATION CONTACT: Karen Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, 202–326–4400, extension 3559. (TTY users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400, extension 3559.)

SUPPLEMENTARY INFORMATION: A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a qualified domestic relations order (QDRO).

When PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. The requirements for submitting a domestic relations order and the contents of such orders are established by statute. The models and the guidance provided by PBGC assist parties by making it easier for them to comply with ERISA's QDRO requirements in plans trusteed by PBGC; they do not create any additional requirements and result in a reduction of the statutory burden.

The Office of Management and Budget(OMB) has approved the collection of information in PBGC's booklet, *Qualified Domestic Relations Orders & PBGC* under control number 1212–0054 through December 31, 2018. PBGC intends to request that OMB extend approval of the collection of information with modifications for three years. 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.

PBGC estimates that it will receive approximately 630 domestic relations orders each year from prospective alternate payees and participants. PBGC further estimates that the total average annual burden of this collection of information will be approximately 3,576 hours and $894,000.

PBGC is soliciting public comments 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 methodologies 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.

Stephanie Cibinic,

Deputy Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2018–19004 Filed 8–30–18; 8:45 am]

BILLING CODE 7709–02–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83960; File No. SR–BOX–2018–28]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BOX Rules 5050 and 5070

August 27, 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 August 15, 2018, BOX Exchange LLC (the ''Exchange'') 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule Rules 5050 (Series of Options Contracts Open for Trading) and 5070 (Long-term Options Contracts) to conform to the recently approved changes to the Options Listing Procedures Plan (''OLPP'').[3] The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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.

[3] *See* Securities Exchange Act Release Nos. 82235 (December 7, 2017), 82 FR 58668 (December 13, 2017) (order approving the Fourth Amendment to the OLPP); 81893 (October 18, 2017), 82 FR 49249 (''OLPP Notice'').

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Rules 5050 (Series of Options Contracts Open for Trading) and 5070 (Long-term Options Contracts) to conform to the recently approved changes to the Options Listing Procedures Plan (''OLPP'').[4]

The Exchange, which is one of the Participant Exchanges to the OLPP, currently has rules that are designed to incorporate the requirements of the OLPP.[5] All Participant Exchanges have similar such (essentially uniform) rules to ensure consistency and compliance with the OLPP. The Exchange proposes to modify such rules to reflect the recent updates as described below.

Addition of Long-Term Equity Options (''LEAPS'')

First, the OLPP has been amended to change the earliest date on which new January LEAPS on equity options, options on Exchange Traded Funds (''ETF''), or options on Trust Issued Receipts (''TIR'') may be added to a single date (from three separate months). As noted in the OLPP Notice, in the past there were operational concerns related to adding new January LEAPs series for all options classes on which LEAPs were listed on a single trading day. And, the addition of new series in a pre-electronic trading environment was a manual process. To accommodate this, the addition of new January LEAPs series was spread across three months (September, October, and November). Today, however, these operational concerns related to January LEAPs have been alleviated as new series can be added in bulk electronically. The Plan Participants, including the Exchange, believe that moving the addition of new January LEAPs series to no earlier than the Monday prior to the September expiration would reduce marketplace confusion about available January LEAPs series. Where previously January LEAPs series for options classes on the February or March expiration cycles would not have been available as early as January LEAPs series for options classes on the January expiration cycle, under the proposed change, all January LEAPs series will be available concurrently.

Accordingly, to conform to this change, the Exchange proposes to modify Rule 5070(c) to reflect that new January LEAPS series on equity options classes, options on ETFs, or options on TIRs, may not be added on a currently listed and traded option class earlier than the Monday prior to the September expiration (which is 28 months before the expiration).

Addition of Equity, ETF, and TIR Option Series After Regular Trading Hours

Second, the OLPP has been amended to allow equity, ETF, and TIR option series to be added based on trading after regular trading hours (*i.e.,* after-market). As noted in the OLPP Notice, the prior version of the OLPP did not allow for option series to be added based on trading following regular trading hours. As such, the Exchange Participants were unable to add new option series that may result from trading following regular trading hours until the next morning, depending on the range of prices in pre-market trading, which is significant because events that occur after regular trading hours, such as earnings releases, often have an important impact on the price of an underlying security. In addition, there are operational difficulties for market participants throughout the industry adding series after system startup. To avoid the potential burden that would result from the inability to add series as a result of trading following regular trading hours, the OLPP was amended to allow an additional category by which the price of an underlying security may be measured. Specifically, to conform to the amended OLPP, the Exchange proposes to add to Rule 5050(b)(1) to provide that ''for option series to be added based on trading following regular trading hours,'' the price of the underlying security is measured by ''the most recent share price reported by all national securities exchanges between 4:15 p.m. and 6:00 p.m. Eastern Time.''

Technical Changes

The Exchange proposes to modify Rule 5070(b) to delete now obsolete operational language, which dates back to when LEAPs were first adopted. The language in question provides that:

[4] *Id.*

[5] In addition to the Exchange, the ''Participant Exchanges'' are: Chicago Board Options Exchange, Incorporated (now known as Cboe Exchange, Inc.), on behalf of the BATS Exchange, Inc. (now known as Cboe BZX Exchange, Inc.); C2 Exchange, Incorporated (now known as Cboe C2 Exchange, Inc.); EDGX Exchange, Inc. (now known as Cboe EDGX Exchange, Inc.); Miami International Securities Exchange, LLC; MIAX PEARL, LLC; Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; Nasdaq Options Market, LLC; Nasdaq PHLX, LLC; NYSE Arca, Inc.; and NYSE American, LLC.

After a new long-term options contract series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are opened for trading.

The Exchange proposes to delete this language because when this language was adopted LEAPs were not opened for trading until late in the trading day unless there was buying or selling interest. Today, however, technological improvements allow the Exchange to open all LEAP series at the same time as all other series in an option class.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and Section 6(b)(5) of the Act,[7] 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.

In particular, the proposed rule change, which conforms to the recently adopted provisions of the OLPP, as amended, allows the Exchange to continue to list extended far term option series that have been viewed as beneficial to traders, investors and public customers. Accordingly, the Exchange believes that the proposal is consistent with the Act because it will allow the Exchange to list all January, 2021 expiration series on the Monday prior to the September, 2018 expiration. Moreover, this change would simplify the process for adding new January LEAP options series and reduce potential for investor confusion because all new January LEAP options would be made available beginning at the same time, consistent with the amended OLPP. The Exchange notes that this proposal does not propose any new provisions that have not already been approved by the Commission in the amended OLPP, but instead maintains series listing rules that conform to the amended OLPP.

The proposal to permit series to be added based on after-market trading is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange to make series available for trading with reduced operational difficulties. The Exchange notes that this proposed change, which is consistent with the amended OLPP should provide market participants with earlier notice regarding what options series will be available for trading the following day, and should help to enhance investors' ability to plan their options trading.

The Exchange also believes that the proposed technical changes, including deleting obsolete language and reorganizing and consolidating the rule, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that by conforming Exchange rules to the amended OLPP, the Exchange would promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Exchange believes that adopting rules, which it anticipates will likewise be adopted by Participant Exchanges, would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

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[8] and Rule 19b–4(f)(6) thereunder.[9] 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, 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 and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] 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 proposal may become operative immediately upon filing. The Commission notes that the Exchange's proposal would conform the Exchange's rules to the amended OLPP, which the Commission previously approved.[13] 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.[14]

At any time within 60 days of the filing of such 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 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.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* OLPP Notice, *supra* note 3.

[14] 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).

under Section 19(b)(2)(B) [15] of the Act 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–BOX–2018–28 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–BOX–2018–28. 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 a.m. and 3 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–BOX–2018–28 and should be submitted on or before September 21, 2018.

[15] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18894 Filed 8–30–18; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83958; File No. SR–CboeEDGX–2018–039]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete Obsolete Language Regarding the Timing of Listing Long-Term Options Series

August 27, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 24, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rules 19.8 and 29.11.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.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 parts 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 purpose of this proposed rule change is to amend Rules 19.8 and 29.11 to delete now obsolete operational language, which dates back to when long-term options contracts were first adopted. This language provides that when a new equity or index long-term options contract series, as applicable, is listed, such series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such option series until they are opened for trading. The Exchange proposes to delete this language because when this language was adopted, long-term options contracts were not opened for trading until late in the trading day unless there was buying or selling interest. Today, however, technological improvements [3] allow the Exchange to open all long-term options contract series at the same time as all other series in an option class.[4]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with

[3] Historically, market participants needed to manually adjust pricing models when a new long-term options contract series was added, which was time-consuming and created pricing risk. Market participants' systems are able to incorporate series added intraday in an automatic, and thus more timely, manner. Therefore, any previous operational concerns related to the historic manual process have been alleviated.

[4] *See* Rule 19.6(a)–(c) and 29.11(c).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because deleting obsolete rules will more clearly identify for market participants currently applicable rules.[8] The Exchange believes the proposed rule change will eliminate confusion regarding which rules apply to current trading, which ultimately protects investors and the public interest. Additionally, two other options exchanges recently deleted the same provision.[9]

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 purposes of the Act. The proposed rule change deletes an obsolete operation rule, which no longer applies, and thus will have no impact on trading. Therefore, the proposed rule change has no impact on competition. The proposed rule change eliminates confusion with respect to rules applicable to current trading on the Exchange. Additionally, two other options exchanges recently deleted the same provision.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] 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 proposal may become operative immediately upon filing. The Commission notes that the Exchange's proposal would delete obsolete rule text and conform the Exchange's rules to the rules of other exchanges.[14] 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.[15]

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CboeEDGX–2018–039 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 No. SR–CboeEDGX–2018–039. 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 a.m. and 3 p.m. Copies of the filing will also 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 No. SR–CboeEDGX–2018–039 and should be submitted on or before September 21, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18895 Filed 8–30–18; 8:45 am]

BILLING CODE 8011–01–P

[7] *Id.*

[8] *See* Rule 19.6(a)–(c) and 29.11(c).

[9] *See* Securities Exchange Act Release Nos. 83909 (August 22, 2018) (SR–CBOE–2018–061); and 83837 (August 14, 2018), 83 FR 42183 (August 20, 2018) (SR–NYSEArca–2018–59).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4. 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.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See supra* note 9.

[15] 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83959; File No. SR-CboeBZX–2018–069]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete Obsolete Language Regarding the Timing of Listing Long-Term Options Series

August 27, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 27, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rules 19.8 and 29.11.

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rules 19.8 and 29.11 to delete now obsolete operational language, which dates back to when long-term options contracts were first adopted. This language provides that when a new equity or index long-term options contract series, as applicable, is listed, such series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such option series until they are opened for trading. The Exchange proposes to delete this language because when this language was adopted, long-term options contracts were not opened for trading until late in the trading day unless there was buying or selling interest. Today, however, technological improvements [3] allow the Exchange to open all long-term options contract series at the same time as all other series in an option class.[4]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, because deleting obsolete rules will more clearly identify for market participants currently applicable rules.[8] The Exchange believes the proposed rule change will eliminate confusion regarding which rules apply to current trading, which ultimately protects investors and the public interest. Additionally, two other options exchanges recently deleted the same provision.[9]

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 purposes of the Act. The proposed rule change deletes an obsolete operation rule, which no longer applies, and thus will have no impact on trading. Therefore, the proposed rule change has no impact on competition. The proposed rule change eliminates confusion with respect to rules applicable to current trading on the Exchange. Additionally, two other options exchanges recently deleted the same provision.[10]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Historically, market participants needed to manually adjust pricing models when a new long-term options contract series was added, which was time-consuming and created pricing risk. Market participants' systems are able to incorporate series added intraday in an automatic, and thus more timely, manner. Therefore, any previous operational concerns related to the historic manual process have been alleviated.

[4] *See* Rule 19.6(a)–(c) and 29.11(c).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] *See* Rule 19.6(a)–(c) and 29.11(c).

[9] *See* Securities Exchange Act Release Nos. 83909 (August 22, 2018) (SR–CBOE–2018–061); and 83837 (August 14, 2018), 83 FR 42183 (August 20, 2018) (SR–NYSEArca–2018–59).

[10] *See id.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b-4. 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.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] 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 proposal may become operative immediately upon filing. The Commission notes that the Exchange's proposal would delete obsolete rule text and conform the Exchange's rules to the rules of other exchanges.[15] 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.[16]

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR-CboeBZX–2018–069 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 No. SR–CboeBZX–2018–069. 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 a.m. and 3 p.m. Copies of the filing will also 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 No. SR–CboeBZX–2018–069 and should be submitted on or before September 21, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–18896 Filed 8–30–18; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See supra* note 9.

[16] 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).

[17] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2018–0003]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Bureau of the Fiscal Service, Department of the Treasury (Fiscal Service).

This agreement between SSA and Fiscal Service sets forth the terms, conditions, and safeguards under which Fiscal Service will disclose ownership of Savings Securities data to SSA. This disclosure will provide SSA with information necessary to verify an individual's self-certification of his or her financial status to determine eligibility for low-income subsidy assistance (Extra Help) in the Medicare Part D prescription drug benefit program established under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

DATES: The deadline to submit comments on the proposed matching program is 30 days from the date of publication of this notice in the **Federal Register**. The matching program will be effective on October 1, 2018, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Mary.Ann.Zimmerman@ssa.gov.* All comments received will be available for public inspection by contacting Ms. Zimmerman at this street address.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, by any of the means shown above.

SUPPLEMENTARY INFORMATION: None.

Mary Ann Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and Fiscal Service.

Authority for Conducting the Matching Program: 1860D–14 of the Social Security Act (Act) (42 U.S.C. 1395w–114) requires SSA to verify the eligibility of an individual who seeks to be considered as an Extra Help eligible individual under the Medicare Part D prescription drug benefit program and who self-certifies his or her income, resources, and family size.

Purpose(s): This agreement between SSA and Fiscal Service sets forth the terms, conditions, and safeguards under which Fiscal Service will disclose ownership of Savings Securities data to SSA. This disclosure will provide SSA with information necessary to verify an individual's self-certification of his or her financial status to determine

eligibility for low-income subsidy assistance (Extra Help) in the Medicare Part D prescription drug benefit program established under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173).

Categories of Individuals: The individuals whose information is involved in this matching program are those individuals who apply for low-income subsidy assistance (Extra Help) in the Medicare Part D prescription drug benefit program established under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173).

Categories of Records: SSA will disclose to Fiscal Service a finder file with the SSN for each individual for whom SSA requests Savings Securities ownership information. When a match occurs on an SSN, Fiscal Service will disclose the following to SSA: The denomination of the security; the serial number; the series; the issue date of the security; the current redemption value; and the return date of the finder file.

SSA will disclose to Fiscal Service a finder file with the SSN for each individual for whom it requests Savings Securities registration information. Fiscal Service bases the query on the SSN associated with the account and reports any subsequent account holdings. When a match occurs on an SSN, Fiscal Service will disclose the following to SSA: The purchase amount; the account number and confirmation number; the series; the issue date of the security; the current redemption value; and the return date of the finder file.

System(s) of Records: SSA will disclose to Fiscal Service a finder file consisting of SSNs extracted from SSA's Medicare Database (MDB) File System, 60–0321, fully published at 71 FR 42159 on July 25, 2006 and amended at 72 FR 69723 on December 10, 2007. The MDB File System is a repository of Medicare applicant and beneficiary information related to Medicare Part A, Part B, Medicare Advantage Part C, and Medicare Part D.

Fiscal Service will match the SSNs from SSA's finder file with the SSNs in Fiscal Service Savings Securities Registration Systems, which reside in the systems of records Treasury/BPD.002, ''United States Savings-Type Securities Treasury/BPD'' and Treasury/BPD.008, ''Retail Treasury Securities Access Application-Treasury/BPD'' fully published at 73 FR 42904 on July 23, 2008 and amended at 76 FR 51128 on August 17, 2011.

[FR Doc. 2018–18986 Filed 8–30–18; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 10527]

United States Passports Invalid for Travel to, in, or Through the Democratic People's Republic of Korea

AGENCY: Department of State.

ACTION: Notice of extension of passport travel restriction.

SUMMARY: On September 1, 2017, all United States passports were declared invalid for travel to, in, or through the Democratic People's Republic of Korea (DPRK) unless specially validated for such travel. If not renewed, the restriction is set to expire on August 31, 2018. This notice extends the restriction until August 31, 2019 unless extended or sooner revoked by the Secretary of State.

DATES: The extension of the travel restriction is in effect on September 1, 2018.

FOR FURTHER INFORMATION CONTACT: Anita Mody, Bureau of Consular Affairs, Passport Services, Office of Legal Affairs, 202–485–6500.

SUPPLEMENTARY INFORMATION: On September 1, 2017, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.63(a)(2), all United States passports were declared invalid for travel to, in, or through the Democratic People's Republic of Korea (DPRK) unless specially validated for such travel. If not renewed, the restriction is set to expire on August 31, 2018.

The Department of State has determined that there continues to be serious risk to United States nationals of arrest and long-term detention representing imminent danger to the physical safety of United States nationals traveling to and within the DPRK, within the meaning of 22 CFR 51.63(a)(3). Accordingly, all United States passports shall remain invalid for travel to, in, or through the DPRK unless specially validated for such travel under the authority of the Secretary of State. This extension to the restriction of travel to the DPRK shall be effective on September l, 2018, and shall expire August 31, 2019 unless extended or sooner revoked by the Secretary of State.

Dated: August 27, 2018.

Michael R. Pompeo,

Secretary of State, Department of State.

[FR Doc. 2018–18858 Filed 8–30–18; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36211]

Clackamas Valley Railway, LLC—Lease and Operation Exemption With Interchange Commitment—Union Pacific Railroad Company

Clackamas Valley Railway, LLC (CVR), a noncarrier,[1] has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Union Pacific Railroad Company (UP) and to operate[2] approximately 1.6 miles of railroad line in Clackamas, Or. (the Line). The Line extends east from a connection with UP's Portland-Eugene, Or., main line immediately south of UP milepost 760.0, running parallel to SE Jennifer Street (to the south), continuing southeast across SE Jennifer Street and turning south to termination at Carpenter Drive. According to CVR, there are no mileposts associated with the Line.

This transaction is related to a concurrently filed verified notice of exemption in *Progressive Rail Inc.—Continuance in Control Exemption—Clackamas Valley Railway, LLC,* Docket No. FD 36212, in which Progressive Rail Incorporated seeks Board approval to continue in control of CVR upon CVR's becoming a Class III rail carrier.

CVR states that the Line is currently operated by UP as excepted track under 49 U.S.C. 10906. However, because it will operate the Line as its entire line of railroad, CVR asserts that it will become a rail carrier upon consummation of the proposed transaction. *See Effingham R.R.—Pet. for Declaratory Order—Constr. at Effingham, Ill.,* 2 S.T.B. 606, 609–10 (1997), *aff'd sub nom. United Transp. Union—Ill. Legislative Bd.* v. *STB,* 183 F.3d 606 (7th Cir. 1999).

CVR certifies that its projected annual revenues from this transaction will not result in the creation of a Class I or Class II rail carrier and will not exceed $5 million. As required under 49 CFR 1150.33(h)(1), CVR has disclosed in its verified notice that the lease agreement contains an interchange commitment that prohibits CVR from entering into any other agreement for the movement of CVR traffic without the prior consent of UP. CVR has provided additional information regarding the interchange commitment as required by 49 CFR 1150.33(h).

Although CVR states in its verified notice that the transaction is proposed to be consummated on or about August

[1] CVR states that the transaction described here is its initial railroad acquisition.

[2] A draft copy of the operating agreement was submitted under seal with the notice of exemption.

31, 2018, the earliest this transaction may be consummated is September 15, 2018 (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than September 7, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36211, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on CVR's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to CVR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: August 28, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–19080 Filed 8–30–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36212]

Progressive Rail Incorporated—Continuance in Control Exemption—Clackamas Valley Railway, LLC

Progressive Rail Incorporated (PGR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Clackamas Valley Railway, LLC (CVR), upon CVR's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *Clackamas Valley Railway, LLC—Lease & Operation Exemption with Interchange Commitment—Union Pacific Railroad Co.,* Docket No. FD 36211. In that proceeding, CVR seeks an exemption under 49 CFR 1150.31 to lease and operate 1.6 miles of railroad line in Clackamas, Or. (the Line), owned by Union Pacific Railroad Company (UP).

The earliest this transaction may be consummated is September 15, 2018 (30 days after the verified notice was filed).

PGR will continue in control of CVR upon CVR's becoming a Class III rail carrier. According to PGR, it owns or operates rail lines in Minnesota, Wisconsin, and Illinois. PGR states that it controls six other Class III railroads that operate in Minnesota, Missouri, Iowa, North Carolina, Illinois, and California,[1] and that its control of a seventh, the St. Paul & Pacific Railroad, LLC (SPR), is pending.[2]

PGR states that: (1) The Line to be operated by CVR does not connect with any other railroads in the PGR corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the Line with any other railroad in the PGR corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than September 7, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36212, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on PGR's representative, Bradon J. Smith, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

[1] Airlake Terminal Railway Company, LLC; Central Midland Railway Company; Iowa Traction Railway Company; Iowa Southern Railway Company; Piedmont & Northern Railroad LLC; and Chicago Junction Railway Company.

[2] PGR's exemption authorizing it to continue in control of SPR became effective on August 15, 2018. *Progressive Rail—Continuance in Control Exemption—St. Paul & Pac. R.R.,* FD 36208 (STB served Aug. 1, 2018).

According to PGR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: August 28, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2018–19020 Filed 8–30–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Operating Requirements: Commuter and On-Demand Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The revision of this collection involves the amendment of regulations, which allows a certificate holder's pilots to log second-in-command (SIC) time in operations that does not otherwise require a SIC. This revision also removes the burden for initial certification as that is already counted under ICR 2120–0593.

DATES: Written comments should be submitted by October 1, 2018.

ADDRESSES: 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/FAA, 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.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of

information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0039

Title: Operating Requirements: Commuter and On-Demand Operation

Form Numbers: N/A.

Type of Review: This is a revision of an existing information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 14, 2018 (83 FR 27822). On June 27, 2018, the FAA published the final rule Regulatory Relief, Aviation Training devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions (83 FR 30232). In that rule, the FAA is amending § 135.99 by adding paragraph (c) to allow a certificate holder to receive approval of a second-in-command (SIC) professional development program (SIC PDP) via operations specifications (Ops Specs) to allow the certificate holder's pilots to log SIC time in operations conducted under part 135 in an airplane or operation that does not otherwise require a SIC. As explained in the rule, the FAA believes that a comprehensive SIC PDP will provide opportunities for beneficial flight experience that may not otherwise exist and also provide increased safety in operations for those flights conducted in a multicrew environment. The FAA is establishing requirements in § 135.99(c) for certificate holders, airplanes, and flightcrew members during operations conducted under an approved SIC PDP. Those changes are reflected in this information collection.

The FAA is also changing certain logging requirements to enable the logging of SIC time obtained under a SIC PDP. Those changes are reflected in a revision to information collection 2120–0021.

Respondents: Operators who currently possess an FAA approved PIC or SIC training program could revise and utilize those existing programs to qualify their pilots seeking approval to log SIC time. Those operators that do not already possess an approved PIC/SIC training program (that must include crew resource management training) would be required to submit a proposed new SIC training program for FAA approval. This would be amending an existing part 119 certificate. As of September 28, 2017 the FAA estimates that there were approximately 457 part 135 operators with single engine turbine-powered airplanes or multiengine airplanes that would qualify or actually pursue the authorization to conduct a SIC professional development program.

The FAA estimates that approximately 20 operators would be required to submit a newly developed SIC Professional Development Training Program for approval in the first year that the program is available. The FAA estimates that 50 operators will request an amendment to their existing PIC/SIC training program. This time burden is reflected in § 135.325, Training program and revision.

Frequency: As needed.

Estimated Average Burden per Response: Section 135.99(c) permits a certificate holder to seek approval of an SIC professional development program via issuance of operations specifications (Ops Specs) to allow the certificate holder's pilots to log SIC time. Under an approved SIC professional development program, pilots may log SIC time in part 135 operations conducted in multiengine airplanes and single engine turbine-powered airplanes that do not otherwise require an SIC, if those pilots: (1) Meet certification, training, and qualification requirements for pilots in part 135 operations, and (2) serve under the supervision of a part 135 PIC who meets certain experience requirements.

The FAA estimates that 20 operators will take approximately 40 hours each to develop and submit an acceptable new SIC training program. This program change will result in a burden increase of 800 hours in the first year of information collection only.

The FAA estimates that 50 operators will take approximately 20 hours each to revise and submit an acceptable SIC training program. This program change will result in a burden increase of 1,000 hours.

The new or revised SIC training program will result in a burden of 1,800 total hours in the first year of information collection.

In addition, the FAA has revised the burden in section 135.325 to remove the calculation of the burden for new applicants (for initial approval of training programs); this burden should not be reflected in this collection as it is already addressed in a previously approved collection (2120–0593 Certification: Air Carriers and Commercial Operators—FAR Part 119). This change is necessary to avoid double-counting the burden.

Estimated Total Annual Burden: The overall burden for part 135 was previously estimated at 1,154,674 hours. With the removal of the initial certification burden already accounted for in the part 119 statement, addition of the SIC training program development and approval burden, the total new annual reduced burden estimate is 1,314,814 hours. This is a reduction of 160,140 hours from the previous estimate.

Issued in Washington, DC, on August 23, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–18883 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification: Pilots and Flight Instructors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The revision of this collection involves the logging of training time in aviation training devices under the provisions of regulations specified in the background of this document, and the logging of flight time as a second in command (SIC) under the provisions of regulations specified in the background of this document.

DATES: Written comments should be submitted by October 1, 2018.

ADDRESSES: 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/FAA, 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.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0021.

Title: Certification: Pilots and Flight Instructors.

Form Numbers: 8710–1, 8710–13.

Type of Review: This is a revision of an existing information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 14, 2018 (83 FR 27822). On June 27, 2018, the FAA published the final rule Regulatory Relief, Aviation Training devices; Pilot Certification, Training, and Pilot Schools; and Other Provisions (83 FR 30232). In that rule, the FAA is reducing the burden for instrument currency requirements under § 61.57 for those pilots that use aviation training devices. Prior to that final rule, § 61.57(c)(3) required persons using an aviation training device to establish instrument experience to complete the required tasks within the preceding 2 calendar months. Persons using an aircraft, full flight simulator, flight training device, or a combination, however, were required to establish instrument experience within the preceding 6 calendar months. 14 CFR 61.57(c)(1)–(2). The final rule amends § 61.57(c) to allow pilots to accomplish instrument experience in aviation training devices by performing the same tasks required for flight simulation training devices and aircraft, and at the same 6-month interval allowed for flight simulation training devices and aircraft.

The FAA estimates that, of the 102,811 active pilots with an instrument rating, that approximately 50% are maintaining currency. It is likely that only 15% of those pilots (approximately 15,422 pilots) are using an aviation training device exclusively to maintain their instrument currency. For those pilots, this change will reduce the recordkeeping requirements of logging time from 6 times a year to two times a year, when logging instrument currency exclusively in an aviation training device. The FAA estimates this burden reduction to be 6168.8 hours annually.

Additionally, the final rule amends § 135.99 by adding paragraph (c) to allow a certificate holder to receive approval of a second in command (SIC) professional development program (SIC PDP) via operations specifications (Ops Specs) to allow the certificate holder's pilots to log SIC time in operations conducted under part 135 in an airplane or operation that does not otherwise require a SIC. Specifically, with this final rule, § 61.159(c) allows pilots to log SIC time in part 135 operations in a single engine turbine-powered airplane or a multi-engine airplane that otherwise does not require an SIC. This will require the pilot to obtain a logbook endorsement from the pilot in command for each individual flight to log this time as SIC. The FAA estimates that of the 76,957 Commercial Pilots with airplane and instrument privileges that approximately 10% (7,696) may actively pursue a SIC position with a Part 135 operator that is approved for logging SIC time as described for this provision. However, because of the limited number of operators (approximately 457 operators as of September 28, 2017) that would qualify or actually pursue this authorization, the FAA estimates that only 15% (1,154 pilots) might actually become qualified annually to log SIC time under this provision. This additional record keeping requirement will be reflected in Section 61.159, Aeronautical experience. The FAA estimates this SIC training program burden increase is 1,154 hours annually.

Respondents: The total number of respondents in the airman certification program is estimated to be approximately 25 percent of the population of active certificated pilots and instructors. Given a population of 825,000, the result is approximately 206,250 respondents providing data on an annual basis. The total number of applicants for a remote pilot certificate with a small UAS rating is estimated to be 39,229 annually.

Frequency: As needed.

Estimated Average Burden per Response: For the hour burdens resulting from the application requirements of the collection of information other than remote pilots with small UAS ratings, the FAA estimates that forms are submitted for these certificates and ratings at an average preparation time of 15 minutes (0.25 hrs) each. The average time estimate of 0.25 hours assumes that many individual applicants will submit an 8710–1 form more than once for various reasons, and that most of the information provided on the form likely will not have changed. For Part 107 we estimate that an average of 39,229 forms are submitted annually that require an average preparation time of 0.25 hours to complete.

Estimated Total Annual Burden: The total number of annual responses for the airman certification program is estimated to be 1,196,653. The FAA estimates the total reporting burden hours to be 43,157 hours. The FAA estimates the total recordkeeping burden hours to be 311,329 hours. The FAA estimates the burden for the collection of information to be 354,486 hours annually.

Issued in Washington, DC, on August 23, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2018–18882 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Wainiha Bridges Along State Route 560 in the State of Hawaii

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final within the meaning of title 23 of the United States Code. The actions relate to the replacement of the temporary Wainiha Bridges along Kūhiō Highway (State Route 560) at approximate Mileposts 6.4 and 6.7, which is located in the Halele'a District on the island of Kaua'i, State of Hawai'i. Those actions grant licenses, permits, and 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 the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 28, 2019. 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: Thomas Parker, Project Manager, Federal Highway Administration, Central Federal Lands Highway Division, 12300 W Dakota Avenue, Suite 380, Lakewood, Colorado 80228, Telephone (720) 963–3688, Email *Thomas.W.Parker@dot.gov.* Regular office hours are 8:00 a.m. to 5:00 p.m. (Mountain Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Hawai'i: Project to Replace Temporary Wainiha Bridges (Replacement of the Temporary Wainiha Bridges and Rehabilitation of Kaua'i Belt Road).

Project Overview: The project includes the replacement of three temporary ''ACROW Panel'' modular steel bridges on Kūhiō Highway (State Route 560) near the mouth of the Wainiha Stream on the island of Kaua'i, Hawai'i. The actions by the Federal agencies on the project, and the laws under which such actions were taken, are described in the Draft Environmental Assessment (DEA) signed on April 6, 2016, in the Final EA (FEA) and Finding of No Significant Impact (FONSI) signed December 21, 2017, and in other key project documents. The FEA, FONSI, and other key documents for the project are available by contacting FHWA at the addresses provided above. The DEA, FEA and FONSI documents can be viewed and downloaded from the project website at *https://flh.fhwa.dot.gov/projects/hi/wainiha/.*

This notice applies to all Federal agency decisions, actions, approvals, licenses and permits on the project as of the issuance date of this notice, including but not limited to those arising under the following laws, as amended:

1. *General:* National Environmental Policy Act [42 U.S.C. 4321–4370h]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)] (transportation conformity).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(e)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966 [54 U.S.C. 306108]); Archaeological Resources Protection Act of 1977 [16 U.S.C. 470aa–470mm]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c–2]; Native American Grave Protection and Repatriation Act [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]; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1387] (Section 404, Section 401, Section 319); Land and Water Conservation Fund Act [16 U.S.C. 460l–4–460l–11]; Safe Drinking Water Act [42 U.S.C. 300f–300j–9.]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Transportation Equity Act for the 21st Century (TEA–21) [23 U.S.C. 103(b)(6)(m), 133(b)(11)] (wetlands mitigation banking); Flood Disaster Protection Act of 1973 [42 U.S.C. 4001–4129].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [PL 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(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(1)(1).

Issued on: August 23, 2018.

Curtis Scott,

Acting Division Director, Lakewood, Colorado.

[FR Doc. 2018–18919 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2017–0002–N–5]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Information Collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA), this notice announces that FRA is forwarding the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and comment. The ICR describes the information collections and their expected burden. On July 2, 2018, FRA published a notice providing a 60-day period for public comment on the ICR.

DATES: Interested persons are invited to submit comments on or before October 1, 2018.

ADDRESSES: Submit written comments on the ICR to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jones, Information Collection Clearance Officer, Office of Railroad Policy & Development, Human Factors Division, RPD–34, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38–119, Washington, DC 20590 (telephone: (202) 493–6106); or Ms. Kim Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W34–212, Washington, DC 20590 (telephone: (202) 493–6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8–12. On July 2, 2018, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which it is now seeking OMB approval. *See* 83 FR 31030. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.10(b); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Grant Management Requirements for the Federal Railroad Administration Grant Awards Activities and Cooperative Agreements (''Awards'').

OMB Control Number: 2130–0615.

Abstract: FRA is an Operating Administration of the U.S. Department of Transportation (DOT). FRA solicits grant applications for projects including, but not limited to, preconstruction planning activities, safety improvements, congestion relief, improvement of grade crossings, rail line relocation, as well as projects that encourage development, expansion, and upgrades to passenger and freight rail infrastructure and services. FRA funds projects that meet FRA- and government-wide evaluation standards and align with the DOT Strategic Plan.

FRA administers award agreements for both construction and non-construction projects that will result in benefits or other tangible improvements in rail corridors, service, safety, and technology. These projects include completion of preliminary engineering, environmental, research and development, final design, and construction.

FRA requires systematic and uniform collection and submission of information, as approved by OMB, to ensure accountability of Federal assistance provided by FRA. Through this information collection, FRA will measure Federal award recipients' performance and results, including expenditures in support of agreed-upon activities and allowable costs outlined in a FRA Notice of Grant Award (NGA). This information collection includes OMB-required reports and documentation, as well as additional forms and submissions to compile evidence relevant to addressing FRA's important policy challenges, promoting cost-effectiveness in FRA programs, and providing effective oversight of programmatic and financial performance. FRA issues and manages awards in compliance with 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The forms for which FRA is seeking renewal of its current approval in this information collection are listed below. All non-research awards are subject to the application, reporting, closeout, and other processes described in this justification.

Form(s): FRA forms: 30 (FRA Assurances and Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters and Drug-Free Workplace Requirements), 31 (Grant Adjustment Request Form), 32 (Service Outcome Agreement Annual Reporting), 33 (Final Performance Report), 34 (Quarterly Progress Report), 35 (Application Form), 217 (Categorical Exclusion Worksheet), and 229 (NIST Manufacturing Extension Partnership Supplier Scouting—FRA—Item Opportunity Synopsis) may be located at FRA's public website. Standard Forms (SF) 270 (Request for Advance or Reimbursement), 424 (Application for Federal Assistance), 424A (Budget Information for Non-Construction Programs), 424B (Assurances for Non-Construction Programs), 424C (Budget Information for Construction Programs), 424D (Assurances for Construction Programs), 425 (Federal Financial Report), and LLL (Disclosure of Lobbying Activities) may be located at *Grants.gov*.

Respondent Universe: Generally, includes State and local governments and railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 3,477.

Total Estimated Annual Burden: 174,423.88 hours.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Juan D. Reyes III,

Chief Counsel.

[FR Doc. 2018–17284 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2018–0079]

Agency Information Collection: Activity for OMB Review: Agency Request for Reinstatement of a Previously Approved Information Collection: 2105–0009, Advisory Committee Candidate Biographical Information Request Form

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Department of Transportation invites the general public, industry and other governmental parties to comment on the information collection request (ICR) OMB No. 2105–0009 Committee Candidate Biographical Information Request Form. The information collection request previously approved by the Office of Management and Budget (OMB) expired on May 31, 2012. The collection is needed to facilitate background investigations of individuals seeking or currently appointed to a Department committee. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published June 11, 2018, and the comment period ended August 10, 2018.

DATES: Written comments should be submitted by October 1, 2018.

FOR FURTHER INFORMATION CONTACT: David Freeman, Program Analyst, Executive Secretariat, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or telephone: (202) 366–2918.

Refer to OMB Control No. 2105–0009.

ADDRESSES: Written comments should be submitted to the attention of the

DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503 or by email at *OIRA_submission@omb.eop.gov* with the associated OMB Control Number 2105–0009.

SUPPLEMENTARY INFORMATION:

Title: Committee Candidate Biographical Information Request.

OMB Control No.: 2105–0009.

Type of Review: Reinstatement with change of previously approved information collection.

Form No.: DOT F1120.1.

Abstract: The requested reintroduction of the approved control number expands the information collection request (ICR) OMB No. 2105–0009, ''Advisory Committee Candidate Biographical Information Request,'' to include all DOT committee candidates and will be used to gather information from individuals interested in appointment to a committee and individuals who have been recommended for a membership on a committee to ensure fair and balanced membership. DOT is also revising the name of the collection to ''Committee Candidate Biographical Information Request'' consistent with the scope of the collection.

Respondents: Individuals who have contacted DOT to indicate interest in appointment to a committee and individuals who have been recommended for membership on a committee. Only one collection is expected per individual.

Number of Respondents: 100 annually.

Frequency: One time.

Estimated Time per Response: 15 minutes.

Total Annual Burden: 25 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will be have practical utility; (b) the accuracy of the Department's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information collection; and (d) ways to minimize the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology without reducing the quality of the information collected. All comments will become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as mended; and 49 CFR 1:48.

Issued in Washington, DC.

David Freeman,

Program Analyst, DOT Executive Secretariat.

[FR Doc. 2018–18950 Filed 8–30–18; 8:45 am]

BILLING CODE 4910–9–X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0682]

Agency Information Collection Activity Under OMB Review: Advertising, Sales, and Enrollment Materials, and Candidate Handbook

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before October 1, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0682'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *Cynthia.Haryey-Pryor@va.gov.*

Please refer to ''OMB Control No. 2900–0682'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 CFR 21.4252(h); 44 U.S.C. 3501–3521.

Title: Advertising, Sales, and Enrollment Materials, and Candidate Handbook (No Form).

OMB Control Number: 2900–0682.

Type of Review: Extension of a currently approved collection.

Abstract: This information is being collected because statute prohibits approval of the enrollment of a Veteran in a course if the educational institution uses advertising, sales, or enrollment practices that are erroneous, deceptive, or misleading either by actual statement, omission, or intimation. The advertising, sales and enrollment materials are reviewed to determine if the institution is in compliance with guidelines for approval.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 25 on February, 6, 2018, pages 5296–5296.

Affected Public: Institutions of Higher Learning and Entities.

Estimate: Annual Burden: 3,062 hours.

Estimated Average Burden per Respondent = 15 min.

Frequency of Response: Annually.

Estimated Number of Respondents: 12,248.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–18913 Filed 8–30–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Agency Information Collection Activity Under OMB Review: Appointment of Veterans Service Organization as Claimant's Representative and Appointment of Individual as Claimant's Representative

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0321'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0321'' in any correspondence.

SUPPLEMENTARY INFORMATION: *Authority:* 44 U.S.C. 3501–21.

Title: Appointment of Veterans Service Organization as Claimant's Representative (VA Form 21–22) and Appointment of Individual as Claimant's Representative (VA Form 21–22a).

OMB Control Number: 2900–0321.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 21–22 and 21–22a are used to collect the information needed to determine whom claimants have appointed to represent them in the preparation, presentation, and prosecution of claims for VA benefits. The information is also used to determine the extent of representatives' access to claimants' records.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 111, on June 8, 2018, page 26747.

Affected Public: Individuals or Households.

Estimated Annual Burden: 26,583 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 319,005.

By direction of the Secretary:

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–18912 Filed 8–30–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0825]

Agency Information Collection Activity Under OMB Review: The Veterans' Outcome Assessment (VOA) (Veteran Survey Interview)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0825'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0825'' in any correspondence.

SUPPLEMENTARY INFORMATION: *Authority:* Public Law 112–239 Sec. 726.

Title:

a. Veterans Outcome Assessment—Baseline.

b. Veterans Outcome Assessment—Follow Up.

OMB Control Number: 2900–0825.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: The mental health outcomes information obtained through this new collection will be used by VA leadership, including those in the Offices of Mental Health Operations and Mental Health Services, Network offices, and VA Medical Centers. Such information on Veteran mental health outcomes is crucial to guide resource allocation and programmatic decisions for mental health programs and to intervene effectively to prevent individual adverse outcomes such as suicide, overdose deaths, and morbidities associated with mental illness and to support recovery-oriented treatment designed to improve functioning and reduce symptoms. The data will allow VA policy makers to reliably track national performance on a quarterly basis and to track VISN performance on a yearly basis. These data will reveal trends in outcomes over time and will help in pinpointing programs that are doing well in terms of patient outcomes, so that other programs can emulate their practices, as well as identifying those programs that are performing poorly so that steps can be taken to improve them. Results of the survey will be reported to Congress and will influence decisions on funding. The VOA will thus provide Veterans who are experiencing mental health problems with a direct voice in program evaluation and improvement. Summary data on performance also will be available on a public website, as mandated by the NDAA, to provide Veterans and their families with additional information for purposes of managing their mental health treatment and U.S. citizens with information regarding VA's mental health programs and Veterans satisfaction with their care.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 28943 on June 26, 2017, pages 28943 and 28944.

Affected Public: Individuals and households.

Estimated Annual Burden: 11,236 hours.

Estimated Average Burden per Respondent: .42 hours.

Frequency of Response: Annually.

Estimated Number of Respondents: 26,752.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–18911 Filed 8–30–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0695]

Agency Information Collection Activity Under OMB Review: Application for Reimbursement of Licensing or Certification Test Fees

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 2018.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oirasubmission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0695'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *Cynthia.Haryey-Pryor@va.gov.*

Please refer to ''OMB Control No. 2900–0695'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Title V of Public Law 110–252.

Title: Application for Reimbursement of Licensing or Certification Test Fees.

OMB Control Number: 2900–0695.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants complete VA Form 22–0803 to request reimbursement of licensing or certification fees paid.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 36 on February, 22, 2018, pages 7849 and 7850.

Affected Public: Individuals or Households.

Estimate: Annual Burden: 660 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 2,641.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–18918 Filed 8–30–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0620]

Agency Information Collection Activity: Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-Department Facilities

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 30, 2018.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900–0620'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 615–9241.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 1725.

Title: Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-Department Facilities, 38 U.S.C. 1725.

OMB Control Number: 2900–0620.

Type of Review: Reinstatement of a currently approved collection.

Abstract: 38 U.S.C. Chapter 17 authorizes VA to provide hospital care, medical services, domiciliary care and nursing home care to eligible veterans. Public Law 106–117 ''The Veterans Millennium Health Care and Benefits Act'' amended 38 U.S.C. by adding § 1725 establishing reimbursement authority for an individual who is an active Department health-care participant who is personally liable for emergency treatment furnished in a non-Department facility provided that the veteran is (1) enrolled in the VA health care system as established under § 1705(a) of this title and (2) the veteran is personally liable for emergency treatment furnished the veteran in a non-Department facility and (3) the veteran does not have coverage under a health-plan contract that would fully extinguish the medical liability for the emergency treatment and (4) the veteran has no other contractual or legal recourse against a third party that would extinguish such liability to the provider and (5) the veteran is not eligible for reimbursement for medical care or services under § 1728 of this title. Further, PL 106–117 directs VA to delineate the circumstances under which such payments may be made, to include such requirements on requesting reimbursement as the Secretary shall establish. Subject to this,

the Secretary may only provide reimbursement after the veteran or the provider of emergency treatment has exhausted without success all claims and remedies reasonably available to the veteran or provider against a third party for payment of such treatment.

Affected Public: Individuals and households.

Estimated Annual Burden: 158,704 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 634,816.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2018–18916 Filed 8–30–18; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Part 240

Amendments to Municipal Securities Disclosure; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–83885; File No. S7–01–17]

RIN 3235–AL97

Amendments to Municipal Securities Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is adopting amendments to the Municipal Securities Disclosure Rule under the Securities Exchange Act of 1934 (''Exchange Act''). The amendments add transparency to the municipal securities market by increasing the amount of information that is publicly disclosed about material financial obligations incurred by issuers and obligated persons. Specifically, the amendments revise the list of event notices that a broker, dealer, or municipal securities dealer (each a ''dealer,'' and collectively, ''dealers'') acting as an underwriter (''Participating Underwriter'') in a primary offering of municipal securities with an aggregate principal amount of $1,000,000 or more (subject to certain exemptions set forth in the Rule) (an ''Offering'') must reasonably determine that an issuer or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the municipal securities, to provide to the Municipal Securities Rulemaking Board (''MSRB''). holders, if material; and (ii) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties; and (b) define the term ''financial obligation'' to mean a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

DATES:

Effective Date: October 30, 2018.

Compliance Date: February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Rebecca Olsen, Acting Director; Ahmed Abonamah, Senior Counsel to the Director; Mary Simpkins, Senior Special Counsel; Hillary Phelps, Senior Counsel; or William Miller, Attorney-Adviser; Office of Municipal Securities, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–6628 or at (202) 551–5680.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to 17 CFR 240.15c2–12 (''Rule 15c2–12'' or ''Rule'') under the Securities Exchange Act of 1934. The amendments (a) amend the list of events for which notice is to be provided to include (i) incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security

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I. Executive Summary

In March 2017, the Commission published for comment proposed amendments to Exchange Act Rule 15c2–12 [1] designed to facilitate investors' and other market participants' [2] access to important information in a timely manner, help enhance transparency in the municipal securities market, and improve investor protection.[3] The proposed amendments would have amended the list of event notices that a dealer acting as a Participating Underwriter in an Offering must reasonably determine that an issuer or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of the municipal securities (''continuing disclosure agreement''), to provide to the MSRB. Specifically, the proposed amendments would have amended the list of events for which notice is to be provided to include: (i) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and (ii) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

In addition, the Commission proposed a definition of the term ''financial obligation.'' As proposed, the term financial obligation would have meant a (i) debt obligation; (ii) lease; (iii) guarantee; (iv) derivative instrument; and (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. The term financial obligation would not have included municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

The Commission also proposed a technical amendment to paragraph (b)(5)(i)(C)(*14*) of the Rule.[4]

A wide range of commenters sent comment letters [5] to the Commission in response to the proposed amendments. Commenters included issuers, dealer associations, investor associations, attorneys, organizations representing industry participants, the SEC Investor Advisory Committee (''IAC''), the MSRB, and others. While commenters generally supported enhanced transparency in the municipal securities market, many encouraged the Commission to consider narrowing the scope of the proposed amendments to avoid overburdening market participants. Common themes raised in the comment letters include: (i) The perceived vague meaning and overly broad scope of the term ''financial obligation''; (ii) the desire for additional guidance with respect to the materiality qualifier in paragraph (b)(5)(i)(C)(*15*) of the Rule; and (iii) the anticipated burdens and costs associated with complying with the proposed amendments. In addition, the IAC stated its support for the central purpose of the proposed amendments to Rule 15c2–12 and encouraged the Commission to work toward passage of the amendments after considering comments received.[6]

The Commission has carefully considered all of the comments and, as discussed below, is adopting the amendments substantially as proposed, with some modifications to address issues raised by commenters.

The amendments address the need for timely disclosure of important information related to an issuer's or obligated person's financial obligations. The Commission believes that the amendments will facilitate investors' and other market participants' access to important information in a timely manner, enhance transparency in the municipal securities market, and improve investor protection. For the reasons discussed in this Adopting Release, the Commission believes that the amendments are consistent with the Commission's mandate to, among other things, adopt rules reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in the municipal securities market.[7]

II. Background

Rule 15c2–12 is designed to address fraud by enhancing disclosure in the municipal securities market by establishing standards for obtaining, reviewing, and disseminating information about municipal securities by their underwriters.[8] In 1989, the Commission adopted paragraphs (a) and (b)(1) through (4) of Rule 15c2–12 [9] to require dealers acting as Participating Underwriters in Offerings to obtain, review, and distribute to potential customers copies of the issuer's official statement.[10] In 1994, the Commission adopted paragraph (b)(5) of the Rule,[11] which became effective in 1995, and was amended in 2008 [12] and 2010.[13] Paragraph (b)(5) of the Rule prohibits a Participating Underwriter from purchasing or selling municipal securities covered by the Rule in an Offering unless the Participating Underwriter has reasonably determined that an issuer or obligated person [14] of

[1] *See* 17 CFR 240.15c2–12(a), (b)(5)(i), (b)(5)(i)(C).

[2] Other market participants include dealers, analysts, and vendors of information regarding municipal securities. Though investors and dealers are the intended beneficiaries of improved access to information about the financial obligations of issuers and obligated persons, the Commission expects that both groups will also benefit indirectly due to the improved ability of analysts and vendors of information regarding municipal securities to access this information.

[3] *See* Exchange Act Release No. 80130 (Mar. 1, 2017), 82 FR 13928 (Mar. 15, 2017) (''Proposing Release''). The comment period for the proposed amendments expired on May 15, 2017.

[4] The Commission proposed a technical amendment to paragraph (b)(5)(i)(C)(*14*) of the Rule to remove the term ''and'' since new events were proposed to be added to paragraph (b)(5)(i)(C) of the Rule.

[5] *See* SEC Comments on Proposed Rule: Proposed Amendments to Exchange Act Rule 15c2–12, *available at https://www.sec.gov/comments/s7-01-17/s70117.htm.*

[6] SEC Investor Advisory Committee, Recommendation of Market Structure Subcommittee of IAC: Select Enhancements to Protect Retail Investors in Municipal and Corporate Bonds (June 5, 2018) (''IAC Recommendation'') (adopted by the IAC on June 14, 2018), *available at https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac061418-market-structure-subcommittee-recommendation.pdf.*

[7] 15 U.S.C. 78*o*(c).

[8] *See* Exchange Act Release No. 34–26985 (June 28, 1989), 54 FR 28799 (July 10, 1989) (''1989 Adopting Release''). For additional information relating to the history of the Rule, *see* Exchange Act Release No. 34–34961 (Nov. 10, 1994), 59 FR 59590 (Nov. 17, 1994) (''1994 Amendments Adopting Release''), Exchange Act Release No. 34–59062 (Dec. 5, 2008), 73 FR 76104 (Dec. 15, 2008) (''2008 Amendments Adopting Release''), and Exchange Act Release No. 34–62184A (May 27, 2010), 75 FR 33100 (June 10, 2010) (''2010 Amendments Adopting Release'').

[9] *See* 1989 Adopting Release, *supra* note 8.

[10] *See* 17 CFR 240.15c2–12(b).

[11] *See* 1994 Amendments Adopting Release, *supra* note 8.

[12] *See* 2008 Amendments Adopting Release, *supra* note 8.

[13] *See* 2010 Amendments Adopting Release, *supra* note 8. The 2010 Amendments (a) require Participating Underwriters to reasonably determine that an issuer or obligated person has agreed to provide event notices in a timely manner not in excess of ten business days after the event's occurrence; (b) include new events for which a notice is to be provided; (c) modify the events that are subject to a materiality determination before triggering a requirement to provide notice to the MSRB; and (d) revise an exemption for certain offerings of municipal securities with put features. The Commission also provided interpretive guidance on Participating Underwriter responsibilities under the antifraud provisions of the federal securities laws in response to market participants' concerns that some issuers and obligated persons were not consistently submitting continuing disclosure documents in accordance with the undertakings made in their continuing disclosure agreements.

[14] The term ''obligated person'' means any person, including an issuer of municipal securities, who is either generally or through an enterprise

Continued

municipal securities has undertaken in a continuing disclosure agreement to provide specified information to the MSRB in an electronic format as prescribed by the MSRB.[15] The information to be provided consists of: (i) Certain annual financial and operating information and audited financial statements, if available (''annual filings'');[16] (ii) timely notices of the occurrence of certain events (''event notices'');[17] and (iii) timely notices of the failure of an issuer or obligated person to provide required annual financial information on or before the date specified in the continuing disclosure agreement (''failure to file notices'').[18]

In July 2012, the Commission issued a Report on the Municipal Securities Market, following a broad review of the municipal securities market that included a series of public field hearings and numerous meetings with market participants.[19] The 2012 Municipal Report states, among other things, that the Commission could consider further amendments to Rule 15c2–12 to mandate more specific types of secondary market event disclosures, including disclosure relating to new indebtedness (whether or not such debt is subject to Rule 15c2–12 and whether or not arising as a result of a municipal securities issuance).[20] The Commission further stated that market participants raised concerns that issuers and obligated persons may not properly disclose the existence or the terms of bank loans, particularly when the terms of the bank loans may affect the payment priority from revenues in a way that adversely affects bondholders.[21]

Currently, the municipal securities market has over $3.844 trillion in principal outstanding.[22] At the end of the first quarter of 2018, individuals held, either directly or indirectly through mutual funds, money market funds, closed-end funds, and exchange-traded funds, approximately $2.587 trillion of outstanding municipal securities (over 65 percent of the total amount outstanding).[23] According to the MSRB, approximately $2.98 trillion of municipal securities were traded in 2017 in approximately 9.89 million trades.[24] There are approximately 50,000[25] state and local issuers of municipal securities, ranging from villages, towns, townships, cities, counties, territories, and states, as well as special districts, such as school districts and water and sewer authorities.[26] Municipal securities defaults historically have been rarer than those involving corporate and foreign government bonds.[27] Nevertheless, six of the seven largest municipal bankruptcy filings in U.S. history have occurred since 2011,[28] and some issuers and obligated persons continue to experience declining fiscal situations and steadily increasing debt burdens.[29] These defaults may negatively impact investors in ways other than non-payment, including delayed payments and pricing disruptions in the secondary market.[30]

As the Commission discussed in the Proposing Release, in recent years issuers and obligated persons have increasingly used direct purchases of municipal securities[31] and direct loans[32] (collectively, ''direct placements'') as alternatives to public offerings of municipal securities.[33]

fund, or account of such person committed by contract or other arrangements to support payment of all, or part of the obligations of the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities). 17 CFR 240.15c2–12(f)(10).

[15] On December 5, 2008, the Commission adopted amendments to Rule 15c2–12 to provide for the Electronic Municipal Market Access (''EMMA'') system. EMMA is established and maintained by the MSRB and provides free public access to disclosure documents. The 2008 Amendments designated the EMMA system as the single centralized repository for the electronic collection and availability of continuing disclosure information about municipal securities. The 2008 Amendments require the Participating Underwriter to reasonably determine that the issuer or obligated person has undertaken in its continuing disclosure agreement to provide continuing disclosure documents: (i) Solely to the MSRB; and (ii) in an electronic format and accompanied by identifying information, as prescribed by the MSRB. *See* 2008 Amendments Adopting Release, *supra* note 8. *See also* Exchange Act Release No. 34–58255 (July 30, 2008), 73 FR 46138 (Aug. 7, 2008) (''2008 Proposing Release''). The 2008 Amendments became effective on July 1, 2009.

[16] *See* 17 CFR 240.15c2–12(b)(5)(i)(A) and (B).

[17] *See* 17 CFR 240.15c2–12(b)(5)(i)(C). Under the Rule prior to these amendments, the following events require notice in a timely manner not in excess of ten business days after the occurrence of the event: (1) Principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701–TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security; (7) modifications to rights of security holders, if material; (8) bond calls, if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the obligated person; (13) the consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (14) appointment of a successor or additional trustee or the change of name of a trustee, if material. In addition, Rule 15c2–12(d) provides full and limited exemptions from the requirements of Rule 15c2–12. *See* 17 CFR 240.15c2–12(d).

[18] *See* 17 CFR 240.15c2–12(b)(5)(i)(D). Annual filings, event notices, and failure to file notices are referred to collectively herein as ''continuing disclosure documents.''

[19] *See* Securities and Exchange Commission, Report on the Municipal Securities Market (July 31, 2012) (''2012 Municipal Report''), *available at https://www.sec.gov/news/studies/2012/munireport073112.pdf.*

[20] *Id.*

[21] *Id.*

[22] *See* Federal Reserve Board, Financial Accounts of the United States: Flow of Funds, Balance Sheets, and Integrated Macroeconomic Accounts (First Quarter 2018) (June 7, 2018), *available at https://www.federalreserve.gov/releases/z1/20180308/z1.pdf.*

[23] *See id.* As of the first quarter of 2018, the amount of municipal securities held directly by the household sector was $1.64 trillion and mutual funds, money market funds, closed-end funds, and exchange-traded funds collectively held $946.4 billion.

[24] *See* MSRB, *2017 Fact Book* (Mar. 18, 2018), *available at http://www.msrb.org/~/media/Files/Resources/MSRB-Fact-Book-2017.ashx?la=en.*

[25] *See* MSRB, *Self-Regulation and the Municipal Securities Market* (Jan. 2018), *available at http://www.msrb.org/Market-Topics/~/media/8059A52FBF15407FA8A8568E3F4A10CD.ashx.*

[26] *See* Registration of Municipal Advisors, Exchange Act Release No. 34–70462 (Sept. 20, 2013), 78 FR 67468 (Nov. 12, 2013).

[27] *See* 2012 Municipal Report, *supra* note 19 (citing Moody's, *The U.S. Municipal Bond Rating Scale: Mapping to the Global Rating Scale and Assigning Global Scale Ratings to Municipal Obligations* (Mar. 2007), *available at https://www.moodys.com/sites/products/DefaultResearch/102249_RM.pdf*; and *Report to Accompany H.R. 6308,* H.R. Rep. No. 110–835, at section 205 (Feb. 14, 2008), *available at https://www.gpo.gov/fdsys/pkg/CRPT-110hrpt835/html/CRPT-110hrpt835.htm*).

[28] The six largest municipal bankruptcies, ranked by amount of debt, are Puerto Rico, in 2017 ($73 billion in debt); Detroit, Michigan, in 2013 ($18 billion in debt); Jefferson County, Alabama, in 2011 ($4.2 billion in debt); Orange County, California, in 1994 ($2.0 billion in debt); Stockton, California, in 2012 ($1.0 billion in debt); and San Bernardino, California, in 2012 ($492 million in debt). *See Detroit's Bankruptcy Is the Nation's Largest,* N.Y. Times (July 18, 2013), *available at http://www.nytimes.com/interactive/2013/07/18/us/detroit-bankruptcy-is-the-largest-in-nation.html; see also* Mary Williams Walsh, *Puerto Rico Declares a Form of Bankruptcy,* N.Y. Times (May 3, 2017), *available at https://www.nytimes.com/2017/05/03/business/dealbook/puerto-rico-debt.html.*

[29] *E.g.,* City of Hartford, Connecticut. *See* Jenna Carlesso, *State Leaders: Hartford Bailout Imminent,* Hartford Courant (Feb. 9, 2018), *available at http://www.courant.com/community/hartford/hc-news-hartford-oversight-board-20180208-story.html.*

[30] *See* 2012 Municipal Report, *supra* note 19.

[31] For example, an investor purchasing a municipal security directly from an issuer or obligated person.

[32] For example, a lender entering into a bank loan, loan agreement, or other type of financing agreement with an issuer or obligated person.

[33] *See* Proposing Release, *supra* note 3, 82 FR at 13929.

Despite continued efforts by market participants to encourage disclosure of certain financial obligations, the MSRB has stated that the number of actual disclosures made is limited.[34] The Commission believes that investors and other municipal market participants should have access to continuing disclosure information regarding financial obligations to improve their ability to analyze their investments and, ultimately, make more informed investment decisions. Access to continuing disclosure information also furthers the Commission's original intent behind adopting Rule 15c2–12, which was to prevent fraudulent, deceptive, or manipulative acts or practices in the municipal securities market.[35] Accordingly, the Commission believes that amendments to the Rule requiring a Participating Underwriter in an Offering to reasonably determine that an issuer or an obligated person has undertaken, in a continuing disclosure agreement, to provide to the MSRB within ten business days, the event notices specified in new paragraphs (b)(5)(i)(C)(*15*) and (*16*), are necessary.

As discussed in detail below, the Commission is adopting, substantially as proposed, amendments to Rule 15c2–12. The amendments add the following events, as proposed, as paragraphs (b)(5)(i)(C)(*15*) and (*16*) of the Rule for which a Participating Underwriter in an Offering must reasonably determine that the issuer or obligated person has agreed to provide in its continuing disclosure agreement: (1) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect securities holders, if material; and (2) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

In addition, the Commission is adding, substantially as proposed, to paragraph (f) of the Rule, the following definition: The term financial obligation means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

The Commission is also adopting, as proposed, a technical amendment to paragraph (b)(5)(i)(C)(*14*) of the Rule.

In keeping with the objectives set forth in the Exchange Act, including Section 15(c)(2),[36] and the antifraud provisions of the federal securities laws, the Commission believes the amendments to Rule 15c2–12, as adopted, are reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in the municipal securities market. The Commission believes the amendments are consistent with the limitations set forth in Exchange Act Section 15B(d)(1) because the amendments do not require an issuer of municipal securities to make any filing with the Commission or MSRB prior to the sale of municipal securities.[37]

III. Description of the Amendments to Rule 15c2–12

A. Introduction

Commenters were generally supportive of increased transparency in the municipal securities market.[38] Nevertheless, some commenters suggested that the proposed amendments were unnecessary because information about issuer and obligated person financial obligations is already available in audited financial statements, other publicly available documents, and through voluntary disclosures to EMMA.[39] One commenter suggested that the proposed amendments were not needed because the Tax Cuts and Jobs Act of 2017[40] has increased the cost of tax-exempt bank direct placements as compared to publicly offered debt, resulting in a likely reversal of the recent growth of direct placements.[41]

The Commission acknowledges the efforts of many issuers and obligated persons to be transparent. However, as stated in the Proposing Release, investors and other market participants may not learn that the issuer or obligated person has incurred a financial obligation if the issuer or obligated person does not provide annual financial information or audited financial statements to EMMA or does not subsequently issue debt in a primary offering subject to Rule 15c2–12 that results in the provision of a final official statement to EMMA.[42] Further, even if investors and other market participants have access to disclosure about an issuer's or obligated person's incurrence of a financial obligation, such access may not be timely if, for example, the issuer or obligated person has not submitted annual financial information or audited financial statements to EMMA in a timely manner or does not frequently issue debt that results in the provision of a final official statement to EMMA.[43] In many cases, this lack of access or delay in access to disclosure means that investors could be making investment decisions, and other market participants could be undertaking credit analyses, without important information.

Additionally, the Commission understands that to the extent information about financial obligations is disclosed and accessible to investors and other market participants, such

[34] In 2016, the MSRB enhanced EMMA to allow submitters of continuing disclosure to efficiently identify ''Bank Loan/Alternative Financing Filings'' as the type of filing. *See* MSRB, *MSRB Improves Bank Loan Disclosure on EMMA website* (Sept. 26, 2016), *available at http://msrb.org/News-and-Events/Press-Releases/2016/MSRB-Improves-Bank-Loan-Disclosure-on-EMMA-website.* In a letter to the SEC Investor Advocate in October 2017, the MSRB stated its concern that although the number of bank loan disclosures made to EMMA had increased substantially from prior years, only 1,100 bank loan documents were posted to the EMMA website (as of October 2017), representing only a small fraction of bank loans outstanding. *See* Letter from Lynnette Kelly, Executive Director, MSRB, to Rick Fleming, Investor Advocate, Securities and Exchange Commission (Oct. 17, 2017), *available at http://www.msrb.org/Market-Topics/~/media/0E3E9F81C7BA4EB38EE80857FE378F18.ashx.*

According to information received by Commission staff from MSRB staff, the MSRB received 648 filings during calendar year 2017 under the ''Bank Loan/Alternative Financing Filing'' category.

[35] *See* 1989 Adopting Release, supra note 8.

[36] 17 CFR 240.15c2–12 was adopted under a number of Exchange Act provisions, including Section 15(c); 15 U.S.C. 78*o*(c).

[37] *See* Proposing Release, *supra* note 3, 82 FR at 13931.

[38] *See, e.g.,* Houston Letter; Denver Letter; DFW Letter; GFOA Letter; BDA Letter; MSRB Letter.

[39] *See, e.g.,* Arlington SD Letter (stating that its audited financial statements contain information about financial obligations and state law requires disclosure of audited financial statements within 150 days of the end of the fiscal year); NABL Letter (stating that (i) information about financial obligations is already available due to state sunshine laws and improvements in technology, (ii) bond documents prohibit the grant of superior interests in the trust estate or such terms are permitted by outstanding bond contracts, and the risks of such terms are priced into the value of outstanding bonds, and (iii) that voluntary disclosure initiatives should be allowed to further develop); NABL III Letter (stating that Government Accounting Standards Board (''GASB'') Statement No. 88—Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placement (March 2018) (''GASB Statement No. 88'') requires additional information related to debt be disclosed in audited financial statements reducing the disclosure benefits of the amendments). GASB Statement No. 88 is *available at http://www.gasb.org/jsp/GASB/Document_C/DocumentPage?cid=1176170308047&acceptedDisclaimer=true.*

[40] *See* Tax Cuts and Jobs Act of 2017, Public Law 115–97, 131 Stat. 2054 (2017).

[41] *See* NABL III Letter.

[42] *See* Proposing Release, *supra* note 3, 82 FR at 13929.

[43] *Id.*

information currently may not include certain details about the financial obligations.[44] In these cases, investors could be making investment decisions, and other market participants could be undertaking credit analyses, without important information, including the debt payment priority structure of the financial obligation. Furthermore, the Commission understands that investors and other market participants may not have any access or timely access to disclosure regarding the occurrence of events reflecting financial difficulties, including a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation.[45] While it could be true in some cases that governing documents prohibit the granting of superior lien rights to other holders of the issuer's or obligated person's debt, there is no set standard of what provisions are set forth in the legal documents governing an issuance of municipal securities, and documents and the covenants they contain vary from issuer to issuer.[46] Additionally, there are other terms of financial obligations that could affect the issuer's or obligated person's liquidity, overall creditworthiness, or an existing security holder's rights. The amendments would cover any such terms if material and if they affect security holders. Further, the Commission recognizes that some states require that issuers and obligated persons submit their audited financial statements, which provide information about financial obligations, to a state repository within a certain number of days after the end of their fiscal year,[47] and that information about financial obligations may be available under state sunshine laws and through improved technology.[48] However, deadlines for such audited financial statements under state laws may extend far beyond the ten business days required by the Rule,[49] and the procedures for requesting information under sunshine laws may not result in the timely and widespread delivery of such information to market participants. While technology has improved the ability to obtain and disseminate information, EMMA remains the single centralized repository for the electronic collection and availability of continuing disclosure information about municipal securities. Accordingly, the Commission believes these amendments will facilitate investor access to important information in a timely manner and help to enhance transparency.

Additionally, the Commission recognizes that the Tax Cuts and Jobs Act of 2017 may impact the municipal debt market, including, but not limited to the use of direct placements. The amendments are intended to address the need for timely disclosure of important information related to an issuer's or obligated person's financial obligations and cover a variety of obligations incurred by issuers and obligated persons, including but not limited to direct placements.[50] Moreover, the Commission believes that given the diverse reasons for which issuers and obligated persons engage in direct placements in lieu of a public offering of municipal securities, it is likely that direct placements will continue to be utilized in the municipal debt market.[51]

The Commission also recognizes the efforts of the MSRB, the Financial Industry Regulatory Authority (''FINRA''), academics, and industry groups to promote voluntary disclosure of financial obligations. However, as described in the Proposing Release, despite these ongoing efforts, few issuers or obligated persons have made voluntary disclosures of financial obligations, including direct placements, to the MSRB.[52]

1. Incurrence of a Financial Obligation of the Obligated Person, if Material, or Agreement to Covenants, Events of Default, Remedies, Priority Rights, or Other Similar Terms of a Financial Obligation of the Obligated Person, Any of Which Affect Security Holders, if Material

The Commission is adopting as proposed new paragraph (b)(5)(i)(C)(*15*) to the Rule, which requires that a Participating Underwriter in an Offering must reasonably determine that the obligated person has undertaken, in a continuing disclosure agreement, to provide to the MSRB, within ten business days, notice of the incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of

[44] GASB Statement No. 88 has gone into effect for reporting periods beginning after June 15, 2018. *See* GASB Statement No. 88, *supra* note 39. GASB Statement No. 88 ''requires that additional essential information related to debt be disclosed in notes to financial statements, including unused lines of credit, assets pledged as collateral for the debt, and terms specified in debt agreements related to significant events of default with finance-related consequences, significant termination events with finance-related consequences, and significant subjective accelerations clauses.'' The Commission understands that those issuers and obligated persons who adhere to GASB standards when preparing their financial statements could provide information in their audited financial statements similar to that covered under new paragraph (b)(5)(i)(C)(*15*) of the Rule. However, while GASB establishes generally accepted accounting principles (GAAP) that are used by many states and local governments, there are no uniformly applied accounting standards in the municipal securities market. *See* 2012 Municipal Report, *supra* note 19. Further, there is no requirement in Rule 15c2–12 that an issuer or obligated person undertake in its continuing disclosure agreement to provide audited financial statements to the MSRB. *See* 17 CFR 240.15c2–12(b)(5)(i)(B) (limiting the requirement of audited financial statements to ''when and if available''). While the Commission supports efforts to improve the transparency and usefulness of financial statements, GASB Statement No. 88 is not a substitute for these amendments. Industry commentators have expressed a similar view. *See generally,* Standard and Poor's Global Ratings, *Bank Loan Structures Risk Remain, But GASB 88 Is A Positive Step Toward Transparency in Financial Reporting* (May 2, 2018), *available at https://www.spratings.com/documents/20184/86957/Bank+Loan+Structures+Risks+Remain+But+GASB88+Is+A+Positive+Step+Toward+Transparency+In+Financial+Reporting_May-02-2018.pdf/07d7140a-0019-4907-8ab9-35d7b463e77c* (stating ''[m]arkets function most efficiently when all stakeholders have symmetrical or equal access to material information. Although the [GASB Statement No. 88] release speaks to required disclosures, not all public finance issuers comply with GAAP standards or adopt all GASB statements. Consequently, we believe the municipal market is not functioning as effectively as it could around a bank loan structure. Nevertheless, the [GASB Statement No. 88] release is a significant positive development that signals even to those who have not adopted GASB statements that the marketplace is developing higher expectations about disclosures'').

[45] *See* 2012 Municipal Report, *supra* note 19.

[46] Municipal Market Bank Loan Disclosure Task Force, Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans (May 1, 2013) (''Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans''), *available at http://www.nfma.org/assets/documents/position.stmt/wp.direct.bank.loan.5.13.pdf,* (stating ''Bank loan covenants and events of default can be different from or set at higher levels than those applicable to outstanding bonds, thereby enabling the bank to assert remedies prior to other bondholders (which may effectively prioritize repayment of the bank loan)'' and also stating ''[c]ertain assets previously available to secure bonds may be pledged to the bank as security for the bank loan''). The Task Force was composed of representatives from the American Bankers Association, Bond Dealers of America, Government Finance Officers Association, Investment Company Institute, National Association of Bond Lawyers (''NABL''), National Association of Health and Educational Facilities Finance Authorities, National Association of Independent Public Finance Advisors, National Federation of Municipal Analysts, and Securities Industry and Financial Markets Association.

[47] *See* Arlington SD Letter.

[48] *See* NABL Letter.

[49] *Id.*

[50] For a discussion of the definition of the term ''financial obligation,'' *see infra* Section III.A.2.

[51] For example, Federal Deposit Insurance Corporation (''FDIC'') data show the amount of bank direct lending to state and local governments and their instrumentalities during the first quarter of 2018 ($190,533,184,000) remains at a similar level to that of the fourth quarter of 2017 ($190,531,792,000). For a discussion of these data, *see infra* note 319 and related text.

[52] For a discussion of market participant efforts to promote voluntary disclosure of certain financial obligations, *see* Proposing Release, *supra* note 3, 82 FR at 13929–30. *See also supra* note 34.

a financial obligation of the obligated person, any of which affect security holders, if material.

i. Materiality

Commenters raised a number of concerns related to the materiality qualifier contained in proposed new paragraph (b)(5)(i)(C)(*15*). Specifically, commenters (a) questioned the Commission's approach to the materiality qualifier in the proposed amendments; [53] (b) asked the Commission to provide guidance on how to determine the materiality of a financial obligation; [54] (c) stated that the broad scope of the proposed definition of the term ''financial obligation'' would make materiality determinations challenging and burdensome; [55] and (d) requested guidance on how to make materiality determinations in connection with the incurrence of a series of related financial obligations.[56] Each of these categories of comments is discussed below.

a. Use of Materiality Standard

Several commenters addressed the Commission's use of a materiality standard in proposed paragraph (b)(5)(i)(C)(*15*).[57] Some commenters, for example, suggested that the Commission eliminate the materiality qualifier to promote more robust disclosure of financial obligations,[58] while other commenters recommended that the Commission provide mechanical tests for determining when a financial obligation needs to be disclosed.[59]

Materiality is a core principle that guides the Commission's approach to securities regulation, and a materiality qualifier has appeared in Rule 15c2–12 since the Rule was amended in 1994.[60]

The Commission continues to believe that including a materiality qualifier in the amendments is appropriate as it provides a framework for issuers and obligated persons to assess their disclosure obligations in the context of the specific facts and circumstances. As described in the Proposing Release, the Commission believes that not every incurrence of a financial obligation or agreement to terms is material.[61] For example, an issuer or obligated person may incur a financial obligation for an amount that, absent material terms that affect security holders, would not raise the concerns the amendments are intended to address. Utilizing a materiality standard permits an issuer or obligated person to assess its disclosure obligation in the context of the specific facts and circumstances.[62] For example, it may be appropriate for issuers and obligated persons to consider not only the source of security pledged for repayment of the financial obligation, but also the rights associated with such a pledge (*e.g.,* senior versus subordinate), par amount or notional amount (in the case of a derivative instrument or guarantee of a derivative instrument), covenants, events of default, remedies, or other similar terms that affect security holders to which the issuer or obligated person agreed at the time of incurrence, when determining its materiality.[63] Removing the materiality qualifier could result in the disclosure of financial obligations that, absent other facts or circumstances, would not raise the concerns the amendments are intended to address.

Separately, some commenters suggested that the amendments include a mechanical test for materiality. In 1994, the Commission proposed amendments to Rule 15c2–12 that would have used a mechanical test to identify any ''significant obligor'' with respect to an issue of municipal securities and require that both the final official statement and the annual financial information provided on an ongoing basis pursuant to the continuing disclosure agreement include disclosure with respect to any significant obligor.[64] In response to a number of comments, the Commission adopted amendments to Rule 15c2–12 that eliminated the requirement to provide information about specific ''significant obligors'' in both the final official statement and on an ongoing basis. Instead, the Commission adopted an approach that leaves to the parties (including the issuer and the underwriter) the determination of whose financial information is material to the offering and required to be included in both the final official statement and provided on an ongoing basis as part of the annual financial information.[65] The 1994 Adopting Release stated that the standard set forth in the defined term ''final official statement'' provided flexibility that many commenters asserted is necessary in determining the content and scope of the disclosed financial information and operating data, given the diversity among types of issuers, types of issues, and sources of repayment.'' [66] The Commission believes this same need for flexibility applies to assessments of financial obligations and the materiality qualifier allows for consideration of diverse sets of factors. Therefore, the Commission does not believe that it would be appropriate to provide a mechanical test for determining the materiality of a financial obligation. Rather, the Commission continues to believe that materiality determinations should be based on whether the information would be important to the

[53] *See, e.g.,* NFMA Letter; Vanguard Letter; and ICI Letter.

[54] Several commenters also stated their concern about the lack of guidance with respect to determining the materiality of covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders. *See, e.g.,* LPPC Letter; Kutak Rock Letter; Brown Letter; NABL Letter. The discussion in this section regarding materiality applies to these comments.

[55] For further discussion of the term financial obligation, including comments received, *see infra* Section III.A.2.

[56] *See, e.g.,* SIFMA AMG Letter (asking for clarification that a series of related financial transactions must be aggregated for the purpose of assessing materiality); GFOA TX Letter (stating the difficulties in disclosing material derivative instruments as the amount of the financial obligation can fluctuate with the market).

[57] *See, e.g.,* DFW Letter; BDA Letter; Kutak Rock Letter; PFM Letter; Houston Letter; NABL Letter.

[58] *See* NFMA Letter (recommending that the disclosure of debt obligations should not be subject to a materiality qualifier); Vanguard Letter (recommending disclosure of an issuer's entire debt portfolio, including terms of direct placements and bank agreements); ICI Letter (recommending the removal of the second materiality qualifier and mandating disclosure for ''any terms in connection with a financial obligation that affect security holders'').

[59] *See* BDA Letter (stating ''some of those tests could include a percentage of the financial obligation as compared to total outstanding bonds, annual debt service as compared to annual revenues or expenditures, or some other comparable mechanical measurement'').

[60] *See* 1994 Amendments Adopting Release, *supra* note 8.

[61] *See* Proposing Release, *supra* note 3, 82 FR at 13935–36.

[62] *See* THECB Letter (''[w]hat constitutes materiality can vary by entity based on the size of the overall balance sheet, the size of existing obligations or the size of the overall bond portfolio''). While the Commission agrees with that statement, these are not the only factors that are relevant in evaluating the particular facts and circumstances.

[63] *See, e.g.,* UHC Letter (requesting that the Commission ''acknowledge that a financial obligation payable primarily or exclusively from one source of revenues would likely not be material to security holders of municipal securities payable primarily or exclusively from a separate or distinct source of revenues of the same issuer or obligated person''). The Commission believes that an issuer or obligated person would have to assess a number of factors when assessing materiality, including the source of security pledged to the security holders. *See also* NABL Letter.

[64] *See* Exchange Act Release No. 34–33742 (Mar. 9, 1994), 59 FR 12759 (Mar. 17, 1994). The proposed term ''significant obligor'' was defined to mean any person who, directly or indirectly, is the source of 20 percent or more of the cash flow servicing obligations on the municipal securities.

[65] *See* 1994 Amendments Adopting Release, *supra* note 8; *see also* 17 CFR 240.15c2–12(b)(5)(i)(A) and (f)(3).

[66] *See* 1994 Amendments Adopting Release, *supra* note 8 at 59593.

total mix of information made available to the reasonable investor.[67]

b. Guidance

Numerous commenters asked the Commission to provide guidance on how to determine the materiality of a financial obligation, stating that without such guidance, issuers, obligated persons, and dealers would not interpret materiality uniformly.[68] Commenters pointed to the challenges faced by issuers and obligated persons when determining materiality in connection with their participation in the Municipalities Continuing Disclosure Cooperation Initiative (''MCDC Initiative'') [69] as indicative of the lack of clarity that exists with respect to evaluating materiality.[70] In particular, commenters stated that the MCDC Initiative failed to produce clear guidance on materiality, resulting in additional market confusion about what constitutes materiality.[71] They also stated that following the MCDC Initiative, and absent Commission guidance, Participating Underwriters have been conservatively applying materiality determinations to limit potential liability and requiring issuers and obligated persons to disclose potentially non-material information to EMMA.[72]

The Commission believes that the type of analysis undertaken in connection with the MCDC Initiative [73] is distinct from the analysis required to determine whether a piece of information is material and must be publicly disclosed to investors in offering materials.[74] In the materiality inquiry that issuers, obligated persons, and dealers must regularly undertake when preparing disclosure documents in connection with an Offering, they must assess whether a piece of information at the time of issuance is of a character that there is a substantial likelihood that, under all the circumstances, ''the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information available.'' [75] Compliance with these requirements will be evaluated using the same standard.

The Commission believes that the determination by an issuer or obligated person of whether to submit an event notice under paragraph (b)(5)(i)(C)(*15*) requires the same analysis that is regularly made by such parties when preparing offering documents. Accordingly, under the Rule, as amended, an issuer or obligated person will need to consider whether a financial obligation or the terms of a financial obligation, if they affect security holders, would be important to a reasonable investor when making an investment decision.[76] As noted above,[77] an issuer or obligated person may consider a number of factors when assessing the materiality of a particular financial obligation.

Due to the flexible facts-and-circumstances approach to assessing materiality, the Commission acknowledges, as raised by commenters, that in the course of providing disclosures to the market about their financial obligations, some issuers and obligated persons may have differing opinions with respect to whether a piece of information would be considered important to a reasonable investor when making an investment decision. Regardless of these potential differences of opinion, the Commission does not believe it is necessary to provide additional guidance at this time. Issuers and obligated persons have the benefit of experience with making materiality determinations under the federal securities laws generally and the Rule specifically. Furthermore, even absent uniformity, the amendments, as discussed throughout this Release, will result in increased timely disclosure in the municipal securities market of important information regarding the financial obligations of issuers and obligated persons. Additionally, the changes made to the proposed definition of financial obligation should also alleviate commenter concerns about assessing the materiality of each financial obligation incurred by issuers and obligated persons. Forms and guidance that the industry may develop in this area could also assist issuers and obligated persons in evaluating which financial obligations should be disclosed pursuant to their continuing disclosure agreements.

c. Burden of Materiality Determinations

Many commenters stated that materiality determinations would pose

[67] *See Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others,* Exchange Act Release No. 34–33741 (Mar. 9, 1994), 59 FR 12748 (Mar. 17, 1994) (''1994 Interpretive Release'').

[68] *See, e.g.,* GFOA Letter; Denver Letter; THECB Letter (stating that ''what constitutes an obligation and what is material, are vague in this amendment'' and ''what constitutes materiality can vary by entity based on the size of the overall balance sheet, the size of existing obligations or the size of the overall bond portfolio''); *see also* Brown Letter (suggesting definitions of materiality the Commission could adopt); *but see also* ACI Letter (urging the Commission to reject a one-size-fits-all definition of materiality, since what is material to a small issuer may not be material to a larger issuer).

[69] In March 2014, the Division of Enforcement announced the MCDC Initiative, a voluntary program to encourage underwriters and issuers and obligated persons to self-report federal securities law violations involving inaccurate certifications in primary offerings where issuers and obligated persons represented in their final official statements that they had complied with previous continuing disclosure agreements when they had not. The Commission brought settled actions against 71 issuers and obligated persons under the MCDC Initiative. *See* SEC Charges 71 Municipal Issuers in Muni Bond Disclosure Initiative (Aug. 24, 2016) (''SEC Charges 71 Municipal Issuers''), *available at https://www.sec.gov/news/pressrelease/2016-166.html.*

[70] *See, e.g.,* DFW Letter.

[71] *See, e.g.,* NABL Letter (stating ''particularly since the MCDC Initiative, Commission interpretations of 'material' are too vague, ambiguous, and unpredictable to enable issuers and underwriters to clearly determine when notice of an event must be filed or when a failure to file must be disclosed'').

[72] *See, e.g.,* Granite SD Letter; Portland Letter; NABL Letter (stating that some compliance departments and investment banks now refuse to engage in materiality evaluations of prior events and continuing disclosure deficiencies).

[73] *See* Proposing Release at *supra* note 3, 82 FR at 13930 and note 15.

[74] The inquiry undertaken in connection with the MCDC Initiative required an assessment of whether the issuer or obligated person materially fulfilled its contractual obligations under its continuing disclosure agreement, which required a consideration of applicable state law and basic principles of contract law.

[75] *See* 1994 Interpretive Release, *supra* note 67 (quoting *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438, 440 (1976)). The principles behind this inquiry are consistent each time the question of whether a piece of information is material is presented, but the factors considered by issuers and obligated persons while undertaking such an inquiry are not uniform because it is a facts and circumstances driven analysis. This inquiry is distinct from the inquiry issuers, obligated persons, and underwriters conducted as part of the MCDC Initiative, which required an assessment of the issuer's or obligated person's performance of its contractual continuing disclosure obligations.

[76] Issuers and obligated persons have undertaken this type of analysis in the context of the Rule since 1994 when the Rule was amended to prohibit Participating Underwriters from purchasing or selling municipal securities in connection with an Offering unless the Participating Underwriter has ''reasonably determined'' that an issuer or an obligated person has undertaken in a continuing disclosure agreement to provide continuing disclosure information regarding the security and the issuer or obligated person for the life of the municipal security including notices of the occurrence of certain events, if material. *See* 1994 Amendments Adopting Release, *supra* note 8.

Since 2010, paragraphs (b)(5)(i)(C)(*2*), (*7*), (*8*), (*10*), (*13*), and (*14*) of the Rule have required a materiality analysis. *See* 2010 Amendments Adopting Release, *supra* note 8. *See also supra* note 17. Four of those paragraphs, (b)(5)(i)(C)(*2*), (*7*), (*8*), and (*10*), have required a materiality analysis since 1994. *See* 1994 Amendments Adopting Release, *supra* note 8.

Furthermore, this type of analysis is frequently conducted under the securities laws, whereby materiality is determined by reference to whether there is a substantial likelihood that a reasonable security holder would consider the information important in deciding whether to buy or sell a security. *See Basic, Inc.* v. *Levinson,* 485 U.S. 224 (1988).

[77] *See* note 63 and accompanying text.

challenges given the broad scope of the proposed definition of ''financial obligation.'' [78] Commenters argued that ten business days was not enough time to disclose material financial obligations.[79] Some commenters stated that without Commission guidance, issuers or obligated persons would likely utilize outside counsel in order to make materiality determinations.[80] Commenters stated that to avoid the time and expense of reviewing all of their financial obligations for materiality, and to avoid being second guessed by dealers in the future, they might disclose all financial obligations, flooding EMMA with potentially immaterial information of limited value to investors.[81] Commenters also stated that they might seek to avoid the cost, effort, and potential liability associated with summarizing key terms of a transaction by posting entire financing agreements to EMMA.[82]

The Commission acknowledges that there will be costs incurred by issuers, obligated persons, and dealers when evaluating whether a financial obligation is material. However, as discussed in Section III.A.2 herein, the Commission is adopting a narrower definition of ''financial obligation'' than proposed, which will reduce the burden on issuers, obligated persons, and dealers. The adopted definition of financial obligation significantly limits the types of transactions that issuers and obligated persons will need to identify and assess for materiality, and focuses the amendments on debt, debt-like, and debt-related obligations of issuers and obligated persons. The narrowed definition of financial obligation, which only covers those obligations that are debt, debt-like, or debt-related, will result in fewer financial obligations that issuers and obligated persons will need to review for materiality, and should help alleviate commenter concerns about disclosing a material financial obligation within ten business days. In addition, though the period for reporting the incurrence of a material financial obligation does not begin until the date on which the financial obligation is incurred, the Commission understands that most material terms of a financial obligation are typically known to the issuer or obligated person prior to the date of its incurrence. Accordingly, issuers and obligated persons could begin the process of assessing whether a particular obligation should be disclosed pursuant to paragraph (b)(5)(i)(C)(*15*) in advance of its incurrence. As a result, the Commission believes ten business days is a reasonable period of time for compliance. Moreover, the ten business day requirement is already in the Rule and introducing an alternate timeline for the amendments could cause confusion, add complexity to the Rule, and increase the compliance burden for issuers, obligated persons, and dealers.

With respect to commenter concerns about the burdens of summarizing the terms of material financial obligations, issuers and obligated persons could consider amending existing disclosure policies and procedures to address the process for evaluating the disclosure of material financial obligations. Amended policies and procedures, in addition to industry practices that may develop, could help issuers and obligated persons streamline the process of disclosing material financial obligations to EMMA, and ease time and cost burdens associated with identifying, assessing, and disclosing material financial obligations.

d. Materiality and a Series of Related Financial Obligations

Commenters asked whether a series of related financial obligations could be considered material due to their aggregate par amount, though none of the constituent obligations would be material on its own.[83] Materiality is determined upon the incurrence of each distinct financial obligation, taking into account all relevant facts and circumstances.[84] For example, if the issuer or obligated person enters into a series of transactions that, though related,[85] are incurred at different points in time for legitimate business purposes—*e.g.,* to satisfy the necessary conditions for the debt to be considered tax-exempt under provisions of the Internal Revenue Code of 1986, as amended (''IRC'')—the issuer or obligated person would need to assess the materiality of each transaction at the time it was incurred.

When an issuer or obligated person is considering whether a series of related transactions is a single incurrence or has been incurred at different points in time for legitimate business purposes for determining materiality under the amendments, such issuer or obligated person must consider all relevant facts and circumstances. An example of the type of facts and circumstances that could indicate that a series of related transactions were incurred separately for legitimate business purposes would be if the series of financial obligations satisfy the requirements set forth in the U.S. Department of Treasury regulations and guidance governing what constitutes a single issue of municipal securities under the IRC.[86] The Commission cautions issuers and obligated persons against entering into a series of transactions with a purpose of evading potential disclosure obligations established by paragraphs (b)(5)(i)(C)(*15*) and (*16*) of the Rule in a manner that is inconsistent with the purposes of the Rule.[87]

ii. Incurrence of a Financial Obligation

Some commenters recommended that the Commission provide guidance on

[78] *See, e.g.,* Portland Letter; Denver Letter; ACI Letter.

[79] *See, e.g.,* Portland Letter; ACI Letter; Kutak Rock Letter; San Jose Letter.

[80] *See, e.g.,* Denver Letter; San Jose Letter; White Plains Letter; *see also* TASBO Letter (stating that ''the analysis of agreements and instruments captured under the definition of ''financial obligations'' under the proposed regulations will require subject matter experts to review the financial obligations—which they otherwise would not be engaged to review—in detail and make nuanced determinations as to materiality'').

[81] *See, e.g.,* ACI Letter; AAPA Letter; *see also* PFM Letter (stating that absent clarity from the Commission on materiality, ''issuers and investors will likely be harmed by the potential of disclosing information that could prove to be irrelevant to the credit of a particular municipal securities transaction'').

[82] *See* ABA Letter; East Bay Letter.

[83] *See, e.g.,* SIFMA AMG Letter (asking for clarification that a series of related financial transactions must be aggregated for the purpose of assessing materiality); GFOA TX Letter (stating the difficulties in disclosing material derivative instruments as the amount of the financial obligation can fluctuate with the market).

[84] For a discussion of the term ''incurred,'' *see infra* Section III.A.1.ii.

[85] Relevant factors that could indicate that a series of financial obligations incurred close in time are related include the following: (i) Share an authorizing document, (ii) have the same purpose, or (iii) have the same source of security.

[86] *See* 26 CFR 1.150–1(c); *see* Internal Revenue Service, Lesson 2: *Advanced Topics in Arbitrage, available at https://www.irs.gov/pub/irs-tege/02%20Phase%20II%20Lesson%2002%20-%20%20Advanced%20Topics%20in%20Arbitrage.pdf* (IRS educational materials provided to the public containing the conditions under which separate bond series are considered to be a single issue for arbitrage purposes, stating: ''[IRC] Regulations § 1.150–1(c)(1) provides that the term issue means two or more bonds that meet all of the following requirements: (i) Sold at substantially the same time (less than 15 days apart), (ii) sold pursuant to the same plan of financing, and (iii) reasonably expected to be paid from the same source of funds. For example, bonds sold to finance a single facility or related facilities are considered part of the same financing plan, but short-term bonds to finance working capital and long-term bonds to finance capital projects would not be considered part of the same plan. Certificates of participation in a lease and general obligation bonds secured by tax revenues would not be considered part of the same plan'').

[87] U.S. Department of Treasury regulations similarly warn against entering ''into a transaction or series of transactions with respect to one or more issues with a principal purpose of transferring to nongovernmental persons (other than as members of the general public) significant benefits of tax-exempt financing in a manner that is inconsistent with the purposes of section 141 [of the Internal Revenue Code].'' *See* 26 CFR 1.141–14.

the meaning of ''incurrence.'' [88] The Commission believes that a financial obligation generally should be considered to be incurred when it is enforceable against an issuer or obligated person.[89] Disclosure of a material financial obligation at such time would provide investors with important information about the current financial condition and potential liabilities of the issuer or obligated person, including potential impacts to the issuer's or obligated person's liquidity and overall creditworthiness. For example, if an issuer or obligated person enters into an agreement providing for a material drawdown bond,[90] or such agreement contains material terms that affect security holders, the issuer or obligated person generally should provide notice at the time the terms of the obligation are legally enforceable against the issuer or obligated person, instead of each time a draw is made.[91]

iii. Form of Event Notice

Commenters observed that the Commission did not prescribe the form of a notice made pursuant to new paragraph (b)(5)(i)(C)(*15*) [92] and some recommended that the Commission dictate the form and content of disclosures made under the new provision.[93] One commenter, though, stated that the Commission should avoid being too prescriptive with respect to the form and content of a material event notice submitted under paragraph (b)(5)(i)(C)(*15*) of the Rule.[94] Other commenters expressed concern about what they described as the potential negative impact of the public disclosure of financing documents on competition among lenders, as well as the possibility for the disclosure of confidential personally identifiable information.[95]

The Commission acknowledges commenter concerns regarding what form the notice should take. However, given the diversity of issuers and obligated persons, and in light of the structure of the Rule, the Commission believes at this time that market participants are best suited to consider developing best practices in this area to assist issuers and obligated persons and their advisors in carrying out the objective of the amendments, which is to facilitate the timely delivery of important information to investors and other market participants about issuers' and obligated persons' financial obligations.[96] As described in the Proposing Release,[97] a material event notice for the events described in paragraph (b)(5)(i)(C)(*15*) generally should include a description of the material terms of the financial obligation. Examples of some material terms may be the date of incurrence, principal amount, maturity and amortization, interest rate, if fixed, or method of computation, if variable (and any default rates); other terms may be appropriate as well, depending on the circumstances.[98] A description of the material terms would help further the availability of information in a timely manner to assist investors in making more informed investment decisions.[99] The Commission believes that, depending on the facts and circumstances, it could be consistent with the requirements of the Rule for issuers and obligated persons to either submit a description of the material terms of the financial obligation, or alternatively, or in addition, submit related materials, such as transaction documents, term sheets prepared in connection with the financial obligation, or continuing covenant agreements or financial covenant reports to EMMA. Any such related materials, if submitted as an alternative to a description of the material terms of the financial obligation, should include the material terms of the financial obligation. The amendments do not require the provision of confidential information such as contact information, account numbers, or other personally identifiable information to EMMA. Provided the necessary disclosures are made, the formatting of such disclosures tailored to avoid disclosure of such confidential information would be consistent with Rule 15c2–12.[100]

2. ''Financial Obligation''

In the Proposing Release, the Commission defined the term ''financial obligation'' to mean a debt obligation, lease, guarantee, derivative instrument, or monetary obligation resulting from a judicial, administrative, or arbitration proceeding,[101] but not including municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2–12.[102]

Many commenters criticized the proposed definition of ''financial obligation,'' characterizing it as overbroad and vague.[103] In particular, commenters argued that the proposed definition would elicit disclosures of

[88] *See* SIFMA AMG Letter; *see also* NABL Letter.

[89] This is consistent with similar concepts in Exchange Act Form 8–K. Specifically, the instructions for Item 2.03 of Form 8–K provide that ''[a] registrant has no obligation to disclose information under this Item 2.03 until the registrant enters into an agreement enforceable against the registrant, whether or not subject to conditions, under which the direct financial obligation will arise or be created or issued.'' *See* 17 CFR 249.308.

[90] *See* NABL, *Direct Purchases of State or Local Obligations by Commercial Banks and Other Financial Institutions* (July 2017), *available at https://www.nabl.org/DesktopModules/Bring2mind/DMX/Download.aspx?portalid=0&EntryId=1118* (''Certain direct purchase financings are structured as 'draw-down bonds.' Under this structure, the purchaser from time to time makes advances [to the issuer or obligated person], up to a maximum aggregate principal amount of the bonds, over a limited period of time, rather than advancing all proceeds of the bonds at the initial closing, as in a typical publicly-offered borrowing'').

[91] The Commission likewise believes that a financial obligation is incurred with regard to a derivative instrument when the derivative instrument is enforceable against an issuer or obligated person. *See infra* note 155.

[92] *See* Kutak Rock Letter (stating that unlike corporate issuers, there is no checklist or guidepost to assist issuers and obligated persons determine what must be included in disclosure); *see also* AZ Universities Letter (stating that there are no standard EMMA disclosure forms provided by the Commission or the MSRB and issuers will be left on their own to determine the proper format and scope of event notices posted on EMMA).

[93] *See* Vanguard Letter (recommending that the Commission require the disclosure of financial covenant reports, similar to what is provided to banks under loan agreements); BDA Letter (stating that the amendments should require issuers and obligated persons to include in any filing a description to investors describing what is material about the event); NFMA Letter (encouraging the Commission to require in the rule text that either all relevant agreements or a detailed summary of terms of the financial transaction be posted along with the notice of incurrence to EMMA); and IAC Recommendation, *supra* note 6 (suggesting that the Commission clarify that disclosures made under the amendments should include information about the incurrence and amount of indebtedness as well as information about financial covenants).

[94] *See* DAC Letter.

[95] *See* ABA Letter (urging the Commission to provide a mechanism for redacting confidential and personally identifiable information and stating that disclosure of pricing terms may set unrealistic expectations for other issuers and may have an anti-competitive effect by setting a pricing benchmark for certain transactions); *see also* LPPC Letter (stating that the disclosure of covenants, events of default, remedies, priority rights, or other similar terms could adversely impact an issuer's ability to effectively negotiate or enter into future agreements and could be used by the issuer's counterparties to strengthen their negotiating positions).

[96] Industry organizations have developed recommendations for voluntary disclosure of direct placements. Such groups and others could, for example, develop a form submission document and guidance for market participants. *See, e.g.,* Considerations Regarding Voluntary Secondary Market Disclosure About Bank Loans, *supra* note 46.

[97] *See* Proposing Release, *supra* note 3, 82 FR at 13937.

[98] *Id.*

[99] *Id.*

[100] The Commission further notes that information about financial obligations, including transaction documents, would likely be available under state sunshine laws.

[101] *See* Proposing Release, *supra* note 3, 82 FR at 13957.

[102] *See id.*

[103] *See, e.g.,* AAPA Letter; ABA Letter, Form Letter.

limited value to investors at a tremendous cost.[104] With respect to the value of disclosure, commenters argued that the breadth of the proposed definition would produce disclosures of limited value because it did not distinguish between debt and ordinary financial and operating matters of an issuer or obligated person.[105] Commenters also stated that the broad scope of the term ''financial obligation,'' as proposed, would impose substantial burdens on issuers, obligated persons, and other market participants.[106] For example, commenters argued that the breadth of the proposed definition of the term ''financial obligation'' would require a significant amount of issuer or obligated person time and financial and personnel resources to monitor and assess materiality of its financial obligations, which for some issuers or obligated persons could cover thousands of obligations incurred in the normal course of business.[107]

Commenters argued that the proposed definition of the term ''financial obligation,'' if adopted, would make compliance with the Rule unreasonably costly for some,[108] and virtually impossible for others.[109] Ultimately, however, despite their objections to the proposed definition of ''financial obligation,'' many of these commenters suggested that the term should at least cover debt and debt-like obligations that could compete with the rights of existing security holders.[110]

Not all commenters, however, were critical of the proposed definition of the term ''financial obligation.'' [111] Several commenters stated that the proposed definition of the term would provide needed transparency to the municipal securities market.[112] For example, one commenter stated that without timely disclosure of this information, investors and other market participants may not be aware that an issuer or obligated person has incurred a material financial obligation or agreed to certain terms that affect security holders.[113]

The purpose of the amendments is to facilitate investors' and other market participants' access to timely disclosure of important information related to an issuer's or obligated person's material financial obligations that could impact an issuer's or obligated person's liquidity, overall creditworthiness, or an existing security holder's rights (*e.g.,* a bank loan with a senior position in the debt payment priority structure). With these principles and commenter concerns in mind, the Commission is narrowing the definition of ''financial obligation.''

As adopted, ''financial obligation'' means a debt obligation; derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or a guarantee of either a debt obligation or a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation. The term financial obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2–12.

As discussed below, the definition of the term ''financial obligation'' does not include ordinary financial and operating liabilities incurred in the normal course of an issuer's or obligated person's business, only an issuer's or obligated person's debt, debt-like, and debt-related obligations.[114] The Commission believes that a definition of the term ''financial obligation'' that distinguishes debt, debt-like, and debt-related obligations from obligations incurred in an issuer's or obligated person's normal course of operations appropriately focuses the amendments on the types of obligations that could impact an issuer's or obligated person's liquidity, overall creditworthiness, or an existing security holder's rights.[115] Moreover, in the Commission's view, the adopted definition of the term ''financial

[104] *See* GFOA Letter; Brookfield Letter; GFOA TX Letter; Kissimmee Letter.

[105] *See* BDA Letter; Portland Letter (pertaining to leases); GFOA Letter (pertaining to derivative instruments). *See also* IAC Recommendation, *supra* note 6 (stating, ''One term that could be better defined is 'financial obligation', which should pick up indebtedness and similar obligations but should not be so broad as to pick up items such as ordinary course leases'').

[106] With respect to issuers and obligated persons, *see generally* GFOA Letter; NAHEFFA Letter; NCHSA Letter; and CA Finance Letter; and with respect to dealers, *see also* SIFMA Letter.

[107] *See* AAPA Letter (stating that ''many leases and legal or administrative proceedings are part of normal business operations''); ACI Letter (''the term 'financial obligation' is very broad and would include many business and legal obligations that are not direct placements of municipal securities or bank loans and that are not generally considered to be indebtedness . . . US airports are party to well over 50,000 leases''); DAC Letter (''the scope of financial obligations [covers] obligations well beyond bank loans and direct sales . . . potentially requir[ing] issuers and obligated persons to identify, summarize, disclose, track and analyze, within tight timeframes, the incurrence and performance of a far broader range of activities''); GFOA Letter (''information suggested in the proposed requirements (*e.g.,* leases, derivatives) includes transactions that may occur multiple times a year through the normal operating activities of state and local governments and are not on par with debt obligations''); NAHEFFA Letter (''the broad definition of financial obligation could pick up financial aid contracts, health insurance contracts, food service contracts, research agreements, management contracts, sports venue contracts, equipment and vehicle leases, among other contracts''); NAMA Letter (''the definition of 'financial obligations' is too broad and will require the consideration of the materiality of many types of financings and financial obligations that do not affect a government or entity's ability to pay debt . . . [many] are part of the day-to-day 'operations' of governments''); Denver Letter (''the City is currently a party to thousands of contracts . . . [and] is involved in hundreds of administrative and arbitration proceedings every year''); Portland Letter (''we agree that the incurrence of a bank loan or other debt obligation is something that should be disclosed to the market, [but] we are concerned that the definition . . . is easily interpreted to include varying types of leases, such as those for the copiers, lawn mowers, and other minor equipment acquisitions'').

[108] *See, e.g.,* THPRD Letter (''the scope [of] 'financial obligations' covered under the Proposed Amendment is overly broad and would be costly for our organization to monitor''); Port Portland Letter (''[t]o comply with the proposed amendments, issuers would have to create a centralized mechanism to monitor the creation and modification of a wide variety of financial instruments . . . [d]oing so would be unnecessarily burdensome and expensive'').

[109] *See, e.g.,* AZ Universities Letter (stating that ''a significant investment of time and money by the Universities will be necessary to monitor the need for filing an event notice under the Proposed Amendments . . . and the widely publicized lack of funding for public universities does not permit the necessary funding to restructure the Universities' processes or hire additional staff and engage outside legal counsel at significant expense solely to comply with the Proposed Amendments''); *see also* SIFMA Letter (arguing that it would be ''virtually impossible'' for registered representatives to comply with their obligations under MSRB Rule G–47).

[110] *See* BDA Letter (''BDA believes that the primary investor desire for information giving rise to the Proposed Amendments is the way that bank debt competes with publicly traded bonds''); *see also* NAMA Letter; Portland Letter; Form Letter.

[111] *See, e.g.,* ICI Letter; BM Letter; NFMA Letter; SIFMA AMG Letter. For example, one commenter suggested that the Commission add ''crowdfunding campaigns or public projects that pledge future revenues to backers of the projects'' to the definition of ''financial obligation.'' *See* BM Letter. In the Commission's view, the contractual arrangement between the issuer or obligated person and its backers memorializing the pledge of future revenues derived from the project could be a ''debt obligation'' for purposes of the Rule depending on the facts and circumstances. Accordingly, the Commission does not believe it is necessary to separately include crowdfunding-related obligations in the adopted definition of financial obligation.

[112] *See* BM Letter; ICI Letter; Doty Letter.

[113] *See* ICI Letter.

[114] *Cf.* BDA Letter (observing that the ''primary investor desire for information giving rise to the Proposed Amendments is the way that bank debt competes with publicly traded bonds, and this competition is nothing new in the municipal securities market'').

For a description of commenter arguments that the term ''financial obligation'' should distinguish between debt and ordinary financial or operating matters, *see supra* notes 105 and 107.

[115] Several commenters supported this type of approach to the disclosure of ''financial obligations.'' *See, e.g.,* LPPC Letter (stating ''LPPC believes that the Proposed Amendments should be narrowly tailored to require municipal issuers only to provide notice of the incurrence of bank loans, private placements or direct purchases of debt obligations, and derivative instruments that are entered into in connection with, and hedge, debt obligations of an issuer''). *See also* IAC Recommendation, *supra* note 6.

obligation'' will greatly reduce the burden of complying with the amendments, while still capturing important information about the current financial condition of the issuer or obligated person.[116] Accordingly, the Commission believes that this definition strikes the appropriate balance between benefits to investors and other market participants and costs of compliance with the Rule.[117]

i. Debt Obligation

As proposed, the term ''debt obligation'' was intended to capture the short-term and long-term debt obligations of an issuer or obligated person under the terms of an indenture, loan agreement, or similar contract that will be repaid over time.[118] As examples, the Commission stated that a direct purchase of municipal securities by an investor and a direct loan by a bank would be debt obligations of an issuer or obligated person.[119]

A number of commenters supported the Commission's proposal to require disclosure of debt obligations.[120] Even commenters that opposed the Commission's proposed requirement to disclose debt obligations under the Rule advocated for the Commission to encourage voluntary disclosure of such obligations.[121]

The Commission continues to believe that the definition of ''financial obligation'' should include debt obligations because such obligations and their terms could adversely affect the rights of existing security holders, including the seniority status of such security holders, or impact the creditworthiness of an issuer or obligated person.[122] Moreover, the Commission believes that undisclosed debt obligations and their terms could adversely affect security holders. Contrary to some commenter sentiment,[123] recent events in the direct placement market support this belief.[124] Specifically, recent changes to federal tax laws [125] have reportedly triggered provisions commonly found in direct placements relating to the rate at which a direct placement will bear interest.[126] In the Commission's view, these tax-related provisions are illustrative of the types of terms to which issuers and obligated persons agree when incurring financial obligations that could impair an issuer's or obligated person's liquidity or creditworthiness and, thus, adversely affect the interests of existing security holders. Without paragraph (b)(5)(i)(C)(*15*), an issuer or obligated person would not, under the terms of a continuing disclosure agreement, be required to assess the materiality of and disclose, if material, either its agreement to such terms that affect security holders or the incurrence of the underlying debt obligation. For these reasons, the Commission believes that the timely disclosure of both the incurrence of a debt obligation, if material, and the obligation's material terms that affect existing security holders, such as those related to the rate at which a debt obligation will bear interest,[127] would provide important information about the issuer's or obligated person's current financial condition.

In the Proposing Release, the Commission proposed ''lease'' as a separate element of the definition of ''financial obligation.'' [128] Specifically, the Commission stated that the term ''lease'' was intended to capture a lease that is entered into by an issuer or obligated person, including an operating or capital lease.[129] The Commission stated, for example, that if an issuer or obligated person entered into a lease-purchase agreement to acquire an office building or an operating lease to lease an office building for a stated period of time, both would potentially be subject to disclosure under the Proposing Release.[130] However, in light of the GASB decision to discontinue use of the ''capital lease'' and ''operating lease'' labels in government accounting, the Commission believes it is appropriate to also discontinue its use of such labels in connection with the amendments.[131] Thus, although the Commission used the ''capital lease'' and ''operating lease'' terminology in the Proposing Release, it is discontinuing the use of such terms in connection with the definition of the term ''financial obligation.'' Instead, as discussed below, the Commission is providing guidance that the term ''debt obligation'' generally should be considered to include lease arrangements entered into by issuers and obligated persons that operate as vehicles to borrow money.

Commenters criticized the inclusion of leases, without limitation, in the definition of ''financial obligation'' as

[116] *See generally,* Proposing Release, *supra* note 3, 82 FR at 13936. For the Commission's analysis of the costs and benefits of the amendments, *see infra* Section V.C.

[117] *Compare* ICI Letter (arguing that ''timely disclosure'' of financial obligations is necessary because ''such information may significantly impact the fundamental value that investors place on a municipal bond and is therefore necessary to accurately assess, monitor, and compare credit quality of securities and issuers'') *with* GFOA Letter (arguing that the ''proposed additional 'financial obligations' covered by Rule 15c2–12 would be information that is both superfluous to investors and costly for issuers to present outside of financial statements''). *See generally, infra* Section V for the Commission's economic analysis of the amendments.

[118] *See* Proposing Release, *supra* note 3, 82 FR at 13937.

[119] *Id.*

[120] *See, e.g.,* Portland Letter (stating ''we agree that the incurrence of a bank loan or other debt obligation is something that should be disclosed to the market''); SIFMA Letter (stating ''[w]e support event notice disclosure of incurrence of debt through a direct purchase, private placement, or bank loan[s]''); NAST Letter (stating ''we believe that enhanced and uniform disclosure related to bank loan debt would be beneficial for issuers and investors''); NAMA Letter (stating ''the definition of 'financial obligation' should focus only o[n] specific behavior for which the SEC has expressed concern, namely, bank loans and private placements''). *See also* SIFMA AMG Letter (recommending that debt obligation be replaced with the definition of ''direct financial obligation'' in Item 2.03(c) (''Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant'') of Form 8–K).

[121] *See, e.g.,* NABL Letter; GFOA Letter. Despite the efforts of the MSRB and other market participants, voluntary disclosures remain relatively infrequent; moreover, under a voluntary disclosure regime, investors would not benefit from the uniform requirements of the Rule. Accordingly, and as discussed in Section III.A. and Section V.D. *infra,* and in the Proposing Release, the Commission does not believe that voluntary disclosure of debt obligations would fully achieve the Commission's objectives.

[122] *See* Proposing Release, *supra* note 3, 82 FR at 13937–38.

[123] *See* NABL Letter (arguing that the Commission has not provided adequate evidence of investor harm related to undisclosed debt obligations).

[124] *See* Lynn Hume, *Spike in Issuer Bank Loan Rates Feared as Drop in Corporate Tax Rate Looms,* The Bond Buyer (Dec. 8, 2017), *available at https://www.bondbuyer.com/news/issuers-bank-loan-rate-may-spike-with-drop-in-corporate-tax-rate.*

[125] *See* Tax Cuts and Jobs Act of 2017, *supra* note 40.

[126] These terms operate such that a decline in the federal corporate income tax rate will increase the overall cost of the related direct placement to the issuer or obligated person, usually by either: (1) Increasing the interest rate paid by the issuer or obligated person to the lender, or (2) requiring the issuer or obligated person to make periodic cash payments to the lender in addition to any required interest payments. The purpose of these terms is to allow banks to maintain their after-tax yield regardless of the corporate income tax rate. The Commission understands that many of these provisions are automatically triggered upon a reduction of the federal corporate income tax rate. *See* Richard A. Newman et al., *How to Calculate the Gross-Up,* The Bond Buyer (Jan. 18, 2018), *available at https://www.bondbuyer.com/opinion/how-banks-may-calculate-the-gross-up-on-direct-placement-bonds* (stating that interest rates paid by issuers and obligated persons could increase by as much as 102 basis points as a result of such terms).

[127] *See supra* Section III.A.1.iii (discussion of information that should be included in an event notice).

[128] *See* Proposing Release, *supra* note 3, 82 FR at 13937–38.

[129] *Id.* at 13937.

[130] *See* Proposing Release, *supra* note 3, 82 FR at 13937–38.

[131] For a description of GASB's decision to discontinue its use of the ''capital lease'' and ''operating lease'' terminology, *see* Governmental Accounting Standards Board, Statement No. 87—Leases (June 2017), *available at http://www.gasb.org/jsp/GASB/Document_C/DocumentPage?cid=1176169170145&acceptedDisclaimer=true.*

overbroad and argued that the Commission should exclude ''operating leases'' from the definition of ''financial obligation.'' [132] For example, commenters argued that information about an issuer's or obligated person's non-debt-related leases would not provide useful information to bondholders, while others stated that the inclusion of leases in the proposed definition of ''financial obligation'' would result in a ''deluge of filings'' without adding any significant value to the municipal securities market.[133] Commenters also argued that requiring disclosure of all material leases would impose significant burdens on issuers and obligated persons.[134] As an alternative to the Commission's proposed treatment of leases, some commenters suggested that the disclosure of ''capital leases'' under the Rule would be appropriate because such obligations could compete with existing security holders.[135] Specifically, one commenter recommended that, subject to the materiality qualifier, the Commission should only require disclosure of leases that operate as a vehicle to borrow money.[136]

The Commission agrees with commenters that, as proposed, the term ''lease'' was too broad. Accordingly, the Commission believes that it is appropriate to limit the Rule's coverage of leases to those that operate as vehicles to borrow money.[137] The Commission believes that this is appropriate because a lease entered into as a vehicle to borrow money could represent competing debt of the issuer or obligated person. Such leases implicate the Commission's concerns regarding access to timely disclosure regarding their incurrence or terms because they could, for example, contain acceleration provisions or more restrictive debt service covenants and, as a result, could affect existing security holder's rights.[138] Due to the Commission's decision to narrow the scope of leases covered by the amendments to only include those entered into as a vehicle to borrow money, the Commission believes it is appropriate to remove the term ''lease'' from the definition of ''financial obligation.'' As discussed below, however, leases that operate as vehicles to borrow money generally would be debt obligations and thus would be defined as financial obligations under the Rule. Accordingly, the Commission believes that it is appropriate to (i) remove the term ''lease'' from the definition of the term ''financial obligation;'' and (ii) provide guidance that the term ''debt obligation'' generally should be considered to include lease arrangements entered into by issuers and obligated persons that operate as vehicles to borrow money.

As discussed above, the proposed term ''debt obligation'' did not include leases because the Commission included the term ''lease'' as a separate item in the definition of ''financial obligation.'' [139] The Commission stated in the Proposing Release that the term ''debt obligation'' is intended to capture debt obligations of an issuer or obligated person under the terms of an indenture, loan agreement, or similar contract that will be repaid over time. The Commission believes that an obligation to repay borrowed money over time under the terms of a lease is functionally equivalent to a similar obligation that is incurred under the terms of an indenture, loan agreement, or similar contract.[140] Accordingly, the Commission believes that a lease entered into as a vehicle to borrow money is more appropriately defined as a variety of ''debt obligation'' rather than a separate type of ''financial obligation'' as was proposed. The Commission believes that leases entered into as a vehicle to borrow money are commonly used by municipal securities issuers and obligated persons and, when used, commonly understood to be a tool for facilitating an issuer's or obligated person's ability to borrow money.[141] Therefore, under the Rule, a lease that operates as a vehicle to borrow money generally should be treated like an obligation incurred under the terms of an indenture, loan agreement, or similar contract.

In the Proposing Release, the Commission included the phrase ''that will be repaid over time'' when discussing the term ''debt obligation.'' As adopted, the Rule does not include the phrase ''that will be repaid over time'' to avoid any suggestion that there is a temporal consideration regarding the repayment period of a short-term or long-term debt obligation that could be used to distinguish an obligation that is

[132] *See, e.g.,* Portland Letter; San Jose Letter; BDA Letter; East Bay Letter. *See also* IAC Recommendation, *supra* note 6.

[133] *See, e.g.,* GFOA Letter (suggesting that disclosure of operating leases would be ''superfluous to investors''); East Bay Letter (stating that it ''does not believe the minutiae of day to day operations would be helpful information for bond holders''). *See, e.g.,* Port Portland Letter (stating ''the sheer number of leases to which the Port is a party could create a volume of postings that would overwhelm participants in the municipal market''); ACI Letter.

[134] *See, e.g.,* UHC Letter (''The broad definition of leases implicates a variety of lease arrangements executed by UHC in the ordinary course of business, including office leases, copier leases, etc. . . . [i]dentifying and evaluating the materiality of every one of these arrangements . . . would be burdensome and costly'').

[135] *See* White Plains Letter; SIFMA AMG Letter.

[136] *See* BDA Letter.

[137] *See id.;* White Plains Letter.

[138] *See* BDA Letter.

[139] *See* Proposing Release, *supra* note 3, 82 FR at 13937.

[140] *See generally* Association for Governmental Lease and Finance, *An Introduction to Municipal Lease Financing: Answers to Frequently Asked Questions* (July 1, 2000) (''Municipal Lease Financing''), *available at https://aglf.memberclicks.net/assets/docs/municipal_lease_financing.pdf; see also* BDA Letter (arguing that ''the definition of financial obligation should be narrowed to include only obligations for borrowed money, leases that operate as vehicles to borrow money, and derivatives that are executed for the purpose of hedging these types of transactions'').

[141] For example, the types of leases that could be debt obligations include, but are not limited to, lease-revenue transactions and certificates of participation transactions. Typically, in a lease-revenue transaction, an issuer or obligated person borrows money to finance an equipment or real property acquisition or improvement and a lease secures the issuer's or obligated person's obligation to make principal and interest payments to the lender. *See* Municipal Lease Financing, *supra* note 140; *see also* CA Finance Letter (stating that the majority of its municipal securities transactions are structured as lease-revenue transactions). In a certificates of participation transaction, the issuer or obligated person sells certificates of participation and the proceeds of the certificates are used, typically, to finance an equipment or real property acquisition or improvement by the issuer or obligated person. The issuer or obligated person, typically, will, as part of the transaction, execute a lease with a trustee, which serves as the mechanism through which the trustee receives payments from the issuer or obligated person. The trustee then proportionately distributes the lease payments it receives from the issuer or obligated person to certificate holders to pay principal and interest when and as due. *See* Municipal Lease Financing, *supra* note 140.

Moreover, in the context of Rule 15c2–12, the Commission is not limiting the term ''debt obligation'' to debt as it may be defined for state law purposes, but instead is applying it more broadly to circumstances under which an issuer or obligated person has borrowed money. Debt, as defined for state law purposes, ''ordinarily means general obligation debt. Typically, the limitation is interpreted to exclude revenue bonds, special fund obligations, and other debt which is not backed by the full faith and credit of the [issuer] coupled by the unlimited power to levy an ad valorem tax to pay such debt.'' *See* Nat'l Ass'n of Bond Lawyers, Fundamentals of Municipal Bond Law 25 (2018). The Commission believes that, for the purposes of Rule 15c2–12, a narrow interpretation of ''debt'' would be under-inclusive because issuers and obligated persons can, and often do, borrow money through a variety of transactions, many of which would not qualify as ''debt'' under relevant state laws. *See id.* (describing forms of debt that would not be ''debt'' as ordinarily defined by state law). *See also* Steven Maguire and Jeffrey M. Stupak, Cong. Research Serv., RL30638, Tax-Exempt Bonds: A Description of State and Local Government Debt (2015), *available at https://www.hsdl.org/?view&did=761823* (stating that ''an advantage of [lease rental revenue bonds and certificates] is that many states' constitutional and statutory definitions do not consider this type of financing to be debt[.]'').

For a discussion of when a debt obligation is incurred for purposes of the Rule, *see supra* Section III.A.1.ii.

a ''debt obligation'' from one that is not. In the Commission's view, any short-term or long-term debt obligation of an issuer or obligated person under the terms of an indenture, loan agreement, lease, or similar contract[142] is covered by the term ''debt obligation'' regardless of the length of the debt obligation's repayment period.

As adopted, the term ''debt obligation'' includes short-term and long-term debt obligations of an issuer or obligated person under the terms of an indenture, loan agreement, lease, or similar contract.

With respect to leases that do not operate as vehicles to borrow money, the Commission agrees with commenters that the burden of assessing their materiality and disclosing such leases within ten business days would not justify the benefit of such disclosures. While the Commission continues to believe that lease arrangements that are not vehicles to borrow money might be relevant to the general financial condition of an issuer or obligated person, the Commission also believes that such lease arrangements do not warrant inclusion in the Commission's definition of ''financial obligation'' because they generally do not represent competing debt of the issuer or obligated person.[143] Accordingly, at this time, the Commission does not believe that such leases raise the same concerns regarding timely disclosure of their incurrence as leases entered into as a vehicle to borrow money.[144]

ii. Derivative Instrument Entered Into in Connection With, or Pledged as Security or a Source of Payment for, an Existing or Planned Debt Obligation

As proposed, the term ''derivative instrument'' was intended to capture any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument to which an issuer or obligated person is a counterparty.[145] The Commission stated that though issuers and obligated persons may not use each type of derivative instrument listed, the proposed list was sufficiently broad to cover the use of derivative instruments that may develop in the future.[146] As discussed below, many commenters raised questions about the proposed scope of the term ''derivative instrument.'' A common theme was that the Commission should limit the scope of derivative instruments covered by the Rule to those instruments related to debt, such as interest-rate swaps, because only such instruments could compete with the rights of existing securities holders.[147] Commenters also stated that an overly broad interpretation of the term would elicit disclosures that would be of minimal value to investors because such instruments would not represent competing debt of an issuer or obligated person.[148] Commenters cited instruments entered into to manage fuel prices or power price volatility or to reduce other similar risks related to commodity or future inventory purchases by issuers and obligated persons as the types of instruments that should not be covered by the Rule.[149]

The Commission continues to believe derivative instruments should be included in the adopted definition of the term ''financial obligation'' because such instruments could adversely impact an issuer's or obligated person's liquidity and overall creditworthiness, or adversely affect security holders.[150] However, the Commission agrees with commenters that the term, as proposed, was too broad, and is adopting a more tailored approach to derivative instruments by limiting the definition to those that are ''entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation.'' In the Commission's view, derivative instruments entered into in connection with an existing or planned debt obligation such as an interest rate swap could, for example, expose an issuer or obligated person to contingent liquidity risk, such as a requirement to post collateral or pay a termination fee upon the occurrence of certain events,[151] any of which could adversely impact the issuer's or obligated person's liquidity and overall creditworthiness, and affect the interests of security holders. Therefore, such instruments raise the Commission's fundamental concern that security holders lack access or lack timely access to information about an issuer's or obligated person's material financial obligations. Accordingly, as adopted, the definition of ''financial obligation'' includes a ''derivative

[142] A ''similar contract'' could, for example, include a line of credit obtained from a bank or other lender.

[143] *See* BDA Letter (stating that leases entered into in the ordinary course of an issuer's operations do not represent competing debt and should be excluded from the definition of financial obligation); *see also* TASBO Letter (stating that operating transactions ''have little or no impact on a school district's ability to pay debt service on public securities secured by a separate unlimited ad valorem debt service tax'').

A determination of whether a lease is a ''debt obligation'' should be based on the substance of the arrangement, not its label. Accordingly, any type of lease arrangement could, under the appropriate facts and circumstances, be a ''debt obligation'' and be subject to disclosure under the Rule, if it is entered into as a vehicle to borrow money and is material.

[144] Several commenters stated that such disclosures would likely be available in an issuer's or obligated person's audited financial statements. *See, e.g.,* Arlington SD Letter; Lebanon Letter. Examples of such leases that are typically not vehicles to borrow money that are common among issuers and obligated persons include, but are not limited to: Commercial office building leases (*see* San Jose Letter), airline and concessionaire leases at airport facilities (*see* ACI Letter and DFW Letter), and copy machine leases (*see* PFM Letter). Unless they are a debt obligation under the Rule, disclosure of these types of lease arrangements pursuant to the Rule will not be required. However, issuers and obligated persons may choose to voluntarily disclose such leases to EMMA.

[145] *See* Proposing Release, *supra* note 3, 82 FR at 13938.

[146] *Id.*

[147] *See, e.g.,* LPPC Letter.

[148] *See id.,* Kissimmee Letter; BDA Letter; and WPPI Letter (stating ''in the normal course of operations, power utilities enter physical commodities derivatives and we would strongly oppose the inclusion of these lengthy contracts as a material event'').

[149] *See* LPPC Letter.

[150] In its comment letter, NABL argued that the Commission offered little evidence of the need for disclosure of derivative instruments. *See* NABL Letter. *But see* NFMA, *Recommended Best Practices in Disclosure for Direct Purchase Bonds, Bank Loans, and Other Bank-Borrower Agreements* (June 2015), *available at http://www.nfma.org/assets/documents/RBP/rbp_bankloans_615.pdf* (stating, ''In any credit analysis, liquidity is a key component. Bank loans—like a host of other financial products, including LOCs, liquidity facilities, and swaps—often include obligor payment provisions that change upon the occurrence of certain events. These 'triggers' can result in the acceleration of debt payments or in the requirement for the payment or posting of collateral for termination payments, either of which can potentially impair obligor liquidity''). *See also* Elizabeth Campbell, *Chicago Settling $390 Million Tab When City Can Least Afford It,* Bloomberg (Mar. 17, 2016), *available at https://www.bloomberg.com/news/articles/2016-03-17/chicago-settling-390-million-tab-when-city-can-least-afford-it* (stating that the City of Chicago had already paid about $290 million to exit various swaps and was planning to spend $100 million more). *See also* Government Finance Officers Association, *Potential Impacts of Tax Reform on Outstanding and Future Municipal Debt Issuance* (Feb. 2018), *available at http://www.gfoa.org/potential-impacts-tax-reform-outstanding-and-future-municipal-debt-issuance* (highlighting derivatives as a tool to simulate tax-exempt advance refundings, which were abolished under recent changes to the federal tax laws, and reminding issuers to ''fully understand'' the ''specific benefits, risks, and costs'' of such a financial tool), and Brian Tumulty, *What GFOA is Warning on Alternatives to Advance Refundings,* The Bond Buyer (Feb. 15, 2018), *available at https://www.bondbuyer.com/news/what-gfoa-is-warning-on-alternatives-to-advance-refundings?brief=00000159-f607-d46a-ab79-fe27f2be0000.*

[151] *See e.g.,* Ianthe Jeanne Dugan, *School District, Bank in Swap Clash,* Wall St. J. (May 24, 2011), *available at https://www.wsj.com/articles/SB10001424052702303654804576341772921133838* (discussing potential swap termination fee liability of a school district to its swap counterparty); *see also* Statement of State College Area School District Board of School Directors (Jan. 14, 2013) (''State College Area Swap Statement''), *available at http://www.statecollege.com/news/local-news/state-college-area-school-district-agrees-to-9-million-payment-in-interest-rate-swap-agreement-with-royal-bank-of-canada,1222044/.*

instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation.''

The term ''derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation'' is not limited to derivative instruments incurred by issuers or obligated persons solely to hedge the interest rate of a debt obligation or to hedge the value of a debt obligation to be incurred in the future.[152] Instead, the term covers any type of derivative instrument that could be entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation. Accordingly, the Commission reiterates that the definition captures any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument to which an issuer or obligated person is a counterparty in the adopted definition of ''financial obligation'' provided that such instruments are related to an existing or planned debt obligation.[153] This includes, under certain circumstances, instruments that are related to an existing or planned debt obligation of a third party. To determine whether a derivative instrument that relates to an existing or planned debt obligation of a third party is covered by paragraph (b)(5)(i)(C)(*15*), the Commission believes that it would be reasonable to distinguish derivative instruments designed to hedge against the risks of a related debt obligation (*i.e.,* debt-related derivatives) from derivative instruments designed to mitigate investment risk. In the Commission's view, the former generally would be covered by paragraph (b)(5)(i)(C)(*15*), while the latter would not. This definition is sufficiently comprehensive to cover the use of derivative instruments that may develop in the future, while, at the same time, limiting the scope of its current and future application to the types of instruments that are related to an existing or planned debt obligation.

The Commission believes that a debt obligation is ''planned'' at the time the issuer or obligated person incurs the related derivative instrument if, based on the facts and circumstances, a reasonable person would view it likely or probable that the issuer or obligated person will incur the related yet-to-be-incurred debt obligation at a future date. In the Commission's view, it would be likely or probable that an issuer or obligated person will incur a future debt obligation if, for example, the relevant derivative instrument would serve no economic purpose without the future debt obligation (regardless of whether the future debt obligation is ultimately incurred).[154] For example, in a forward starting interest rate swap transaction, an issuer or obligated person typically incurs the forward starting interest rate swap in advance of the incurrence of a debt obligation. As part of such agreement, the issuer or obligated person agrees to pay its counterparty interest at a fixed rate, and, in exchange, the counterparty agrees to provide payments to the issuer or obligated person at a variable rate.[155] These payment obligations will commence and the initial rate for the counterparty's variable rate payments will be set only once the related debt obligation is incurred. In addition, upon incurrence of the forward starting interest rate swap, the issuer or obligated person would typically pay a premium to its swap counterparty to establish the fixed rate payment based on the then prevailing interest rates. Accordingly, without the future incurrence of a debt obligation, the forward starting interest rate swap would have no economic value (for the issuer or obligated person). Therefore, the Commission believes that such an instrument would generally serve no economic purpose (for the issuer or obligated person) except if and when it is paired with a planned incurrence of a debt obligation.

Factors relevant to whether an issuer's or obligated person's debt obligation is ''planned'' might include, but are not be limited to, whether: (1) The documents evidencing the relevant derivative instrument explicitly or implicitly assume a future debt obligation; (2) the legislative body of the issuer or obligated person has taken any preliminary (*e.g.,* preliminary resolution) or final (*e.g.,* authorizing resolution) action to authorize the related future debt obligation; or (3) the issuer or obligated person has hired any professionals (*e.g.,* municipal advisor, bond counsel, rate consultant) to assist or advise the issuer or obligated person on matters related to the future debt obligation. Determinations by issuers and obligated persons of whether a derivative instrument contemplates a future debt obligation should prioritize substance over form. In addition, whether a debt obligation is ''planned'' is based on an objective assessment of the facts and circumstances prevailing at the time of incurrence of the derivative instrument, and is not a bright-line test.

iii. Guarantee of a Debt Obligation or a Derivative Entered Into in Connection With, or Pledged as Security or a Source of Payment for, an Existing or Planned Debt Obligation

As proposed, the term ''guarantee'' was intended to capture a contingent financial obligation of the issuer or obligated person to secure obligations of a third-party or obligations of the issuer or obligated person.[156] Several commenters requested further clarification or asked that the Commission better define the scope of the term ''guarantee.''[157] In response, the Commission is revising the definition of ''financial obligation'' with respect to guarantees and clarifying the scope of guarantees that, if material, would be subject to disclosure under the Rule.

As adopted, the term ''financial obligation'' is defined to include a guarantee of a debt obligation or a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation. The Commission's refinement of this aspect of the definition of ''financial obligation'' is generally responsive to commenter requests for greater clarity as to the scope of guarantees covered by the term ''financial obligation'' and consistent with commenter sentiment that the Rule only cover guarantees that relate to debt, debt-like, or debt-related

[152] For a discussion of when an issuer or obligated person should assess the materiality of a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, *see supra* Section III.A.1.ii.

[153] *See* Proposing Release, *supra* note 3, 82 FR at 13938.

[154] *See* State College Area Swap Statement, *supra* note 151.

[155] For purposes of paragraph (b)(5)(i)(C)(*15*), a forward starting interest rate swap generally would mean any swap used in the municipal debt market that is anticipated to be cash settled at the time of incurrence of a debt obligation, swap anticipated to be part of a synthetic fixed rate debt obligation, or similar product.

For a discussion of when a forward starting interest rate swap is ''incurred,'' *see supra* Section III.A.1.ii. If the incurrence of such a swap is material, a forward starting interest rate swap would be disclosed within ten business days of its incurrence because, in the Commission's view, the issuer's or obligated person's contingent obligation to make payments, post collateral, etc. would begin at the point of incurrence of the swap, not if or when the planned debt obligation is incurred because the terms of the swap will be set at the time that the swap is incurred. As a result, the issuer or obligated person would, at that time, assume market risk (*e.g.,* interest rate fluctuations) and counterparty risk (*e.g.,* counterparty liquidity).

[156] *See* Proposing Release, *supra* note 3, 82 FR at 13938.

[157] *See, e.g.,* OMPA Letter; Oregon Treasurer Letter; WPPI Letter.

obligations.[158] In the Commission's view, the adopted rule text eliminates any ambiguity between the proposed rule text and the Commission's intended scope of the term ''guarantee.''

The Commission continues to believe that the guidance provided in the Proposing Release regarding the term ''guarantee'' accurately sets forth the coverage of guarantee of a debt obligation or derivative instrument entered into in connection with, pledged as security or a source of payment for, an existing or planned debt obligation by the Rule.[159] Moreover, the Commission continues to believe that guarantees should be included in the adopted definition of the term ''financial obligation'' because such arrangements could impact an issuer's or obligated person's liquidity, overall creditworthiness, or existing security holder's rights. However, to provide additional clarity, the term ''guarantee'' is intended to capture any guarantee provided by an issuer or obligated person (as a guarantor)'' [160] for the benefit of itself or a third party, which guarantees payment of a financial obligation.

A guarantee of a debt obligation or a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation could raise two disclosures under the Rule—one for the guarantor and one for the beneficiary of the guarantee. Specifically, if an issuer or obligated person incurs a material guarantee, such guarantee would be subject to disclosure under the Rule, as amended. For an issuer or obligated person that is the beneficiary of a guarantee provided in connection with a debt obligation or a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, the Commission believes that, generally, such beneficiary issuer or obligated person should assess whether such guarantee is a material term of the underlying debt obligation or derivative instrument and, if so (and if the underlying debt obligation or derivative instrument is material), disclose the existence of such guarantee under the Rule.

iv. Monetary Obligation Resulting From a Judicial, Administrative, or Arbitration Proceeding

As proposed, the term ''monetary obligation resulting from a judicial, administrative, or arbitration proceeding'' was included in the definition of ''financial obligation'' because the Commission believed that the requirement to pay such an obligation could adversely impact an issuer's or obligated person's overall creditworthiness and liquidity, and adversely affect security holders.[161] Commenters who addressed this issue were almost uniformly opposed to the inclusion of this term in the definition of ''financial obligation.'' [162] A common sentiment among commenters was that monetary obligations resulting from a judicial, administrative, or arbitration proceeding are of a fundamentally different character than the other categories included within the definition of financial obligation, and therefore are ill-suited to being subject to the same set of regulatory language and materiality and financial difficulties determinations.[163]

Moreover, commenters argued that monitoring the numerous judicial, administrative, and arbitration proceedings to which they are party would be overly burdensome and would require the expenditure of a significant amount of issuer and obligated person time and financial and personnel resources.[164] One commenter questioned whether disclosure of these obligations was necessary, suggesting that many issuers and obligated persons have insurance or funding reserves to cover potential fines or penalties incurred through judicial, administrative or arbitration proceedings.[165] Another commenter stated that in one of the examples cited by the Commission in the Proposing Release as an instance in which a monetary obligation resulting from a judicial proceeding impaired the liquidity and creditworthiness of an issuer, the obligation had been disclosed in the issuer's publicly available audited financial statements, reviewed by rating agencies, and had been widely covered by media prior to the bankruptcy date.[166]

The Commission is revising the definition of the term ''financial obligation'' to exclude the term ''monetary obligation resulting from a judicial, administrative, or arbitration proceeding.'' The Commission believes that, though a monetary obligation resulting from a judicial, administrative, or arbitration proceeding might be relevant to the general financial condition of an issuer or obligated person, such obligations do not typically impact the rights or interests of security holders as issuers and obligated persons generally have reserve funding or insurance to cover such costs, with such funding and insurance typically being reflected in their financial statements.[167] In addition, an initial judgment in a judicial, administrative, or arbitration proceeding may not reflect the ultimate disposition of the proceeding, and years could pass between entry of the initial judgment and the payment of any resulting monetary obligation. Given this delay, the Commission believes that it is unlikely that a monetary obligation resulting from a judicial, administrative, or arbitration proceeding would have an immediate impact on an issuer's or obligated person's liquidity or

[158] *See* BDA Letter; ICI Letter; SIFMA AMG Letter.

[159] *See* Proposing Release, *supra* note 3, 82 FR at 13938. As stated in the Proposing Release, under certain circumstances, in order to facilitate a financing by a third party, an issuer or obligated person may provide a guarantee to reduce risks to the provider of the financing and lower the cost of borrowing for the third party. That guarantee may assume different forms including a payment guarantee or other arrangement that could expose the issuer or obligated person to a contingent financial obligation. For example, an issuer that is a county could agree to guarantee the repayment of municipal securities issued by a town located in the county. In this instance, the county could be required to use its own funds to repay the town's municipal securities. Furthermore, an issuer or obligated person may provide a guarantee with respect to its own financial obligation. For example, an issuer or obligated person could, in connection with the issuance of variable rate demand obligations, agree to repurchase, with its own capital, bonds that have been tendered but are unable to be remarketed. In this instance, the issuer or obligated person uses its own funds to purchase the bonds instead of a third party liquidity facility. A guarantee provided for the benefit of a third party or a self-liquidity facility or other contingent arrangement would be a guarantee under the amendments.

[160] For a discussion of materiality considerations in connection with the Rule, *see supra* Section III.A.1.i, and for a discussion of the form of event notices provided under paragraph (b)(5)(i)(C)(*15*) of the Rule, *see supra* Section III.A.1.iii.

[161] *See* Proposing Release, *supra* note 3, 82 FR at 13938.

[162] *See, e.g.,* GA Finance Letter (''The SEC should exclude monetary obligations resulting from judicial, administrative, or arbitration proceedings from the definition of financial obligation.''); DAC Letter (same); *see also* Denver Letter; Houston Letter; San Jose Letter.

[163] *See* DAC Letter.

[164] *See, e.g.,* San Jose Letter (''[T]he City is involved in a variety of administrative, judicial and arbitration proceedings at any given time.''); Denver Letter (''[T]he City is involved in hundreds of judicial, administrative and arbitration proceedings every year . . . [i]n the vast majority of cases, staff involved in these contracts, regulatory, judicial and administrative proceedings are not aware of the Rule, making the likelihood of an inadvertent non-compliance much greater . . . [t]he City anticipates a significant amount of time, expense and resources would be required to actively monitor its financial obligations, if the term remains so broadly defined'').

[165] *See* LPPC Letter.

[166] *See* NABL Letter.

[167] *See* LPPC Letter (arguing that issuers and obligated persons typically have funding reserves and insurance to cover costs related to judicial, administrative, or arbitration hearings).

creditworthiness or would adversely affect security holders.

Accordingly, at this time, the Commission does not believe that monetary obligations resulting from judicial, administrative, or arbitration proceedings raise the same concerns regarding ready and prompt access to information about their existence as the other types of obligations included in the adopted definition of financial obligation. Therefore, the Commission is removing the term ''monetary obligation resulting from a judicial, administrative, or arbitration proceeding'' from the term ''financial obligation.''

v. Exclusion of Municipal Securities as to Which a Final Official Statement Has Been Provided to the MSRB Consistent With Rule 15c2–12 From Definition of ''Financial Obligation''

As proposed and adopted, the term financial obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2–12.[168] In response to the proposed exclusion, some commenters suggested that the Commission should revise the language so the exclusion would apply when the Rule requires a final official statement to be provided to the MSRB rather than when the final official statement has actually been provided to the MSRB by an underwriter.[169] According to commenters, such a revision would allow an issuer or obligated person to utilize the exclusion even when an underwriter fails to submit the final official statement to the MSRB.[170] The Commission declines to adopt the recommended revision. The Commission continues to believe that the exclusion as proposed is consistent with the current regulatory framework in which an underwriter is responsible for delivering the final official statement to the MSRB. Moreover, this framework establishes appropriate incentives for all involved parties to ensure that the final official statement is, in fact, provided to the MSRB, and helps ensure the relevant information is made available to investors.

Commenters also requested that the Commission revise the proposed language to include an exclusion from disclosure under paragraph (b)(5)(i)(C)(*15*) for any financial obligation for which a final official statement is provided to the MSRB voluntarily.[171] The Commission declines to adopt the recommended revision. The Commission continues to believe that the exclusion should apply only to municipal securities as to which a final official statement is provided to the MSRB consistent with the Rule, and that such final official statement could be provided to the MSRB voluntarily. If such final official statement is provided to the MSRB voluntarily, the Commission believes that such voluntary submission would be made consistent with the Rule if it is provided to the MSRB consistent with the requirements set forth in Rule 15c2–12(b).[172] Therefore, for this exclusion to apply, whether the final official statement is submitted voluntarily or not, the issuer or obligated person must submit the final official statement to the MSRB subject to the requirements of Rule 15c2–12(b). This exclusion from the definition of ''financial obligation'' covers only ''*municipal securities* as to which a final official statement has been provided to the [MSRB] consistent with this rule'' [173] and does not extend to instruments or obligations (contingent or otherwise) related to such municipal securities. Under a continuing disclosure agreement, an issuer or obligated person will need to disclose any such derivative instrument or guarantee if it is material and affects security holders for purposes of new paragraph (b)(5)(i)(C)(*15*) of the Rule and make any related disclosures required under new paragraph (b)(5)(i)(C)(*16*) of the Rule.

3. Default, Event of Acceleration, Termination Event, Modification of Terms, or Other Similar Events Under the Terms of a Financial Obligation of the Obligated Person, Any of Which Reflect Financial Difficulties

The Commission is adopting as proposed the amendment to add new paragraph (b)(5)(i)(C)(*16*) to the Rule, which requires that a Participating Underwriter in an Offering must reasonably determine that the continuing disclosure agreement provides for the submission of notice of the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, provided the occurrence reflects financial difficulties.

As the Commission stated in the Proposing Release, although the occurrence of the events listed in paragraph (b)(5)(i)(C)(*16*) may not be common in the municipal market, they can significantly and adversely impact the value of an issuer's or obligated person's outstanding municipal securities.[174] The Commission also believes the amendments would facilitate investor access to important information in a timely manner and help to enhance transparency in the municipal securities market and enhance investor protection.

i. Default

Two commenters recommended that ''default'' be revised to ''event of default,'' arguing that ''default'' was vague while ''event of default'' is usually defined in transaction documents.[175] Because an ''event of default'' is often specifically defined in transaction documents, it would be more narrowly applied than ''default.'' As described in the Proposing Release, a default could be a monetary default, where an issuer or obligated person fails to pay principal, interest, or other funds due, or a non-payment related default, where an issuer or obligated person fails to comply with specified covenants.[176] Typically, if a monetary default occurs, or a non-payment related default is not cured within a specified period, such default becomes an ''event of default'' and the trustee or counterparty to the financial obligation may exercise legally available rights and remedies for enforcement, including an event of acceleration. The Commission believes that there are defaults that may reflect financial difficulties even if they do not qualify as ''events of defaults'' under transaction documents. This may constitute important information related to an issuer's or obligated person's material financial obligations that could impact an issuer's or obligated person's liquidity, overall creditworthiness, or an existing security holder's rights. Accordingly, the Commission believes the concept of ''default'' should be retained as proposed.

[168] *See* Proposing Release, *supra* note 3, 82 FR at 13957.

[169] *See, e.g.,* DAC Letter; *see also* GA Finance Letter.

[170] *See, e.g.,* DAC Letter.

[171] *See id.*

[172] The Commission understands that issuers and obligated persons have since 1995 followed a similar approach with respect to voluntarily submitted final official statements when choosing to opt out of the small issuer exception of Rule 15c2–12(d)(2)(ii)(A). *Cf.* Division of Market Regulation, U.S. Securities and Exchange Commission, Staff Opinion Letter on Rule 15c2–12 (June 23, 1995), at Question 17, *available at https://www.sec.gov/info/municipal/nabl-1-interpretive-letter-1995-06-23.pdf* (staff guidance regarding an issuer's or obligated person's obligations under the Rule if such issuer or obligated person chooses to opt out of the small issuer exception of Rule 15c2–12(d)(2)(ii)(A)).

[173] *See* 17 CFR 240.15c2–12(f) (emphasis added).

[174] *See* Proposing Release, *supra* note 3, 82 FR at 13941.

[175] *See* Kutak Rock Letter; DAC Letter.

[176] *See* Proposing Release, *supra* note 3, 82 FR at 13940.

ii. Modification of Terms

One commenter proposed revising ''modification of terms'' to ''modification of material terms'' [177] and another commenter recommended adding ''including written or verbal waivers'' after ''modification of terms.'' [178] The Commission believes both revisions are unnecessary. A modification of terms would be reported under a continuing disclosure agreement only if the modification ''reflect[s] financial difficulties of the issuer or obligated person.'' This qualifier is included to help target the disclosure of information relevant to investors in making an assessment of the current financial condition of the issuer or obligated person. Accordingly, because the modification of terms already is subject to a qualifier, the Commission believes there is no need to also include a materiality qualifier. Additionally, ''modification of terms'' is broad, and as such, a written or verbal waiver of a deal provision would be a modification of the terms of an agreement because such waivers are a departure from what was agreed to under the terms of the agreement. Consequently, the Commission is adopting the concept of ''modification of terms'' without any changes.[179]

iii. Other Similar Events

One commenter stated that the ''other similar events'' language was too vague [180] and another recommended that the Commission remove it from the rule text.[181] The Commission continues to believe that the term should be retained in the rule text to ensure that paragraph (b)(5)(i)(C)(*16*) covers not only defaults, events of acceleration, termination events, or modifications of terms that reflect financial difficulties of the issuer or obligated person, but also events arising under the terms of a financial obligation that similarly reflect financial difficulties of the issuer or obligated person. As stated in the Proposing Release, in order to be subject to disclosure under the Rule, the term ''other similar events under the terms of a financial obligation of the obligated person reflecting financial difficulties'' must necessarily share similar characteristics with one of the preceding listed events (a default, event of acceleration, termination event, or modification of terms).[182] The Commission is adopting ''other similar event'' as proposed to address the disclosure of the occurrence of events that, although not specifically set forth in the rule text, are still relevant to investors and other market participants in making an assessment of the current financial condition of the issuer or obligated person. Such events may have potential adverse impacts on the issuer's or obligated person's liquidity and overall creditworthiness, or affect security holders.

iv. Reflect Financial Difficulties

Some commenters argued that ''reflect financial difficulties'' was vague and encouraged the Commission to provide additional guidance to prevent a flood of event notices to EMMA.[183] One commenter suggested alternative language that would narrow the events reported under paragraph (b)(5)(i)(C)(*16*).[184] Some commenters, with the goal of prompting more disclosure to the market, encouraged the Commission to remove the reflects financial difficulties qualifier, stating that it would limit the disclosure of the occurrence of events unrelated to financial difficulties, such as legislative dysfunction, but were nonetheless important to investors.[185]

The Commission continues to believe that the ''reflect financial difficulties'' qualifier is appropriate. The Commission believes that the term is not vague, as the concept of ''reflecting financial difficulties'' has been used in paragraphs (b)(5)(i)(C)(*3*) and (*4*) since the 1994 amendments to Rule 15c2–12, and, as such, market participants should be familiar with the concept as it relates to the operation of Rule 15c2–12.[186] Furthermore, the Commission also believes that additional guidance on the term would be difficult to provide, due to the diversity of issuers and obligated persons as well as the financial conditions affecting them. Accordingly, the Commission believes that ''reflect financial difficulties'' is an appropriate qualifier to help target the disclosures to result in information relevant to investors in making an assessment of the current financial condition of the issuer or obligated person. Removing ''reflect financial difficulties'' could result in overly broad disclosures of event occurrences that would not necessarily be relevant or important to investors' decisions, for instance, by not reflecting on the creditworthiness of an issuer or obligated person.[187] Moreover, the narrowed definition of ''financial obligation,'' as adopted, will limit the number of financial obligations that issuers and obligated persons will need to evaluate when considering whether a disclosure is required under paragraph (b)(5)(i)(C)(*16*) and thereby reduce the burden on issuers, obligated persons, and dealers.

v. Scope of Financial Obligations Subject to Paragraph (b)(5)(i)(C)(*16*)

Some commenters stated their belief that paragraph (b)(5)(i)(C)(*16*) applies to all of an issuer's or obligated person's currently outstanding financial obligations as opposed to just those incurred after the effective date of the amendments.[188] Another commenter recommended limiting this event to only those financial obligations that had been previously disclosed under paragraph (b)(5)(i)(C)(*15*).[189]

As discussed below, the amendments will only affect those continuing disclosure agreements entered into on or after the compliance date for these amendments. Issuers and obligated persons with a continuing disclosure agreement entered into on or after the compliance date must disclose, pursuant to paragraph (b)(5)(i)(C)(*15*), material financial obligations incurred on or after the date on which such a

[177] *See* DAC Letter.

[178] *See* SIFMA Letter.

[179] The Commission believes that a ''modification of terms'' occurs when such modified terms become enforceable against the issuer or obligated person which is consistent with the Commission's view of when a financial obligation is incurred. *See supra* Section III.A.1.ii.

[180] *See* San Jose Letter.

[181] *See* DAC Letter.

[182] *See* Proposing Release, *supra* note 3, 82 FR at 13939–40.

[183] *See, e.g.,* ABA Letter; Brookfield Letter; Bishop Letter; Kutak Rock Letter.

[184] *See* SIFMA Letter (recommending the Commission consider replacing ''reflecting financial difficulties'' with ''materially impairs the ability of an issuer/obligated person to pay debt service as scheduled on outstanding obligations,'' or ''materially impairs the creditworthiness of the issuer/obligated person'').

[185] *See* ICI Letter; Vanguard Letter; SIFMA AMG Letter; *see also* NFMA Letter (arguing that ''the triggering of an event related to financial difficulties should always be publicly disclosed on EMMA, without regard to the materiality of the obligation itself'').

[186] *See* Proposing Release, *supra* note 3, 82 FR at 13939.

[187] For example, as described in the Proposing Release, an issuer or obligated person may covenant to provide the counterparty with notice of change in its address and may not promptly comply with the covenant. A failure to comply with such a covenant may not reflect financial difficulties; therefore, absent other circumstances, this event likely does not raise the concerns the amendments are intended to address. On the other hand an issuer or obligated person could agree to replenish a debt service reserve fund if draws have been made on such fund. In this example, if an issuer or obligated person fails to comply with such covenant, then such an event likely should be disclosed to investors and other market participants. *See* Proposing Release, *supra* note 3, 82 FR at 13939.

Issuers and obligated persons may consider disclosing the occurrence of events that do not reflect financial difficulties as a matter of best practice if they believe investors would find those occurrences important.

[188] *See* Kutak Rock Letter; NAMA Letter.

[189] *See* SIFMA Letter.

continuing disclosure agreement was entered into. However, an event under the terms of a financial obligation pursuant to paragraph (b)(5)(i)(C)(*16*) that occurs on or after the compliance date must be disclosed regardless of whether such obligation was incurred before or after the compliance date. The Commission believes narrowing paragraph (b)(5)(i)(C)(*16*) to only financial obligations incurred after the compliance date or disclosed under paragraph (b)(5)(i)(C)(*15*) would exclude important information regarding the current financial condition of the issuer or obligated person that could potentially adversely impact the issuer's or obligated person's liquidity and overall creditworthiness. Financial obligations incurred prior to the compliance date for these amendments may have long maturity dates and the occurrence of the events set forth in paragraph (b)(5)(i)(C)(*16*) can significantly and adversely impact the value of an issuer's or obligated person's outstanding municipal securities. Additionally, the Commission believes that the burden on issuers and obligated persons to monitor for these events will be limited because the occurrence of a default, event of acceleration, termination event, modification of terms, or other similar events, are significant in nature, and therefore issuers and obligated persons should typically be aware that they have occurred.

B. Technical Amendment

The Commission did not receive any comments on its proposed technical amendment to paragraph (b)(5)(i)(C)(*14*) of the Rule to remove the term ''and'' because new events are proposed to be added to paragraph (b)(5)(i)(C) of the Rule. The Commission is adopting this amendment as proposed.

C. Compliance Date and Transition

The amendments to Rule 15c2–12 will impact only those continuing disclosure agreements entered into in connection with Offerings that occur on or after the compliance date of these amendments.[190] Accordingly, continuing disclosure agreements entered into prior to the compliance date would not be required to reflect changes made to the Rule by such amendments. As a result, for municipal securities issued prior to the compliance date, a recommending dealer would not be required to have procedures in place that provide reasonable assurance that it will receive prompt notice of the events added to the Rule by the amendments.[191]

Additionally, in the Proposing Release, the Commission stated that the amendments would apply to continuing disclosure agreements that are entered into in connection with Offerings occurring on or after the compliance date of the amendments.[192] One commenter inquired whether, under that formulation, a primary offering ''occurs'' on the date of the distribution of the preliminary official statement or on the date the corresponding issuance of municipal securities is settled and the continuing disclosure agreement is executed.[193] For the purposes of these amendments, the Commission believes that an Offering generally should be considered to occur on the date the continuing disclosure agreement is executed. However, if a preliminary official statement is distributed before the compliance date, with an expectation that the Offering will occur on or after the compliance date, the preliminary official statement should generally attach a form of continuing disclosure agreement that reflects the adopted amendments.

In the Proposing Release, the Commission proposed a compliance date three months after the final adoption of the amendments. Several commenters argued that the proposed compliance period of three months after adoption was insufficient.[194] Commenters stated that issuers and obligated persons would need to establish and implement procedures to centralize information, which would both be costly and time-consuming.[195] Another commenter questioned whether the MSRB would be able to implement the necessary adjustments to EMMA by the compliance date.[196] However, another commenter argued that the three-month period was suitable and urged the Commission to make the amendments effective as soon as practicable.[197] The Commission has considered these comments and is extending the compliance date to 180 days after publication of the amendments in the **Federal Register**. The Commission believes that a date of 180 days after publication of the amendments in the **Federal Register** should be sufficient time for Participating Underwriters to revise their procedures to comply with the Rule, and for issuers and obligated persons to become aware of the amendments and plan for their implementation. Moreover, after consultation by Commission staff with MSRB staff, the Commission believes 180 days after publication of the amendments in the **Federal Register** will be adequate for the MSRB to make the necessary modifications to the EMMA system. The Commission is establishing February 27, 2019 as the compliance date for these amendments.[198]

IV. Paperwork Reduction Act

The Rule, as amended, contains ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[199] In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission submitted revisions to the currently approved collection of information titled ''Municipal Securities Disclosure'' (17 CFR 240.15c2–12) (OMB Control No. 3235–0372) to the Office of Management and Budget (''OMB''). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

In the Proposing Release, the Commission provided estimates of the burden of complying with the proposed amendments to the Rule and solicited comments on those estimates and the collection of information requirements. On April 26, 2018, the Commission published a notice soliciting comment

[190] For a discussion of how issuers and obligated persons should proceed when a preliminary official statement is distributed prior to the compliance date, but the Offering is settled and the continuing disclosure agreement is executed after the compliance date, *see* below in this Section III.C.

[191] In the Proposing Release, the Commission stated that under paragraph (c) of the Rule, a dealer cannot recommend the purchase or sale of a municipal security unless such dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraphs (b)(5)(i)(C) and (D) and paragraph (d)(2)(ii)(B) of the Rule with respect to the security. The Commission recognized that for continuing disclosure agreements entered into prior to the compliance date, the recommending dealer would receive notice solely of those events covered by that continuing disclosure agreement, which would likely not include any of the items added by the amendments. *See* Proposing Release, *supra* note 3, 82 FR at 13941. The Commission solicited comments on the impact of the proposed amendments with respect to recommending dealers. With the exception of one related comment that is discussed in Section IV.D.4., the Commission received no comments on this subject.

[192] *See id.*

[193] *See* Hawkins Letter.

[194] *See* GFOA Letter; ABA Letter; BDA Letter; NABL Letter.

[195] *See* GFOA Letter; NABL Letter; NAMA Letter.

[196] *See* ABA Letter.

[197] *See* ICI Letter.

[198] If any of the provisions of these amendments, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

[199] 44 U.S.C. 3501 *et seq.*

on the currently approved collection of information;[200] the Commission hereby withdraws this notice from the **Federal Register**, but addresses the comments received[201] in response to it below in this Section IV. In the Proposing Release, the Commission stated that the estimates of the effect that the amendments will have on the collection of information were based on data from various sources, including the most recent PRA submission for Rule 15c2–12.[202] As discussed above, the Commission received numerous comment letters on the proposed rulemaking. Of the comment letters the Commission received, some commenters addressed the collection of information aspects of the proposal.[203] Certain commenters addressed the accuracy of the Commission's burden estimates for the proposed collection of information, stating that the estimates were too low. The Rule as amended includes several modifications or clarifications from the proposed rule amendments that address concerns raised by commenters and that are intended, in part, to decrease implementation burdens relative to the proposal. As discussed in Section III.A.2., the Commission is narrowing the scope of the amendments to Rule 15c2–12 and expects that the total burden of complying with the adopted amendments to Rule 15c2–12 will be significantly lower than the burden of complying with the amendments as originally proposed. Nevertheless, in response to comments received on the burden estimates in the Proposing Release, the Commission is revising its approach to estimating the PRA burden related to the Rule and is increasing its PRA burden estimates related to the amendments and Rule 15c2–12.

Discussed below is the revised Paperwork Reduction Act analysis for Rule 15c2–12. First, the Commission provides a summary of the collection of information required under Rule 15c2–12 prior to these amendments, the amendments to Rule 15c2–12 as proposed, and the amendments to Rule 15c2–12 as adopted. Second, the Commission summarizes the use of the information collected under the Rule. Third, the Commission discusses the respondents subject to a collection of information requirement under the Rule. Fourth, the Commission discusses the burdens under the Rule prior to these amendments, estimated burdens in the Proposing Release, and the revised burdens under Rule 15c2–12 as it applies to broker-dealers, issuers of municipal securities, and the MSRB. Finally, the Commission discusses the costs under the Rule prior to these amendments, estimated costs in the Proposing Release, and the revised costs under Rule 15c2–12 to broker-dealers, issuers of municipal securities, and the MSRB.

A. Summary of Collection of Information

1. Collection of Information Prior to Amendments

Paragraph (b) of Rule 15c2–12 requires a dealer acting as a Participating Underwriter in an Offering: (1) To obtain and review an official statement ''deemed final'' by an issuer of the securities, except for the omission of specified information, prior to making a bid, purchase, offer, or sale of municipal securities; (2) in non-competitively bid offerings, to send, upon request, a copy of the most recent preliminary official statement (if one exists) to potential customers; (3) to contract with the issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule's delivery requirement, and the requirements of the rules of the MSRB; (4) to send, upon request, a copy of the final official statement to potential customers for a specified period of time; and (5) before purchasing or selling municipal securities in connection with an offering, to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract for the benefit of holders of such municipal securities, to provide annual filings, event notices, and failure to file notices (*i.e.,* continuing disclosure documents) to the MSRB in an electronic format as prescribed by the MSRB.[204] In addition, under paragraph (c) of the Rule, a dealer that recommends the purchase or sale of a municipal security is required to have procedures in place that provide reasonable assurance that it will receive prompt notice of any event specified in paragraph (b)(5)(i)(C) of the Rule and any failure to file annual financial information regarding the security.[205]

Under paragraph (b)(5)(i)(C) of Rule 15c2–12, dealers acting as Participating Underwriters in Offerings are required to reasonably determine that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide event notices to the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of ten business days, when any of the following events with respect to the securities being offered in an offering occurs: (1) Principal and interest payment delinquencies with respect to the securities being offered; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the I.R.S. of proposed or final determinations of taxability, Notices of Proposed Issue or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security; (7) modifications to rights of security holders, if material; (8) bond calls, if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the securities, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the obligated person; (13) consummation of a merger, consolidation, or acquisition, acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to is terms, if material; and (14) appointment of a successor or additional trustee or the change of name of a trustee, if material.[206]

2. Proposed Amendments to Rule 15c2–12

Under the proposed amendments, the Commission proposed to add two additional event notices that a dealer acting as a Participating Underwriter in an Offering must reasonably determine that an issuer or an obligated person has undertaken, in a written agreement or contract for the benefit of holders of

[200] Proposed Collection; Comment Request (Extension: Rule 15c2–12, SEC File No. 270.330, OMB Control No. 3235–0372), 83 FR 18358 (Apr. 26, 2018).

[201] *See* SIP Letter; NABL III Letter.

[202] *See* Submission for OMB Review; Comment Request (Extension: Rule 15c2–12, SEC File No. 270.330, OMB Control No. 3235–0372), 80 FR 9758 (Feb. 24, 2015) (''2015 PRA Notice'').

[203] *See, e.g.,* NABL OMB Letter; GFOA Letter; Kutak Rock Letter; ABA Letter; AZ Universities Letter; Arlington SD Letter; Denver Letter; NAHEFFA Letter; NCSHA Letter; SIFMA Letter; SIP Letter; and TASBO Letter.

[204] *See* 17 CFR 240.15c2–12(b).

[205] *See* 17 CFR 240.15c2–12(c).

[206] *See* 17 CFR 240.15c2–12(b)(5)(i)(C).

municipal securities, to provide to the MSRB. Specifically, the proposed amendments would have amended the list of events for which notice is to be provided to include the following added two additional events as paragraphs (b)(5)(i)(C)(*15*) and (*16*) of Rule 15c2–12: (1) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and (2) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

For purposes of the proposed amendments, the Commission proposed to define the term ''financial obligation'' to mean a (i) debt obligation; (ii) lease; (iii) guarantee; (iv) derivative instrument; or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. As proposed to be defined, the term financial obligation did not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with Rule 15c2–12.

3. Adopted Amendments to Rule 15c2–12

In response to comments received and as discussed in Section III.A., the Commission has revised its proposed amendments to Rule 15c2–12. The two additional events as paragraphs (b)(5)(i)(C)(*15*) and (*16*) of Rule 15c2–12 are unchanged from the Proposing Release: (1) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and (2) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

However, the definition of the term ''financial obligation'' has been narrowed and is now defined as a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The terms ''lease'' and ''monetary obligation resulting from a judicial, administrative, or arbitration proceeding'' have been removed; the term ''derivative instrument'' has been limited to those ''entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation''; and the term ''guarantee'' has been limited to guarantees of a ''debt obligation'' or ''derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation.'' As discussed above in Section III.A.2., these terms were removed or narrowed in response to comments and in order to reduce the burden of complying with the amendments.

B. Use of Information

The adopted amendments would provide dealers with timely access to important information about municipal securities that they can use to carry out their obligations under securities laws, thereby reducing the likelihood of antifraud violations. This information could be used by individual and institutional investors; underwriters of municipal securities; other market participants, including dealers, analysts, municipal securities issuers, the MSRB, vendors of information regarding municipal securities, the Commission and its staff, and the public generally.[207] The adopted amendments will enable market participants to be better informed about material events that occur with respect to municipal securities and their issuers and would assist investors in making decisions about whether to buy, hold or sell municipal securities.

C. Respondents

In November 2015, OMB approved an extension without change of the approved collection of information associated with the Rule. The approved paperwork collection associated with Rule 15c2–12 applies to dealers, issuers of municipal securities, and the MSRB. The paperwork collection associated with these adopted amendments would apply to the same respondents. Under the Rule prior to these amendments, the Commission estimated that the number of respondents impacted by the paperwork collection associated with the Rule consists of approximately 250 dealers and 20,000 issuers.[208] In the Proposing Release, the Commission estimated that the number of respondents would not change because the proposed amendments would not expand the types of securities covered under paragraphs (b)(5) and (c) of the Rule, and thus would not increase the number of dealers or issuers having a paperwork burden. The Commission received one comment that contended that the Commission's estimate of the number of issuers affected was too low.[209] As discussed in greater detail below, the Commission continues to believe that its estimate of the number of dealers made in the Proposing Release is appropriate, but is revising its estimate of the number of issuers.

D. Total Annual Reporting and Recordkeeping Burden

The Commission estimates the aggregate information collection burden for the amended Rule to consist of the following:

1. Dealers

In the Proposing Release, consistent with prior estimates, the Commission estimated that approximately 250 dealers potentially could serve as Participating Underwriters in an offering of municipal securities.[210] The Commission received no comments on this estimate. The Commission has reviewed this estimate and continues to estimate that, under the amendments, the number of dealers subject to a paperwork burden as Participating Underwriters will be 250.

Under the Rule prior to these amendments, the Commission has estimated that the total annual burden on all 250 dealers is 22,500 hours (90 hours per dealer per year). This estimate is the sum of two separate burdens: (1) 2,500 hours per year for 250 dealers (10 hours per dealer per year) to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB, and (2) 20,000 hours per year for 250 dealers (80 hours per dealer per year) serving as Participating Underwriters to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule.

i. Amendments to Events To Be Disclosed Under a Continuing Disclosure Agreement

a. Estimates in Proposing Release

In the Proposing Release, the Commission stated it did not expect the

[207] *See supra* Section I.

[208] *See* 2015 PRA Notice, *supra* note 202. The number of issuers in the estimate reflects those issuers that are affected by the continuing disclosure requirements of Rule 15c2–12.

[209] *See* NABL OMB Letter.

[210] *See* Proposing Release, *supra* note 3, 82 FR at 13943; 2015 PRA Notice, *supra* note 202.

proposed amendments to increase the annual hourly burden for dealers to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB. Thus, the Commission estimated that pursuant to the Rule as proposed to be amended, 250 dealers would continue to incur 2,500 hours per year (10 hours per year per dealer) to make this determination.

However, because the proposed amendments would add two events notices to paragraph (b)(5)(i)(C) of the Rule, the Commission estimated that the amendments to the Rule would result in an increase of 2,500 hours per year (10 hours per dealer per year) for dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule. Using the Commission's prior estimate of 20,000 hours per year (80 hours per dealer per year) as a baseline for this burden,[211] the Commission estimated that dealers would incur an additional 2,500 hours per year, for a total estimated burden of 22,500 hours per year (90 hours per dealer per year) to make this determination.

Therefore, in the Proposing Release, the Commission estimated that the total annual burden of dealers acting as a Participating Underwriter in an Offering would increase by 2,500 hours to 25,000 hours annually (100 hours per dealer per year).[212]

b. Comments Received

The Commission received no comments on its estimate that dealers would continue to incur a burden of 2,500 hours per year (10 hours per dealer per year) to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of municipal securities, to provide continuing disclosure documents to the MSRB. However, as discussed in further detail below, the Commission is revising its method for calculating the PRA burden on dealers. Accordingly, this estimate is being changed to reflect the new calculation method.

The Commission received several comments on its estimate that the amendments, by adding two event notices to paragraph (b)(5)(i)(C) of the Rule, would increase the burden on dealers by 2,500 hours (10 hours per dealer per year) to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule. One commenter stated that because the amendments were ''substantially overbroad in scope,'' they would subject dealers acting as Participating Underwriters in Offerings to ''enormous burdens'' beyond what had been estimated.[213] Another commenter criticized the Commission's estimate as failing to account for the time needed to interpret the ''broad'' definition of ''financial obligation'' contained in the proposed amendments, assess the materiality of events, and complete review procedures.[214] That commenter stated that the Commission's estimates of an increase in burden of ten hours per dealer per year, when calculated on a per issuance basis, resulted ''in an average additional underwriter burden of approximately 12 minutes'' per issuance of municipal securities.[215] That commenter further stated that this estimate was unrealistic because each dealer, to comply with the proposed amendments, would have to ''obtain a list of all financial obligations (bonds, notes, leases, guarantees, derivatives, and monetary obligations from judicial, administrative, or arbitration proceedings), obtain a copy of the financial obligation,'' and then perform a series of reviews, including whether the financial obligation is ''material,'' to determine whether the issuer had failed to comply with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule.[216]

Commenters also criticized the Commission's prior estimate, predating the proposed amendments, that dealers would incur a burden of 20,000 hours per year (80 hours per dealer per year) to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule.[217] These commenters contended that, irrespective of the increased burden from the proposed amendments, the Commission's prior estimates of this burden on dealers were also far too low.[218] One commenter argued that the Commission's prior PRA estimates ''greatly underestimated the compliance burdens of the existing Rule,'' and, noting that the Commission used its prior PRA estimates as the starting point for its new burden estimates, criticized the Commission for its ''reliance on inapposite, faulty prior estimates.''[219] That commenter also argued that ''as a result of subsequent Commission actions, its prior estimates are no longer indicative.''[220] That commenter further discussed prior Commission estimates of PRA burdens attributable to Rule 15c2–12, arguing that the prior estimates had contained ''gross inaccuracies'' that had not been sufficiently addressed.[221]

c. Revised Estimates of Burden

The Commission has considered the comments received and in response is revising its method to calculate the PRA burden for dealers under Rule 15c2–12. In doing so, the Commission is also revising (1) its estimate that dealers would continue to incur a burden of 2,500 hours per year (10 hours per dealer per year), to reasonably

[211] As discussed above, under the Rule prior to these amendments, the Commission estimated that dealers would incur a burden of 20,000 hours (80 hours per year per dealer) to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule.

[212] This estimate reflected the following: 2,500 hours (estimate for dealers to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of municipal securities, to provide continuing disclosure documents to the MSRB) + [20,000 hours (estimate under the Rule prior to these amendments for dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule) + 2,500 hours (estimate of the increased burden due to the amendments on dealers to determine whether issues or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule)] = 25,000 hours.

[213] *See* ABA Letter.

[214] *See* NABL OMB Letter.

[215] *See id.*

[216] *See id.*

[217] As discussed above, under the Rule prior to these amendments, the Commission estimated that the total annual burden for dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule was 20,000 hours, or 80 hours per year per dealer. The Commission used this estimate as a baseline for its estimate in the Proposing Release, concluding that the proposed amendments would add 2,500 hours of additional burden on dealers to perform this task, for a total of 22,500 hours.

[218] *See, e.g.,* NABL OMB Letter; SIFMA Letter.

[219] *See* NABL OMB Letter.

[220] *See id.*

[221] *See id.* (highlighting the ''substantial 'due diligence' time'' spent by underwriters to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule).

determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of municipal securities, to provide continuing disclosure documents to the MSRB; (2) its estimate that the amendments would increase the burden on dealers by 2,500 hours (10 hours per dealer per year), to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule; and (3) its prior estimates under the Rule, predating the proposed amendments, that the total annual burden for dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule was 20,000 hours (80 hours per dealer per year).

In prior PRA submissions, the Commission calculated the PRA burden on dealers on a collective, rather than per issuance, basis, primarily focusing on the number of dealers acting as Participating Underwriters in Offerings. However, in response to comments,[222] the Commission is now calculating the PRA burdens on dealers under Rule 15c2–12 on a per issuance of municipal securities basis. The Commission believes this is appropriate because a dealer's obligations under Rule 15c2–12 are triggered by acting as a Participating Underwriter in an Offering. This method is consistent with the Commission's estimates of the PRA burden on issuers for the Rule, which are also calculated on a per event basis.[223] The Commission is basing its estimate on the average number of primary market submissions to the MSRB over the past three years—13,658.[224]

Using this new method of calculation, the Commission is revising its estimate that dealers would continue to incur a burden of 2,500 hours per year (10 hours per dealer per year), to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of municipal securities, to provide continuing disclosure documents to the MSRB.[225] The Commission estimates that dealers will incur a 15 minute burden per issuance of municipal securities to make this determination, resulting in an annual burden on all dealers of approximately 3,415 hours (approximately 13.7 hours per dealer per year).[226] This revised estimate constitutes an increase of approximately 915 hours (approximately 3.7 hours per dealer) over the estimates provided in the Proposing Release.[227] No commenter provided an estimate for this burden. However, the Commission understands that most continuing disclosure agreements are provided to the dealer by the issuer or obligated person and that most of these agreements are standard form agreements[228] of limited length. Further, the Commission believes that the determination required to be made—that the issuer or obligated person has undertaken to provide continuing disclosure documents to the MSRB—is a narrow one that does not require a substantial time commitment from the dealer. For these reasons, the Commission believes the estimate of a 15 minute burden per issuance is appropriate.

The Commission is also revising its estimate that the amendments, by adding two event notices to paragraph (b)(5)(i)(C) of the Rule, would increase the burden on dealers by 2,500 hours per year (10 hours per dealer per year) to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule. Under the new method of calculation, the Commission believes that the amendments will, on average, amount to an additional one hour burden per issuance of municipal securities, resulting in an annual increased burden on all dealers of 13,658 hours (approximately 55 hours per year per dealer).[229] This revised estimate constitutes an increase of 11,158 hours (approximately 45 hours per dealer), over the estimates provided in the Proposing Release.[230] The Commission believes this revised estimate appropriately reflects the concerns raised by commenters while also recognizing that the amendments have been substantially narrowed from the amendments as proposed. The adopted definition of ''financial obligation'' in the Rule has significantly limited the scope of leases covered[231] and no longer covers monetary obligations resulting from a judicial, administrative, or arbitration proceeding.[232] Accordingly, dealers, when determining whether issuers or obligated persons have failed to comply with the events added by the amendments, will have a substantially smaller set of ''financial obligations'' to review.

Finally, the Commission is revising its prior estimates, predating the proposed amendments, that the total annual burden for dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule is 20,000 hours (80 hours per dealer per year). No commenter provided an estimate for this burden. Under the new method of calculation, the Commission believes that dealers will incur 8 hours of burden per issuance of municipal securities to make this determination, resulting in an

[222] *See id.*

[223] *See infra* Section IV.D.2.

[224] According to the MSRB Fact Book for each respective year, in 2017 there were 12,709 primary market submissions to the MSRB, in 2016 there were 14,314 primary market submissions to the MSRB, and in 2015 there were 13,952 primary market submissions to the MSRB. 12,709 + 14,314 + 13,952 = 40,975. 40,975/3 = 13,658. *See* MSRB 2017 Fact Book, *supra* note 24.

[225] As discussed above, this estimate received no comments from commenters and the Commission continues to believe that this burden is unaffected by the amendments. This estimate is being revised solely to correspond with the Commission's new method of calculation.

[226] 13,658 (estimated annual issuances) × .25 (hourly burden to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB) = 3,414.5 hours. 3,414.5 hours/250 (estimated number of dealers) = 13.65 hours.

[227] In the Proposing Release, the Commission estimated dealers would continue to incur a burden of 2,500 hours per year, or ten hours per year per dealer, to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of municipal securities, to provide continuing disclosure documents to the MSRB. 3,415 hours − 2,500 hours = 915 hours.

[228] Although not required by the Commission, a staff letter suggested that a standard form should be used. *See* Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, U.S. Securities and Exchange Commission, to John S. Overdorff, Chair, Securities Law and Disclosure Committee, Nat' Ass'n of Bond Lawyers (Sept. 19, 1995) (''NABL 2''), *available at https://www.sec.gov/info/municipal/nabl-2-interpretive-letter-1995-09-19.pdf* (stating that such documents ''should list all events in the same language as is contained in the rule, without any qualifying words or phrases'').

[229] 13,658 (estimated annual issuances) × 1 (average additional hourly burden per issuance as a result of the amendments) = 13,658 hours. 13,658 hours/250 (estimated number of dealers) = 54.63 hours.

[230] In the Proposing Release, the Commission estimated that the amendments to the Rule would result in an additional 2,500 hours annually (an additional 10 hours per year per dealer) for dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule. 13,658 hours (new estimate of annual increased burden on dealers) − 2,500 hours (previous estimate) = 11,158 hours. 11,158/250 (estimated number of dealers) = 44.63 hours.

[231] *See supra* Section III.A.2.i.

[232] *See supra* Section III.A.2.iv.

annual burden on dealers of 109,264 hours (approximately 437 hours per dealer per year).[233] This revised estimate constitutes an increase of 89,264 hours (an increase of approximately 357 hours per dealer), over the estimate provided in the Proposing Release.[234] The Commission arrived at the 8-hour per issuance burden estimate after considering (1) the comments addressing the prior burden estimates for dealers under Rule 15c2–12, particularly the comments related to the Commission's prior PRA submissions; (2) comments addressing the potential that dealer burdens may have shifted as a result of subsequent Commission action; (3) the MSRB's statistics concerning the number of event notices filed on an annual basis; and (4) the potential volume of documentation to be reviewed under this obligation.[235] Based on the Commission's experience, the Commission believes that the estimate of an average burden of 8 hours per issuance is appropriate.

Accordingly, under the Commission's revised estimates, the total annual burden for all dealers acting as Participating Underwriters in Offerings will be 126,337 hours (approximately 505 hours per dealer per year),[236] or an average of 9.25 hours per issuance of municipal securities.[237] This revised estimate constitutes an increase of 101,337 hours (approximately 405 hours per dealer) over the estimates in the Proposing Release for the entire dealer community.[238] The Commission understands that burdens will vary across dealers and across specific issuances depending on numerous factors, such as the frequency of issuances by the issuer, size and complexity of the issuer, and the familiarity of the dealer with the issuer. The burden for some dealers will exceed our estimate, and the burden for others will be less. However, the Commission believes, on balance, that 126,337 hours (on average approximately 505 hours per dealer per year), is a reasonable estimate for the time needed for dealers acting as Participating Underwriters in Offerings to comply with their obligations under Rule 15c2–12.

ii. One-Time Paperwork Burden

In the Proposing Release, the Commission estimated that each dealer acting as a Participating Underwriter in an Offering would incur a one-time paperwork burden to have its internal compliance attorney prepare and issue a notice advising its employees about the proposed revisions to Rule 15c2–12, including any updates to policies and procedures affected by the proposed amendments.[239] Based on prior estimates for similar amendments, the Commission estimated that it would take each dealer's internal compliance attorney approximately 30 minutes to prepare and issue a notice describing the dealer's obligations in light of the Proposed Amendments, for a total one-time, first-year burden of 125 hours for the entire dealer community.[240] The Commission also stated that it believed the task of preparing and issuing a notice advising the dealer's employees about the proposed amendments is consistent with the type of compliance work that a dealer typically handles internally.

One commenter expressed concern that the Commission's estimate of the one-time burden on dealers acting as Participating Underwriters in Offerings was too low.[241] The commenter stated that dealers would have to ''identify their resulting duties, develop procedures for complying with them (including means for determining appropriate review levels and materiality judgments in commonly recurring circumstances), communicate the procedures to applicable personnel, and include the procedures in periodic training.'' [242] The commenter did not provide its own estimate for the one-time burden on dealers. In response to this comment, the Commission is revising its estimate of the time it will take each dealer to prepare and issue a notice advising its employees about the amendments to Rule 15c2–12 from 30 minutes per dealer to five hours per dealer. The Commission believes this revised estimate more accurately captures the time needed to complete the tasks identified by the commenter while also recognizing that the Commission has narrowed the scope of the amendments and removed several terms that commenters had characterized as burdensome and time-consuming to interpret and implement.[243]

Accordingly, the Commission estimates that the 250 dealers acting as a Participating Underwriter in Offerings would incur a one-time burden of five hours each, for a total one-time, first year burden of 1,250 hours for all dealers.

iii. Total Burden for Dealers

Under the amendments to Rule 15c2–12 as adopted, the total burden on all dealers would be 127,587 hours for the first year [244] and 126,337 hours for each subsequent year.[245] Table 1 below briefly summarizes the Commission's PRA burden estimates for dealers in the 2015 PRA Notice (the Commission's most recent estimates prior to these

[233] 13,658 (estimated annual issuances) × 8 (average burden estimate per issuance for dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule) = 109,264 hours. 109,264 hours/250 (estimated number of dealers) = 437.05 hours.

[234] In the Proposing Release, the Commission estimated that the dealer burden, not including the proposed amendments, for determining whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule, was 20,000 hours (80 hours per year per dealer). *See* Proposing Release, *supra* note 3, 82 FR at 13943–44 and note 131. 109,264 hours (revised estimate of this dealer burden) − 20,000 hours (estimate in the Proposing Release) = 89,264 hours. 89,264/250 (estimated number of dealers) = 357.05 hours.

[235] *See* MSRB 2017 Fact Book, *supra* note 24.

[236] 109,264 hours (revised estimate of dealer burden, prior to these amendments, to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule) + 13,658 hours (revised estimate of additional dealer burden, due to the amendments, to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule) + 3,415 hours (revised annual estimate for dealers to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing disclosure documents to the MSRB) = 126,336.5 hours. 126,337 hours/250 (estimated number of dealers) = 505.35 hours.

[237] 0.25 hours (revised estimate of burden per issuance for dealer to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of municipal securities, to provide continuing disclosure documents to the MSRB) + 1 hour (revised estimate of additional burden per issuance, due to the amendments, for dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule) + 8 hours (revised estimate of burden per issuance, prior to these amendments, for dealers to determine whether issuers or obligated persons have failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule) = 9.25 hours per issuance.

[238] 126,337 hours (revised estimate of total dealer burden) − 25,000 hours (estimate of total dealer burden in Proposing Release) = 101,337 hours. 101,337 hours/250 (estimated number of dealers) = 405.35 hours.

[239] *See* Proposing Release, *supra* note 3, 82 FR at 13944.

[240] *See id.*

[241] *See* NABL OMB Letter.

[242] *See id.*

[243] *See supra* Sections III.A.1 and III.A.2.

[244] 126,337 hours (revised estimate of total annual burden for dealers acting as a Participating Underwriter) + 1,250 hours (estimated one-time burden for dealers acting as a Participating Underwriter) = 127,587 hours.

[245] *See supra* note 236.

amendments), the Proposing Release, and the Adopting Release.

TABLE 1—SUMMARY OF PRA BURDEN ESTIMATES FOR DEALERS

	Annual burden (hours)	One-time burden (hours)
Dealers (2015 PRA Notice)	22,500	[246] n/a
Dealers (Proposing Release)	25,000	125
Dealers (Adopting Release)	126,337	1,250

2. Issuers

The amendments, as adopted, result in a paperwork burden on issuers of municipal securities. For this purpose, issuers include issuers of municipal securities described in paragraph (f)(4) of the Rule and obligated persons described in paragraph (f)(10) of the Rule.

Under the Rule prior to these amendments and in the Proposing Release, the Commission estimated that 20,000 issuers of municipal securities annually submit to the MSRB approximately 62,596 annual filings, 73,480 event notices, and 7,063 failure to file notices.[247] The number of issuers was based on information received from the MSRB in 2015 regarding the number of issuers affected by continuing disclosure agreements. In response to the Proposing Release, the Commission received a comment stating that the true number of issuers affected by Rule 15c2–12 was 34,696, or the number of filings on EMMA in 2016 listed under the category of ''audited financial statements or CAFRs.'' [248] However, the Commission believes that category likely overstates the number of issuers affected by continuing disclosure agreements because a large number of those filings may not reflect distinct issuers filing separate audited financial statements. Many of the documents filed under that category are supplemental documents, or multiple years of audited financial statements filed by a single issuer all in one year. Instead, based on recent data provided by the MSRB staff to the Commission staff in conjunction with this rulemaking, the Commission believes that an appropriate revised estimate is that 28,000 issuers are affected by continuing disclosure requirements under Rule 15c2–12.[249]

i. Amendments to Event Notice Provisions of the Rule

The Commission proposes to modify paragraph (b)(5)(i)(C) of the Rule, which presently requires a dealer acting as a Participating Underwriter in an Offering to reasonably determine that an issuer or obligated person has entered into a continuing disclosure agreement that, among other things, contemplates the submission of an event notice to the MSRB in an electronic format upon the occurrence of any events set forth in the Rule. The Rule prior to these amendments contained fourteen such events. The adopted amendments to this paragraph of the Rule add two new event disclosure items: New paragraph (b)(5)(i)(C)(*15*) contains a new disclosure event in the case of the incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and new paragraph (b)(5)(i)(C)(*16*) requires the disclosure of a default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties. The Commission believes that the adopted amendments to paragraph (b)(5)(i)(C) of the Rule will increase the current annual paperwork burden for issuers because they will result in an increase in the number of event notices to be prepared and submitted.

ii. Total Burden on Issuers for Amendments to Event Notices

Under the Rule prior to these amendments, the Commission estimates that issuers prepare and submit annually: (1) 73,480 event notices, with each notice taking approximately two hours to prepare and submit; (2) 62,596 annual filings, with each filing taking approximately seven hours to prepare and submit; and (3) 7,063 failure to file notices, with each notice taking approximately two hours to prepare and submit.[250] Accordingly, under the estimate prior to these amendments, issuers would incur a total annual burden of 599,258 hours.[251]

In the Proposing Release, the Commission estimated that the amendments to the Rule would result in an increase to the annual total burden of issuers. Specifically, the Commission estimated that the proposed amendment in paragraph (b)(5)(i)(C)(*15*) of the Rule would increase the total number of event notices submitted by issuers annually by approximately 2,100 notices, and that the proposed amendment in paragraph (b)(5)(i)(C)(*16*) would increase the total number of event notices submitted by issuers annually by approximately 100 notices. The Commission also estimated that the time required for an issuer to prepare and submit the proposed two additional types of event notices to the MSRB in an electronic format, including time to actively monitor the need for filing, would continue to be approximately two hours per filing, because the two proposed types of event notices would require substantially the same amount of time to prepare as those prepared for existing events. Accordingly, the Commission estimated that the increase in number of event notices would result in an increase of 4,400 hours in the annual paperwork burden for issuers to submit event notices, with a total annual paperwork burden for issuers to submit event notices of approximately 151,360 hours (146,960 hours + 4,400

[246] The 2015 PRA Notice contained no estimates of one-time burdens and costs because the approved collection of information associated with the Rule had not changed.

[247] *See* Proposing Release, *supra* note 3, 82 FR at 13944; 2015 PRA Notice, *supra* note 202.

[248] *See* NABL OMB Letter.

[249] 28,000 is the current approximate number of issuers identified in MSRB Form G–32 filings as agreeing to provide continuing disclosure information under Rule 15c2–12 dating from June 2018 back to February 2011, when the MSRB first began collecting such information.

[250] *See* 2015 PRA Notice, *supra* note 202.

[251] 73,480 (annual number of event notices) × 2 (estimate of average hours needed to prepare and submit each) + 62,596 (annual number of annual filings) × 7 (estimate of average hours needed to prepare and submit each) + 7,063 (annual number of failure to file notices) × 2 (estimate of average hours needed to prepare and submit each) = 599,258 hours.

hours), and a total annual burden on issuers of 603,658 hours.[252]

iii. Comments Related to Estimated Paperwork Burden on Issuers

The Commission received several comments relating to the estimates of the Paperwork Reduction Act burden on issuers.[253] Commenters expressed concern that the Commission's estimates understated the burden of the proposed amendments on issuers because, in large part, the Commission failed to account for the overly broad definition of ''financial obligation.'' One commenter criticized the term financial obligation for requiring ''information that is both superfluous to investors and costly for issuers to present,'' further stating that ''leases, for example, are transactions that take place many times per year in many jurisdictions and are commonly related to the ongoing operations of a government.'' [254] Another commenter stated that issuers ''enter into a staggering number of leases and other financial obligations, as defined in the Proposed Amendments, in the ordinary course of providing important services to the public.'' [255] And another commenter stated that the definition of financial obligation could capture routine items such as equipment lease programs and short-term maintenance contracts.[256] Commenters also criticized the inclusion of ''monetary obligation resulting from a judicial, administrative, or arbitration proceeding,'' stating that issuers could be subject to potentially hundreds of such obligations annually and that monitoring for such obligations would be expensive and time-consuming.[257] Many commenters stated that, as defined, ''financial obligations'' incurred by the issuer would be managed across dozens of departments and that ''significant expense and effort'' would be required to train employees across these departments and create ''a system of coordination and review that would enable the [issuer] to comply'' with the proposed amendments.[258]

Commenters also criticized the Commission for failing to account for the burden created by what they termed the ambiguity of the term ''material.'' One commenter argued that the Commission, by refusing to give explicit guidance as to materiality, will force issuers to ''review voluminous, often inconsistent court decisions and administrative orders in an attempt to give clarity to the term.'' [259] The net result, the commenter argued, is that issuers will expend far more hours than estimated by the Commission to review ''even routine financial obligations'' for materiality.[260]

These commenters generally contended that the burden of complying with the proposed amendments was far greater than the Commission's estimates. One commenter, after surveying its members, estimated that the time needed to ensure compliance with the proposed amendments would be approximately seven hours per event notice required to be filed with the MSRB under the proposed rule.[261] Another commenter suggested that the time needed for an issuer to prepare and submit an event notice for the proposed amendments could be up to 100 times greater than the Commission's original estimate of two hours per notice.[262] And another commenter estimated that the total annual burden on issuers for preparing and submitting event notices would be 109,292 hours [263] for proposed amendment (15) and 530 hours [264] for proposed amendment (16). That commenter further estimated that issuers would spend 867,400 hours [265] a year monitoring for possibly reportable events and 173,480 hours [266] evaluating possibly reportable events. Commenters also criticized past Commission estimates of issuer burden for filing event notices for being ''substantially understated.'' [267]

In response to comments, the Commission is revising, from two hours to four hours, its estimate of the average time needed for an issuer to prepare and submit an event notice to the MSRB in an electronic format, including time to actively monitor the need for filing. The Commission believes this change, which recognizes an increased annual burden estimate on issuers of 151,360 hours [268] from the estimates in the Proposing Release, appropriately reflects the concerns raised by the commenters that the original estimates were too low.[269] This four-hour estimate applies to the average time needed to monitor, prepare, and file *all* sixteen types of event notices, not just the two new event notices required by the amendments to the Rule. The Commission recognizes that the event notices required by the amendments may on average be more complex and require more than an average of four

[252] 75,680 (annual number of event notices including additional 2,200 event notice burden created by amendments) × 2 (average estimate of hours needed to prepare and submit each) + 62,596 (average number of annual filings) × 7 (average estimate of hours needed to prepare and submit each) + 7,063 (average number of failure to file notices) × 2 (average estimate of hours needed to prepare and submit each) = 603,658 hours. The Commission believed that the proposed amendments would not affect the number of annual filings or failure to file notices required to be filed by issuers, so those estimates were unchanged from the estimates under the Rule prior to these amendments. *See* 2015 PRA Notice, *supra* note 202.

[253] *See* GFOA Letter; NABL OMB Letter; Kutak Rock Letter; ABA Letter; SIP Letter.

[254] *See* GFOA Letter.

[255] *See* NABL OMB Letter.

[256] *See* Kutak Rock Letter.

[257] *See, e.g.* Houston Letter; Denver Letter.

[258] *See* Denver Letter. *See also, e.g.* AZ Universities Letter; Kutak Rock Letter; NABL OMB Letter; NAHEFFA Letter.

[259] *See* NABL OMB Letter.

[260] *See id.*

[261] *See* GFOA Letter (''Respondents estimated that the average amount of internal staff time committed to ensuring compliance to the proposed amendments would be 7.3 hours per material event and 7.8 per occurrence, modification of terms or other similar event'').

[262] *See* Kutak Rock Letter.

[263] *See* NABL OMB Letter. The commenter estimated that one-quarter of 34,696 issuers (as discussed above, the Commission believes this likely overstates the number of issuers) would each file three material event notices annually under the proposed amendment (15), and each notice would take 4.2 hours to prepare and file. Using these estimates, issuers would file an additional 26,022 event notices to comply with proposed amendment (15) based off the following: 34,696 (estimated number of issuers) × .25 (estimated percentage of such issuers filing event notices under proposed amendment (15)) × 3 (number of event notices needed to be filed be each such issuer) = 26,022 filings. The commenter did not provide any basis for its estimate that one-quarter of issuers would need to file event notices, or any basis for its estimate that each such issuer would file three event notices, which would result in an additional 26,022 filings. Moreover, the commenter was basing its estimates on the proposed amendments, not the narrowed, adopted definition of ''financial obligation.''

[264] *See id.* The commenter estimated that 100 notices would need to be filed under proposed amendment (16), and that each would take 5.3 hours to prepare and file. The commenter's estimate that each such notice would take 5.3 hours to prepare and file is based on a survey response.

[265] *See id.* The commenter estimated that 34,696 issuers would each need 25 hours a year to monitor and elevate possibly reportable events under the proposed amendments. The commenter did not provide a basis for its estimate that every issuer would need 25 hours a year to monitor for such events.

[266] *See id.* The commenter estimated that one-half of 34,696 issuers would need ten hours a year to evaluate possibly reportable events. The commenter did not provide a basis for its estimate that one-half of issuers would need to evaluate possibly reportable events, and its estimate that such an evaluation would take ten hours a year.

[267] *See id.*

[268] 75,680 (annual number of event notices) × 4 (revised estimate of hours needed to prepare and submit each) = 302,720 hours. This number includes and incorporates its estimate that the amendments, as adopted, add an additional 2,200 event notices to the burden estimates. The burden estimate in the Proposing Release was 75,680 event notices at 2 hours each, equaling 151,360 hours. 302,720 hours − 151,360 hours = 151,360 hours of increased burden over the estimate in the Proposing Release.

[269] The Commission is not adopting the estimates of total burden provided by the commenters because those estimates were in response to amendments that have since been substantially narrowed. *See supra* Section III.A.2.

hours to monitor, evaluate, prepare, and file. But, as discussed below, the Commission believes that the adopted amendments will generate relatively few event notices and that the majority of the event notices required to be filed under the Rule are not as time-consuming for an issuer to monitor, evaluate, prepare, and file. As even commenters critical of the Commission's estimates stated, ''the existing events under Rule 15c2–12 are generally objectively ascertainable by most laymen and rarely occur, making them easily identifiable by issuers and relatively inexpensive to handle.'' [270] Furthermore, the majority of event notices filed on EMMA in recent years have been for bond calls, which is an action typically instituted by the issuer itself and therefore one the issuer would require very little effort to monitor.[271] Accordingly, the Commission believes that increasing the estimate of average time needed to monitor, evaluate, prepare, and file an event notice in electronic format to the MSRB to four hours per event notice addresses the comments raised and forms an appropriate average estimate of the burden on issuers to comply with this collection of information requirement under the Rule.

However, the Commission is not changing its estimate that the amendments to the Rule will result in 2,200 additional event notices filed annually, raising the total number of event notices prepared by issuers annually to approximately 75,680. The Commission believes this estimate remains appropriate because of the substantial narrowing of the definition of financial obligation from the definition proposed in Proposing Release.[272] The adopted definition of financial obligation removes or extensively limits the definitions, such as the modifications regarding leases, derivatives, and judicial obligations that commenters cited as the most burdensome. The adopted definition of financial obligation is tailored to apply only to debt, debt-like, and debt-related obligations. The adopted definition narrows the number of transactions for which issuers and obligated persons will need to monitor, evaluate, review, or file notices. The Commission believes this change will reduce the burdens of the adopted amendments as compared to the proposed amendments. In particular, the narrowing of ''financial obligation'' to focus on instruments that compete with a security holder's interests, as a security holder [273] will dramatically limit the need for issuers to centralize reporting and analysis for staff across multiple departments.[274] Moreover, as discussed in Section III.A.1.i, the Commission has provided examples intended to assist issuers in determining materiality under the Rule, addressing another issue commenters believed added to the burden of compliance with the Rule.

iv. Total Burden for Issuers

Under the amendments to Rule 15c2–12 as adopted, the total burden on issuers to submit continuing disclosure documents would be 755,018 hours.[275] Table 2 below briefly summarizes the Commission's PRA burden estimates for issuers in the 2015 PRA Notice (the Commission's most recent estimates prior to these amendments), the Proposing Release, and the Adopting Release.

TABLE 2—SUMMARY OF PRA BURDEN ESTIMATES FOR ISSUERS

	Estimated filings (submissions)	Annual burden (hours)	One-time burden (hours)
Estimates in 2015 PRA Notice			
Issuers (annual filings)	62,596	438,172	n/a
Issuers (event notices)	73,480	146,960	n/a
Issuers (failure to file notices)	7,063	14,126	n/a
Estimates in Proposing Release			
Issuers (annual filings)	62,596	438,172	0
Issuers (event notices)	75,680	151,360	0
Issuers (failure to file notices)	7,063	14,126	0
Estimates in Adopting Release			
Issuers (annual filings)	62,596	438,172	0
Issuers (event notices)	75,680	302,720	0
Issuers (failure to file notices)	7,063	14,126	0

[270] *See* Kutak Rock Letter.

[271] According to the 2017 MSRB Fact Book, bond call notices in 2017 were 63% of total event notices (38,198 of 60,883 total event notices). In 2016, bond call notices were 66% (41,862 of 63,586 event notices) of total event notices. *See* MSRB 2017 Fact Book, *supra* note 24.

[272] Other than comments in the NABL OMB Letter discussed above in note 263, the Commission did not receive comments quantifying the increase in the total number of event notices that issuers would file because of the proposed amendments. As previously stated, the narrowing of the definition of ''financial obligation'' from the definition proposed in the Proposing Release should reduce the number of required filings. Nonetheless, in light of the comments in the NABL OMB Letter suggesting that filings resulting from the proposed amendments might be higher than the Commission originally estimated, in light of a lack of data to quantify a reduction in filings resulting from the narrowed scope of the amendments, and to provide an estimate for the paperwork burden that would not be under-inclusive, the Commission has elected to retain the proposed estimate at this time.

[273] *See supra* Section III.A.2.i.

[274] *Compare, e.g.,* Denver Letter (the broad scope of financial obligation will require ''significant expense and effort . . . [to] train relevant City employees across dozens of departments and agencies and to create a system of coordination and review'') *and* TASBO Letter (''school districts will be required to restructure their organizations and establish review processes in order to vet the types of 'financial obligations' captured under the broad definition included in the proposed regulations.'') *with* BDA Letter (if the definition of financial obligation were ''properly crafted around competing debt, all of the material 'financial obligations' would ordinarily fall within the responsibility of that one department because it tends to be responsible for all debt of the issuer'').

[275] 438,172 hours (estimated burden for issuers to submit annual filings) + 302,720 hours (estimated annual burden for issuers to submit event notices under the amendments) + 14,126 hours (estimated annual burden for issuers to submit failure to file notices) = 755,018 hours.

3. MSRB

Under the Rule prior to these amendments, the Commission estimated that the MSRB incurred an annual burden of approximately 12,699 hours to collect, index, store, retrieve, and make available the pertinent documents under the Rule.[276] In the Proposing Release, the Commission estimated, based on preliminary consultations between Commission staff and MSRB staff, that 12,699 hours was still a reasonable estimate for this annual burden. The Commission also estimated, based on consultations with the MSRB staff, that the MSRB would require a one-time burden of 1,162 hours to implement the necessary modifications to EMMA to reflect the additional mandatory disclosures under Rule 15c2–12. Accordingly, the Commission estimated that the total burden on the MSRB to collect, store, retrieve, and make available the disclosure documents covered by the Rule would be 13,861 hours[277] for the first year and 12,699 hours for each subsequent year.

The Commission received no comments on these estimates. However, the Commission is revising these estimates to correspond with updated estimates provided by the MSRB. The Commission now estimates that the MSRB incurs an annual burden of approximately 19,500 hours to collect, index, store, retrieve, and make available the pertinent continuing disclosure documents under the Rule.[278] The Commission also now estimates that the MSRB would require a one-time burden of 1,700 hours to implement the necessary modifications to EMMA to reflect the additional mandatory disclosures under Rule 15c2–12.[279] Accordingly, the Commission estimates that the total burden on the MSRB to collect, store, retrieve, and make available the disclosure documents covered by the Rule would be 21,200 hours[280] for the first year and 19,500 hours for each subsequent year. Table 3 below summarizes the Commission's PRA burden estimates for the MSRB in the 2015 PRA Notice (the Commission's most recent estimates prior to these amendments), the Proposing Release, and the Adopting Release.

TABLE 3—SUMMARY OF PRA BURDEN ESTIMATES FOR THE MSRB

	Annual burden (hours)	One-time burden (hours)
MSRB (2015 PRA Notice)	12,699	n/a
MSRB (Proposing Release)	12,699	1,162
MSRB (Adopting Release)	19,500	1,700

4. Total Burden for Dealers Effecting Transactions in the Secondary Market

Under the Rule prior to these amendments and in the Proposing Release, the Commission made no estimate of the burden on dealers effecting transactions in the secondary market to comply with Rule 15c2–12. Two commenters characterized this as an omission.[281] Those commenters cited to obligations, under Rule 15c2–12(c) and MSRB Rule G–47, which those commenters stated required dealers in the secondary market to disclose material information to investors, expressing concern that the proposed amendments would greatly increase the burden on such dealers.[282] One commenter estimated that the total annual burden on dealers effecting transactions in the secondary market would be 14,224,229 hours.[283]

The Commission continues to believe that neither the adopted amendments nor Rule 15c2–12 prior to amendment contains ''collection of information requirements'' within the meaning of the PRA on dealers effecting transactions in the secondary market. Rule 15c2–12(c) requires only that a dealer acting in the secondary market have ''procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraph (b)(5)(i)(C), paragraph (b)(5)(i)(D), and paragraph (d)(2)(ii)(B)'' of the Rule. To the extent that dealers effecting transactions in the secondary market review and disclose material to customers, those associated burdens stem from antifraud provisions and MSRB rules that are not subject to this PRA analysis.

5. Annual Aggregate Burden for Amendments to Rule 15c2–12

The Commission estimates that the ongoing annual aggregate information collection burden for the Rule after giving effect to the amendments would be 900,855 hours.[284]

E. Total Annual Cost

1. Dealers and the MSRB

In the Proposing Release, the Commission stated that it did not expect dealers to incur any additional external costs associated with the proposed amendments to the Rule because the proposed amendments do not change the obligation of dealers under the Rule to reasonably determine that the issuer or obligated person has undertaken, in a written agreement or contract, for the benefit of holders of such municipal securities, to provide continuing

[276] *See* 2015 PRA Notice, *supra* note 202.

[277] First-year burden for the MSRB: 12,699 hours (estimate of annual burden in the Proposing Release) + 1,162 hours (estimate for one-time burden to implement the proposed amendments) = 13,861 hours.

[278] According to the MSRB, its estimated annual burden has changed from 12,699 hours to 19,500 hours due to a change in the method of calculation used by the MSRB to estimate annual burden.

[279] According to the MSRB, its estimated one-time burden has changed from 1,162 hours to 1,700 hours after further assessment of the work needed to prepare EMMA for two new event notices.

[280] First-year burden for the MSRB: 19,500 hours (estimated annual burden) + 1,700 hours (estimate for one-time burden to implement the amendments) = 21,200 hours.

[281] *See* NABL OMB Letter and SIFMA Letter.

[282] *See id.*

[283] *See* NABL OMB Letter. The commenter derived this estimate by multiplying 9,358,046 (the number of municipal securities trades reported by the MSRB in 2016) by 76% (the purported percentage of such transactions that would require review) and then by 2 (how many hours such a review would take). The 76% figure was the mean response in the commenter's survey to the question ''what percentage [of issuers] have outstanding 'financial obligations' that you believe the SEC might determine to be material . . . ?'' The estimate that it would take two hours for a dealer to complete its due diligence was apparently derived from a survey response indicating that an issuer's redacted financial obligations to be reviewed would average 39 pages in length.

[284] 126,337 hours (total estimated annual burden for dealers) + 755,018 hours (total estimated annual burden for issuers) + 19,500 hours (total estimated annual burden for MSRB) = 900,855 hours. The initial first-year burden would be 903,805 hours: 127,587 hours (total estimated burden for dealers in first year) + 755,018 hours (total estimated burden for issuers in first year) + 21,200 hours (total estimated burden for MSRB in the first year) = 903,805 hours.

disclosure documents to the MSRB, and to determine whether the issuer or obligated person has failed to comply with such undertakings in all material respects.[285] To the extent that dealers would incur a one-time burden of preparing and issuing a notice advising the dealer's employees about the amendments, the Commission believed that the work would be consistent with the type of compliance work that a dealer typically handles internally, and that the dealer would not incur any additional external costs.[286] The Commission received no comments on this estimate and continues to believe that this estimate is appropriate.

Also in the Proposing Release, the Commission stated that it did not expect the MSRB to incur any additional external costs associated with the proposed amendments to the Rule. The Commission believed that the MSRB would not incur additional external costs specifically associated with modifying the indexing system to accommodate the amendments to the Rule because the MSRB would implement those changes internally. The Commission received no comments on this estimate. After consultation of the Commission staff with MSRB staff, the Commission continues to believe that this estimate is appropriate. Additionally, in the Proposing Release, the Commission estimated that the MSRB expends $10,000 annually in hardware and software costs for the MSRB's EMMA system.[287] After consultation of the Commission staff with MSRB staff, the Commission now estimates that the MSRB expends $520,000 annually in hardware and software costs for the MSRB's EMMA system.[288]

Under the amendments to Rule 15c2–12 as adopted, the total external costs to dealers would be zero and the total external costs to the MSRB would be $520,000 annually. Table 4 below summarizes the Commission's PRA external cost estimates for dealers and the MSRB in the 2015 PRA Notice (the Commission's most recent estimates prior to these amendments), the Proposing Release, and the Adopting Release.

TABLE 4—SUMMARY OF PRA COST ESTIMATES FOR DEALERS AND THE MSRB

	Annual external cost	One-time external cost
Estimates in 2015 PRA Notice		
Dealers	$0	n/a
MSRB	10,000	n/a
Estimates in Proposing Release		
Dealers	0	$0
MSRB	10,000	0
Estimates in Adopting Release		
Dealers	0	0
MSRB	520,000	0

2. Issuers

In the Proposing Release, the Commission stated that it believes issuers generally would not incur external costs associated with the preparation of event notices filed under the amendments, because issuers would generally prepare the information contained in the continuing disclosures internally.

However, the Commission recognized that issuers would be subject to some costs associated with the amendments to the Rule if they paid third parties to assist them with their continuing disclosure responsibilities. Under the Rule prior to these amendments, the Commission estimated that up to 65% of issuers may use designated agents to submit some or all of their continuing disclosure documents to the MSRB for a fee estimated to range from $0 to $1,500 per year, with an average total annual cost incurred by issuers using the services of a designated agent of $9,750,000.[289] In the Proposing Release, the Commission modified this estimate to account for the estimated increase in filings as a result of the proposed amendments. The Commission estimated that the proposed amendments would result in 2,200 more event notices filed annually, increasing costs for issuers using a designated agent for submission of event notices to the MSRB of approximately six percent, to $10,335,000.[290]

The Commission received no comments on this estimate. The Commission continues to believe that the amendments will result in an increase of 2,200 event notices filed[291] and that the amendments will increase costs for the issuers using a designated agent by approximately six percent. The Commission also continues to believe that up to 65% of issuers may use designated agents; however, the Commission is revising its calculations to correspond with its revised estimate of the number of issuers affected by continuing disclosure agreements consistent with the Rule, which has changed from 20,000 in the Proposing Release to 28,000.[292] As a result, the Commission is making two adjustments. First, the Commission is revising its estimate of the cost to issuers who may

[285] *See* Proposing Release, *supra* note 3, 82 FR at 13946.

[286] *Id.*

[287] *Id.*

[288] According to the MSRB, its estimated annual cost has changed to $520,000 after a change in the method of calculation used by the MSRB to estimate annual cost. This estimate corresponds to the estimated annual cost in hardware and software costs to operate the continuing disclosure service for the MSRB's EMMA system.

[289] *See* Proposing Release, *supra* note 3, 82 FR at 13946. The Commission estimated the following: 20,000 (number of issuers) × .65 (percentage of issuers that may use designated agents) × $750 (estimated average annual cost for issuer's use of designated agent) = $9,750,000. *See also* 2015 PRA Notice, *supra* note 202.

[290] *Id.*

[291] *See supra* Section IV.D.2.iii.

[292] *See supra* Section IV.D.2 (revising the estimated number of issuers affected by continuing disclosure agreements consistent with the Rule from 20,000 to 28,000). This revision is necessary because the Commission's prior calculations in the Proposing Release relied on an estimate of 65% of 20,000 issuers.

use designated agents under the Rule prior to these amendments to reflect the increase in the number of issuers who may use designated agents.[293] Second, the Commission is increasing the estimated cost to issuers who may use designated agents under the Rule by six percent, to account for the estimated increased costs as a result of the amendments to issuers who use designated agents. Accordingly, the Commission now estimates an average total annual cost incurred by issuers using the services of a designated agent for the Rule prior to these amendments of $13,650,000 [294] and further estimates that those costs would be increased by approximately six percent as a result of the amendments, to $14,469,000.[295]

In the Proposing Release, the Commission also estimated that issuers would incur some cost to revise their current template for continuing disclosure agreements to reflect the proposed amendments to the Rule. The Commission stated its belief that continuing disclosure agreements tend to be standard form agreements. As it did in response to prior amendments to the Rule in 2010,[296] the Commission estimated that it would take an outside attorney approximately 15 minutes to revise the template for continuing disclosure agreements for the proposed amendments to the Rule.[297] The Commission estimated that each issuer, if it employed an outside attorney to update its template for continuing disclosure agreements, would incur a cost of approximately $100, for a one-time total cost of $2,000,000 for all issuers.[298] The Commission received one comment on this estimate. The commenter agreed that updating the template was ''a relatively simple process,'' but stated that the Commission failed to account for the time spent reviewing the revised continuing disclosure agreement.[299] Because continuing disclosure agreements tend to be standard form agreements and because the updates required to continuing disclosure agreements by these amendments amount to simply adding the text of two additional events,[300] the Commission continues to believe that the estimate of 15 minutes per issuer is appropriate and accounts for the average total cost incurred by each issuer to update and review its template for continuing disclosure agreements. However, as a result of the Commission's revised estimate of issuers affected by continuing disclosure requirements under Rule 15c2–12,[301] the Commission now estimates a one-time total cost of $2,800,000 for all issuers.[302]

The Commission did not estimate any other external costs incurred by issuers as a result of the proposed amendments. Several commenters disagreed, stating that due to the proposed broad definition of financial obligation and commenters' view that there was lack of clarity around materiality, issuers would rely, in some part, on outside counsel to assist in the monitoring, evaluating, preparing, and filing of the event notices required by the proposed amendments.[303] One commenter, citing those same reasons, reported that 97% of survey respondents indicated that outside counsel would be required when preparing an event notice under the proposed amendments.[304] Another commenter reported that it would need to ''enter into new engagements with subject matter experts'' to determine whether certain financial obligations needed to be disclosed under the proposed amendments.[305]

The Commission has considered these comments and is revising its cost estimates for issuers. As discussed in Section III.A.2., the Commission has clarified and narrowed the scope of the amendments which will substantially lessen the burden on issuers of monitoring, evaluating, preparing, and filing event notices required by the amendments to the Rule. The Commission expects that any external costs that would have been incurred by issuers under the proposed amendments would be similarly reduced by those changes. The Commission also believes that the adopted amendments, by focusing on debt, debt-like, and debt-related obligations, will reduce the need for issuers to obtain outside counsel to assist with an event notice.[306]

However, the Commission acknowledges that some issuers may retain outside counsel to assist in the evaluation and preparation of some of the more complex event notices as a result of the amendments to the Rule. As discussed above, the Commission estimates that the amendments will generate 2,200 additional event notices a year.[307] The Commission believes a reasonable estimate is that issuers may retain outside counsel on half of those event notices, 1,100, while preparing the other half solely internally.[308] The Commission further believes that, for those 1,100 complex event notices in which issuers and obligated persons seek assistance from outside counsel, one-half of the burden of preparation of the event notices (including time for monitoring and evaluation) will be carried by issuers internally (four hours), and the other-half of the burden will be carried by outside professionals retained by the issuer (four hours).[309] Thus, the Commission now estimates that issuers will incur an approximate annual total cost of $1,760,000 [310] to

[293] Previously, the Commission estimated that 65% of 20,000 issuers would use designated agents for the submission of event notices to the MSRB. *See* 2015 PRA Notice, *supra* note 202. The Commission now estimates that 65% of 28,000 issuers may use designated agents.

[294] 28,000 issuers (revised estimate of issuers affected by continuing disclosure agreements consistent with the Rule) × .65 (percentage of issuers that may use designated agents) × $750 (estimated average annual cost for issuer's use of designated agent for the Rule prior to these amendments) = $13,650,000.

[295] 28,000 (number of issuers) × .65 (percentage of issuers that may use designated agents) × $795 ($750 × 1.06) (estimated average annual cost for issuer's use of designated agent under the amendments to the Rule) = $14,469,000. The increase in annual cost as a result of the amendments is $819,000 ($14,469,000 − $13,650,000 = $819,000).

[296] *See* 2010 Amendments Adopting Release, *supra* note 8.

[297] *See* Proposing Release, *supra* note 3, 82 FR at 13946.

[298] *Id.* 20,000 issuers × $100 = $2,000,000.

[299] *See* Kutak Rock Letter.

[300] *See* NABL 2, *supra* note 228.

[301] *See supra* Section IV.D.2.

[302] 28,000 issuers (revised estimate of issuers affected by continuing disclosure requirements under the Rule) × $400 (hourly wage for an outside attorney) × .25 hours (estimated time for outside attorney to revise a continuing disclosure document in accordance with the amendments to the Rule) = $2,800,000 (total one-time cost for all issuers). *See also* Proposing Release, *supra* note 3, 82 FR at 13946 and note 153. The Commission recognizes that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that costs of outside counsel would be an average of $400 per hour.

[303] *See* NAMA Letter; ABA Letter; Arlington SD Letter; GFOA Letter.

[304] *See* GFOA Letter. According to the commenter, it surveyed 174 GFOA members primarily responsible for debt disclosure in their respective jurisdictions.

[305] *See* Arlington SD Letter.

[306] *See, e.g.,* NAMA Letter (stating the ''too broad'' definition of financial obligation would force issuers to consult counsel for ''many types of financings and financial obligations that do not affect a government['s] . . . ability to pay debt); *see also* BDA Letter (stating if the definition of financial obligation were focused on competing debt, the responsibility to assess whether an event notice was needed would be handled by an issuer's debt finance department).

[307] *See supra* Section IV.D.2.iii.

[308] While some commenters stated that the assistance of outside counsel would be required on nearly all event notices under the proposed amendments, the Commission believes that the narrowed scope of the adopted amendments, as well as the examples provided in Section III.A.1. intended to assist issuers in determining materiality under the Rule, will substantially reduce the need for issuers to consult with outside counsel.

[309] *See* NABL OMB Letter (survey of outside bond counsel: ''If asked to prepare a summary of a financial obligation, on average how many hours would be required to comply?'' Median answer—4 hours).

[310] 1,100 (number of event notices requiring outside counsel) × 4 (estimated time for outside

employ outside counsel to assist in the examination, preparation, and filing of certain event notices.

Under the amendments to Rule 15c2–12 as adopted, the total cost to issuers would be $16,229,000 annually,[311] with a one-time cost of $2,800,000.[312] Table 5 below summarizes the Commission's PRA external cost estimates for issuers in the 2015 PRA Notice (the Commission's most recent estimates prior to these amendments), the Proposing Release, and the Adopting Release.

TABLE 5—SUMMARY OF PRA COST ESTIMATES FOR ISSUERS

	Annual external cost	One-time external cost
Estimates in 2015 PRA Notice		
Issuers (that use the services of a designated agent to submit continuing disclosure documents)	$9,750,000	n/a
Estimates in Proposing Release		
Issuers (that use the services of a designated agent to submit continuing disclosure documents)	10,335,000	$0
Issuers (to update template for continuing disclosure agreements to reflect the proposed amendments)	0	2,000,000
Estimates in Adopting Release		
Issuers (that use the services of a designated agent to submit continuing disclosure documents)	14,469,000	0
Issuers (to update template for continuing disclosure agreements to reflect the amendments)	0	2,800,000
Issuers (to hire outside counsel to assist in preparing event notices)	1,760,000	0

F. Retention Period of Recordkeeping Requirements

As an SRO subject to 17 CFR 240.17a–1 (Rule 17a–1 under the Exchange Act), the MSRB is required to retain records of the collection of information for a period of not less than five years, the first two years in an easily accessible place. Broker-dealers registered pursuant to Exchange Act Section 15 are required to comply with the books and records requirements of 17 CFR 240.17a–3 and 240.17a–4 (Exchange Act Rules 17a–3 and 17a–4). Participating Underwriters and dealers transacting business in municipal securities are subject to existing recordkeeping requirements of the MSRB.[313] The amendments to the Rule would contain no recordkeeping requirements for any other persons.

G. Collection of Information Is Mandatory

Any collection of information pursuant to the amendments to the Rule would be a mandatory collection of information.

H. Responses to Collection of Information Will Not Be Kept Confidential

The collection of information pursuant to the amendments to the Rule would not be kept confidential and would be publicly available.[314] Specifically, the collection of information that would be provided pursuant to the continuing disclosure documents under the amendments would be accessible through the MSRB's EMMA system and would be publicly available via the internet.

V. Economic Analysis

A. Introduction

The Commission is adopting, substantially as proposed, amendments to Rule 15c2–12 under the Exchange Act to revise the list of event notices that a Participating Underwriter in an Offering must reasonably determine an issuer or obligated person has agreed to provide to the MSRB in its continuing disclosure agreement.

As discussed above, the main difference between the Rule as proposed[315] and the Rule as adopted[316] is that the definition of financial obligation is narrower in the adopted amendments. The Commission believes that the revisions being made to the proposed definition do not qualitatively change the overall assessment of the economic impacts from the Proposing Release. While the amendments being adopted may result in a smaller increase in disclosure than the proposed amendments because of the narrower scope of the definition of financial obligation, they will still lead to an increase in disclosure compared to a baseline that consists of the existing regulatory framework for municipal securities disclosure, including Rule 15c2–12 prior to these amendments, and current relevant MSRB rules. Therefore, the economic effects of the amendments being adopted remain qualitatively consistent with those under the

attorney to assist in the preparation of such event notice) × $400 (hourly wage for an outside attorney) = $1,760,000. The Commission recognizes that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis we estimate that costs of outside counsel would be an average of $400 per hour.

[311] $1,760,000 (annual cost to employ outside counsel to assist in preparation of certain event notices) + $14,469,000 (annual cost to employ designated agents to submit event notices) = $16,229,000.

[312] *See supra* note 302.

[313] *See* MSRB Rules G–8, G–9. Exchange Act Rules 17a–3 and 17a–4 state that, for purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, such entities will be deemed in compliance with Exchange Act Rules 17a–3 and 17a–4 if they are in compliance with MSRB Rules G–8 and G–9, respectively.

[314] Continuing disclosure agreements may not be available if they are not subject to state Freedom of Information Act requirements. Internal dealer notices would not generally be publicly available but may be available to the Commission, the MSRB, and FINRA.

[315] *See* Proposing Release, *supra* note 3, 82 FR at 13937. In the Proposing Release, the Commission defined the term ''financial obligation'' to mean a debt obligation, lease, guarantee, derivative instrument, or monetary obligation resulting from a judicial, administrative, or arbitration proceeding, but not including municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2–12.

[316] *See supra* Section III.A.2. The adopted definition of financial obligation removes the term ''lease'' and ''monetary obligation resulting from a judicial, administrative, or arbitration proceeding'' from the proposed definition of financial obligation, and limits the coverage of derivative or guarantee to those related to a debt obligation. The Commission believes the revised definition helps distinguish debt and debt-like obligations from obligations incurred in an issuer's or obligated person's normal course of operations, and focuses the amendments on the types of obligations that could compete with a security holder's interests.

proposed amendments. More discussion on the relative costs and benefits of the two approaches and why some of the economic effects cannot be quantified follow in later sections.[317]

As discussed in the Proposing Release, the need for more timely disclosure of information in the municipal securities market about financial obligations is highlighted by market developments beginning in 2009 which feature the increasing use of direct placements by issuers and obligated persons as financing alternatives to public offerings of municipal securities.[318] According to the Consolidated Reports of Condition and Income (''Call Report'') filed by financial institutions,[319] the dollar amount of commercial bank loans to state and local governments has nearly tripled since the financial crisis, increasing from $66.5 billion as of the end of 2010 to $190.5 billion by the end of first quarter 2018. In comparison, the dollar amount of municipal securities outstanding remained relatively flat over the same time period.[320]

The use of direct placements or other debt obligations may benefit issuers and obligated persons in the form of convenience or lower borrowing costs relative to a public offering of municipal securities—there is typically no requirement to prepare an offering document or obtain a credit rating, liquidity facility, or bond insurance.[321] On the other hand, the use of these financial obligations may negatively affect existing investors for several reasons. First, the incurred financial obligations, if material, could substantially increase or change an issuer's or obligated person's overall indebtedness and impact its liquidity and overall creditworthiness, and thereby affect the value of the municipal securities held by investors. Second, an issuer or obligated person may agree to covenants of a financial obligation that may negatively affect security holders' contractual rights. For example, the covenants could alter the debt payment priority structure of the issuer's or obligated person's outstanding securities, or pledge the assets previously available to secure the bonds to the lender, both of which could dilute existing security holders' claims or create contingent liquidity risk, credit risk, or refinancing risk. Similarly, ''default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation'' as included in the rule text in paragraph (b)(5)(i)(C)(*16*), could also impact the value of municipal securities held by investors.[322]

However, under the current regulatory framework, investors and other market participants may not have any access or timely access to information related to the incurrence of financial obligations and other events included in the amendments, despite their potential impact on the risks of, and returns to, municipal securities.[323] Moreover, to the extent information about a financial obligation is disclosed and accessible to investors and other market participants, such information currently may not include certain details about a financial obligation.[324] As a result, investors could be making investment decisions on whether to buy, sell or hold municipal securities without current information about an issuer's or obligated person's outstanding debt and other market participants could also be undertaking credit analyses without such information.

As described in Section III.A and the Proposing Release, numerous market participants, including the MSRB, FINRA, academics, and industry groups, have encouraged issuers and obligated persons to voluntarily disclose information about certain financial obligations.[325] However, despite these ongoing efforts, few issuers or obligated persons have made voluntary disclosures of financial obligations, including direct placements, to the MSRB.

The Commission is mindful of the costs imposed by and benefits obtained from its rules. In the Proposing Release, the Commission solicited comments on all aspects of the costs and benefits associated with the amendments, including any effect the Rule may have on efficiency, competition, and capital formation. The Commission has considered these comments, which are discussed in more detail in the sections below, and continues to believe that the amendments to Rule 15c2–12 will facilitate investors' and other market participants' access to more timely and informative disclosure in the secondary market about financial obligations of issuers and obligated persons. The Commission believes that more timely and informative disclosure allows investors to make more informed investment decisions and analysts to produce more informed analyses, and such disclosure can therefore enhance transparency in the municipal securities market and investor protection. The discussion below elaborates on the likely costs and benefits of the amendments and their potential impact on efficiency, competition, and capital formation.

Where possible, the Commission has attempted to quantify the costs, benefits, and effects on efficiency, competition, and capital formation that may result

[317] *See infra* Section V.C.2.i and Section V.D.1.

[318] *See* Proposing Release, *supra* note 3, 82 FR at 13929.

[319] Federal Deposit Insurance Corporation, *Consolidated Reports of Condition and Income, available at https://www.fdic.gov/regulations/resources/call/index.html.* According to the FDIC, every national bank, state member bank, insured state nonmember bank, and savings association is required to file a call report as of the close of business on the last day of each calendar quarter. The dollar amount of commercial bank loans to state and local governments is computed using Call Report data, *available at https://cdr.ffiec.gov/public/.* The dollar amount is the sum of item RCON2107, ''OBLIGATIONS (OTHER THAN SECURITIES AND LEASES) OF STATES AND POLITICAL SUBDIVISIONS IN THE U.S,'' across all the depository institutions for the stated time period. Item RCON2107 is defined as follows: ''Includes all obligations of states and political subdivisions in the United States (including those secured by real estate), other than leases and other those obligations reported as securities issued by such entities in 'Securities Issued by States Political Subdivision in the U.S. (8496, 8497, 8498, and 8499)' or 'Mortgage-backed securities (8500, 8501, 8502, and 8503).' Excludes all such obligations held for trading. States and political subdivisions in the U.S. includes: (1) The fifty states of the United States and the District of Columbia and their counties, municipalities, school districts, irrigation districts, and drainage and sewer districts; and (2) the governments of Puerto Rico and of the U.S. territories and possessions and their political subdivisions.'' *See* Board of Governors of the Federal Reserve System, Micro Data Reference Manual, *available at http://www.federalreserve.gov/apps/mdrm/data-dictionary* (includes detailed variable definition).

[320] As of the end of 2010, the dollar amount of municipal securities outstanding was $3.94 trillion. *See* SIFMA, *US Bond Market Issuance and Outstanding, available at https://www.sifma.org/wp-content/uploads/2017/06/cm-us-bond-market-sifma.xls (''SIFMA Bond Data''). See also* Board of Governors of the Federal Reserve System, Federal Reserve Board Historical Flow of Funds, *available at https://www.federalreserve.gov/datadownload/Choose.aspx?rel=z1* (''Historical Flow of Funds''). As of the end of the first quarter of 2018, the dollar amount of municipal securities outstanding was $3.84 trillion. *See* Flow of Funds, *supra* note 22 at 121 Table L. 212.

[321] *See* Daniel Bergstresser and Peter Orr, *Direct Bank Investment in Municipal Debt,* 35 Mun. Fin. J. 1, 3 (2014) (''Bergstresser and Orr''); California Debt and Investment Advisory Commission, *New Frontiers in Public Finance: A Return to Direct Lending* (Oct. 3, 2012), *available at http://www.treasurer.ca.gov/cdiac/webinars/2012/20121003/presentation.pdf.*

[322] Although historically municipal securities have had significantly lower rates of default than corporate and foreign government bonds, as mentioned in Section II, defaults by issuers and obligated persons have occurred. Since 2011, the municipal securities market has experienced six of the seven largest municipal bankruptcy filings in U.S. history. *See supra* note 28.

[323] *See supra* Section III.A. See also Proposing Release, *supra* note 3, 82 FR at 13929–30.

[324] *Id.*

[325] *See supra* note 52. *See also* Bergstresser and Orr, *supra* note 321.

from the Rule amendments. However, the Commission is unable to quantify some of the economic effects of the amendments because many of the key variables or inputs for calculating such effects are not available. For example, the Commission is unable to reasonably estimate the scope of the improvement in pricing of municipal securities under the amendments. In order to estimate the improvement in pricing, one needs to first estimate the level of the mispricing under both the Rule prior to these amendments and the amended Rule, and to do that requires information about the true value, or fundamental value, of securities. That fundamental value, in turn, depends on a number of factors, many of which are not observable. As one example, credit risk of the issuer or obligated person is a crucial factor in determining the value of its securities. But as already discussed, issuers and obligated persons may incur material financial obligations without disclosing them for an extended period of time under current rules. Since it is not known whether issuers and obligated persons have incurred material financial obligations and the resulting amount of debt they have outstanding, and since the terms of such financial obligations, including interest rate, maturity, and priority structure are also unknown, the Commission cannot measure the change in estimates of issuers' and obligated persons' credit risks that the Commission anticipates would result from this new information. Without robust estimates of credit risk, among other necessary inputs, it is not possible to quantify the improvement in pricing, even if it is assumed the amendments would completely eliminate mispricing.

Similarly, due to an absence of data, the Commission is unable to provide a reasonable estimate of the potential change in borrowing costs issuers or obligated persons may experience as a result of the amendments. For example, loan rate determinants include the characteristics of the issuer or obligated person (*e.g.,* size, credit risk, etc.), loan characteristics (*e.g.,* size of the loan, maturity, priority structure and covenants, etc.), and the issuer's or obligated person's relationship with the lenders (*e.g.,* the length of the relationship and the number of lenders). Because of the unavailability of this information, the Commission is not able to quantify the amendments' impact on borrowing costs.

There are other factors that also limit the Commission's ability to quantify the future economic impact of the amendments. For example, recent federal tax law changes may also affect borrowing costs of issuers and obligated persons as well as investor demand for municipal debt, among other things.[326] Because the impacts from the changes in the federal tax laws and the amendments are likely to overlap, it may not be possible to disentangle the two. In addition, the amendments' impact may vary significantly across different issuers and obligated persons, which poses additional challenges to quantifying the amendments' effects. Additional discussion of these factors and issues on quantification follows in later sections.

B. Economic Baseline

To assess the economic impact of the amendments to Rule 15c2–12, the Commission is using as its baseline the existing regulatory framework for municipal securities disclosure, including Rule 15c2–12 prior to these amendments, and current relevant MSRB rules.

1. The Current Municipal Securities Market

As discussed above and in the Proposing Release, the need for more timely and informative disclosure of financial obligations is highlighted by market developments beginning in 2009, which feature the increasing use of direct placements by issuers and obligated persons as financing alternatives to public offerings of municipal securities. Below is an overview of the current state of the municipal securities market and issuers' and obligated persons' use of direct placements based on data from the Federal Reserve Board's Flow of Funds data,[327] and Call Report data from the FDIC.[328]

According to Flow of Funds data, the notional amount of the total municipal securities outstanding in the U.S. was $3.84 trillion as of the end of the first quarter of 2018.[329] Prior to (and during) the 2008 financial crisis, the amount of municipal securities outstanding was increasing steadily, growing from $2.87 trillion in 2004 to a post-crisis peak of $3.94 trillion in 2010.[330] Since 2010, the overall size of the municipal securities market has remained flat.[331]

However, the involvement of commercial banks in the municipal capital markets has increased dramatically in terms of purchases of municipal securities and extensions of loans to state and local governments and their instrumentalities.[332] U.S. chartered depository institutions' holdings of outstanding municipal securities have grown rapidly, from 6.46% of the total outstanding (or $254.6 billion) in 2010 to 14.4% of the total outstanding (or $554.4 billion) in the first quarter of 2018, an over two-fold increase.[333] The fastest growth has been in direct lending to state and local governments and their instrumentalities. The dollar amount of bank loans to state and local governments has nearly tripled since the 2008 financial crisis, increasing from $66.5 billion at the end of 2010 to $190.5 billion by the end of the first quarter of 2018, or equivalently, an increase from 1.69% of total municipal securities outstanding to 4.95%.[334]

The incurrence of financial obligations can result in an increase in the issuer's or obligated person's outstanding debt, negatively affecting the liquidity and creditworthiness of the issuer or obligated person and the prices of their outstanding municipal securities. However, currently, there is a lack of secondary market disclosure about these financial obligations, a topic that has been discussed by the MSRB, certain market participants, and academics.[335] As a result, investors and other market participants may not have access or timely access to information regarding financial obligations, and such information may not be incorporated in the prices of issuers' or obligated persons' outstanding municipal securities. As discussed in the Proposing Release, recognizing the

[326] *See supra* notes 124, 125, and 126.

[327] Municipal securities are defined in the table description for the Flow of Funds data as follows. ''Municipal securities are obligations issued by state and local governments, nonprofit organizations, and nonfinancial corporate businesses. State and local governments are the primary issuers; detail on both long and short-term (original maturity of 13 months or less) debt is shown. This instrument excludes trade debt of, and U.S. government loans to, state and local governments. Debt issued by nonprofit organizations includes nonprofit hospital bonds and issuance to finance activities such as lending to students. Debt issued by the nonfinancial corporate business sector includes industrial revenue bonds. Most municipal debt is tax-exempt; that is, the interest earned on holdings is exempt from federal income tax. Since 1986, however, some of the debt issued has been taxable, including the Build America Bonds authorized under the American Recovery and Reinvestment Act of 2009.'' *See* Federal Reserve Board, Financial Accounts of the United States: All Table Descriptions, at 31–32 (Mar. 8, 2018) *available at http://www.federalreserve.gov/apps/fof/Guide/z1_tables_description.pdf.*

[328] *See* Call Report, *supra* note 319.

[329] Flow of Funds, *supra* note 22, at 121 Table L. 212.

[330] *See* SIFMA Bond Data, *supra* note 320.

[331] *See id.*

[332] *See* Bergstresser and Orr, *supra* note 321.

[333] *See* SIFMA Bond Data and Historical Flow of Funds, *supra* note 320.

[334] *See* Call Report, *supra* note 319. *See also* SIFMA Bond Data, *supra* note 320.

[335] *See supra* note 52. *See also* Bergstresser and Orr, *supra* note 321.

credit implications of direct placements, at least one rating agency now requires, and other rating agencies strongly encourage, issuers and obligated persons to notify them of the incurrence of direct placements, and to provide all relevant documentation related to such indebtedness.[336] This rating agency also stated it may suspend or withdraw its ratings should issuers and obligated persons fail to provide such notification in a timely manner.[337] While such efforts can induce more disclosure and help mitigate mispricing, each rating agency would have to implement a similar process to collect the same information, and issuers and obligated persons would have to provide identical responses multiple times, which might not be an efficient way to increase disclosure in the municipal securities market.

2. Rule 15c2–12

As discussed above, the Commission first adopted Rule 15c2–12 in 1989 as a means reasonably designed to prevent fraud in the municipal securities market by enhancing the quality, timing, and dissemination of disclosures in the municipal securities primary market.[338] Currently, Rule 15c2–12, most recently amended in 2010, prohibits a Participating Underwriter from purchasing or selling municipal securities in connection with an Offering unless the Participating Underwriter reasonably determines that the issuer or obligated person has undertaken in a continuing disclosure agreement to provide the MSRB with: (1) Annual filings; (2) event notices; and (3) failure to file notices.[339] The Rule prior to these amendments does not impose on a Participating Underwriter any obligation to reasonably determine that an issuer or obligated person has undertaken in its continuing disclosure agreement to disclose the events covered in these amendments. As discussed in Section III.A, investors and other market participants may not learn that the issuer or obligated person has incurred a financial obligation if the issuer or obligated person does not provide annual financial information or audited financial statements to EMMA or does not subsequently issue debt in a primary offering subject to Rule 15c2–12 that results in the provision of a final official statement to EMMA.

Even if investors and other market participants have access to disclosure about an issuer's or obligated person's financial obligations, such access may not be timely if, for example, the issuer or obligated person has not submitted annual financial information or audited financial statements to EMMA in a timely manner or does not frequently issue debt that results in a final official statement being provided to EMMA. Typically, as discussed above and in the Proposing Release, investors and other market participants do not have access to an issuer's or obligated person's annual financial information or audited financial statements until several months or up to a year after the end of the issuer's or obligated person's applicable fiscal year, and a significant amount of time could pass before an issuer's or obligated person's next primary offering subject to Rule 15c2–12.[340]

Furthermore, to the extent the information about financial obligations is disclosed and accessible to investors and other market participants, such information currently may not include certain details about the financial obligations. Specifically, disclosure of a financial obligation in an issuer's or obligated person's financial statements may be a line item about the amount of the financial obligation, and may not provide investors and other market participants with information relating to an issuer's or obligated person's agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect security holders, if material.[341]

3. MSRB Rules

MSRB rules do not address the disclosure of the events covered in the amendments. However, as described above and in the Proposing Release, the MSRB has highlighted the increased use of direct placements as a financing alternative.[342] The MSRB has encouraged issuers to voluntarily disclose direct placements on EMMA,[343] including providing instructions to issuers on how they may provide such disclosures using EMMA. Despite the MSRB's efforts to encourage voluntary disclosure, the number of disclosures made using EMMA has been limited.[344]

In March 2016, the MSRB published a regulatory notice requesting comment on a concept proposal to require municipal advisors to disclose information regarding the direct placements of their municipal entity clients to EMMA.[345] On August 1, 2016, the MSRB announced that it had decided not to pursue the ideas set forth in the MSRB Request for Comment. Many who commented on the MSRB's Request for Comment stated that the best way to ensure disclosure of direct placements is to amend Rule 15c2–12.[346]

4. GASB Statement No. 88

GASB released in April 2018 Statement No. 88, Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements.[347] In issuing the guidance, GASB stated the ''guidance [is] designed to enhance debt-related disclosures in notes to financial statements, including those addressing direct borrowings and direct placements.'' [348] GASB Statement No. 88 states ''[t]he primary objective of this Statement is to improve the information that is disclosed in notes to government financial statements related to debt, including direct borrowings and direct placements. It also clarifies which liabilities governments should include when disclosing information related to debt. This Statement defines debt for purposes of disclosure in notes to financial statements. . . .'' [349]

GASB Statement No. 88 also ''requires that additional essential information related to debt be disclosed in notes to financial statements, including unused lines of credit, assets pledged as collateral for the debt, and terms specified in debt agreements related to significant events of default with finance-related consequences, significant termination events with finance-related consequences, and significant subjective accelerations clauses.'' [350]

As discussed more fully above, although GASB Statement No. 88 could result in the disclosure of more information related to debt disclosed in issuers' or obligated persons' audited financial statements consistent with that

[336] *See* Proposing Release *supra* note 3, 82 FR at 13934.

[337] *See id.*

[338] *See supra* Section II.

[339] *See supra* notes 16, 17, and 18.

[340] *See* Proposing Release, *supra* note 3, 82 FR at 13929.

[341] *See supra* note 97.

[342] *See* Proposing Release, *supra* note 3, 82 FR at 13933 and note 76.

[343] *See supra* note 52.

[344] *See supra* note 34.

[345] *See id.*

[346] *See* Proposing Release, *supra* note 3, 82 FR at 13933 and note 76.

[347] *See* GASB Statement No. 88—Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements, *supra* note 44.

[348] *See* GASB, *GASB Establishes New Guidance on Debt Disclosures, Addresses Direct Borrowings and Direct Placements* (Apr. 2, 2018), *available at http://www.gasb.org/cs/Satellite?c=GASBContent_C&cid=1176170309590&d=Touch&pagename=GASB%2FGASBContent_C%2FGASBNewsPage.*

[349] *See* GASB Statement No. 88—Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements, *supra* note 44.

[350] *Id.*

under new paragraph (b)(5)(i)(C)(*15*) of the Rule, the new guidance does not improve the timeliness of the disclosure investors and market participants will receive, nor does it cover the events under paragraph (b)(5)(i)(C)(*16*) of the Rule.[351] Additionally, currently, not all state and local governments follow GASB standards for their annual financial reports.[352]

5. Federal Tax Law Changes

Recent changes to federal tax laws [353] could impact, or may have already impacted, the municipal securities market in several ways. First, because the new law caps the state and local tax deduction allowed to be taken on an individual federal income tax return, the law may increase the demand for tax-free investments such as municipal bonds, driving up bond prices and driving down bond yields.[354]

Second, a decline in the federal corporate income tax rate may increase the interest rates on issuers' or obligated persons' direct placements, reducing the demand for direct placements. Prior to the changes in the federal tax law, municipal issuers and obligated persons enjoyed lower interest rates than their corporate counterparts in part because banks benefitted from tax-free interest income. The reduction in the corporate income tax rate diminishes the relative benefit for the municipal tax exemption, making direct placements less attractive.[355] In addition, as discussed above, interest rates on issuers' and obligated persons' direct placements may also increase as a result of certain provisions being triggered by the reduction in the federal corporate income tax rate,[356] reducing the demand for direct placements.

Third, as discussed above, because the new tax law eliminated state and local governments' ability to use tax-exempt bonds to advance refund outstanding bonds, some issuers and obligated persons may be incentivized to use complex strategies and derivative products to refund outstanding bond issues,[357] potentially increasing these issuers' and obligated persons' credit risk.

6. Existing State of Efficiency, Competition, and Capital Formation

Under current rules, certain inefficiencies may arise in the municipal securities market as a result of the lack of timely disclosure of information on important credit events. As discussed above and in the Proposing Release, currently investors and other market participants may not learn about the new information related to the issuer's or obligated person's financial obligations for months or over a year after the end of the issuer's or obligated person's fiscal year. Since the market is not able to incorporate into prices the most recent credit risk information about issuers and obligated persons, the securities offered by issuers or obligated persons of different credit risks could be priced identically. For example, all else equal, an issuer or obligated person that incurs a large amount of undisclosed financial obligations may be more likely to default on its payment obligations than one that does not. However, in the absence of public disclosure, market participants could assign the same price to both issuers' or obligated persons' securities. Mispricing on the basis of undisclosed risks could lead to inefficiency in the allocation of financial resources across high- and low-risk issuers and obligated persons.

Rule 15c2–12 prior to these amendments may create competitive advantages for certain market participants. As discussed above and in the Proposing Release, because the market might not be able to differentiate securities offered by high-risk issuers and obligated persons from those offered by low-risk issuers and obligated persons because of lack of disclosures under Rule 15c2–12 prior to these amendments, low-risk issuers and obligated persons could be subject to disadvantages if they are unable to credibly demonstrate to market participants that they are low-risk. As another example, municipal securities investors are also in a disadvantageous position relative to private lenders. As discussed above and in the Proposing Release, the terms of a financial obligation incurred by an issuer or obligated person may include covenants that alter the debt payment priority structure of the issuer's or obligated person's outstanding securities, or give the lender a lien on assets or revenues that were previously pledged to secure repayment of an issuer's or obligated person's outstanding municipal securities, effectively diluting existing security holders' claims and adversely affecting their contractual rights without their knowledge. In the Commission's view, the existence of these scenarios does not represent a fully competitive market.

The price inefficiencies in the municipal securities market and the disparity in available information for different types of investors could result in inefficient allocation of capital. For example, as mentioned above, the inability of the market to differentiate high-risk issuers or obligated persons from low-risk ones could lead to a mismatch of investors to securities appropriate for their risk preferences, leading to suboptimal allocation of capital.

C. Benefits, Costs and Effects on Efficiency, Competition, and Capital Formation

The Commission has considered the potential costs and benefits associated with the amendments and the comments received regarding the proposed amendments.[358] The Commission continues to believe that the primary economic benefits of the amendments stem from the potential improvement in the timeliness and informativeness of municipal securities disclosure. The Commission believes that the Rule 15c2–12 amendments will facilitate investors' access to more timely and informative disclosure, help investors make more informed investment decisions, and enhance investor protection. The Commission also believes that improved disclosure can assist other market participants, including rating agencies and municipal securities analysts, in providing more accurate credit ratings and credit analyses as they will have more timely

[351] *See supra* note 44.

[352] *See, e.g.,* Emilia Istrate, Cecilia Mills and Daniel Brookmyer, National Association of Counties, *Counting Money: State and GASB Standards for County Financial Reporting* (Feb. 2016), *available at http://www.naco.org/sites/default/files/documents/Counting%20Money_Full%20Report.pdf.*

[353] *See supra* note 125.

[354] *See, e.g.,* Carla Fried, *The Tax Law Gives Municipal Bonds a New Allure,* N.Y. Times, (Feb. 23, 2018), *available at https://www.nytimes.com/2018/02/23/business/the-tax-law-gives-municipal-bonds-a-new-allure.html.*

[355] *See, e.g.,* Kyle Glazier, *Why Muni Issuers Are Eschewing Bank Loans,* The Bond Buyer, (May 21, 2018), *available at https://www.bondbuyer.com/news/why-muni-issuers-are-eschewing-bank-loans* (noting that ''issuers are already removing direct bank loans from their portfolios in favor of other types of more traditional debt thanks to the new tax law as well as rising interest rate'').

[356] *See supra* notes 124 and 126.

[357] *See, e.g.,* Lynn Hume, *Alternatives to Tax-exempt Advance Refundings Would Cost Issuers,* The Bond Buyer (Nov. 22, 2017), *available at https://www.bondbuyer.com/news/issuers-have-costlier-alternatives-to-advance-refundings;* GFOA, *Potential Impacts of Tax Reform on Outstanding and Future Municipal Debt Issuance, available at http://www.gfoa.org/potential-impacts-tax-reform-outstanding-and-future-municipal-debt-issuance; see also supra* note 139. *See also supra* note 150.

[358] The Commission understands that it is possible that the issuer or obligated person may not comply with its previous continuing disclosure undertakings and may not provide the MSRB with notice of the events pursuant to Rule 15c2–12 amendments, in which case, the actual costs and benefits of the amendments would depend on the issuer's or obligated person's commitment to disclosure.

access to information regarding an issuer's or obligated person's outstanding debt. Disclosure that is both more timely and informative can positively affect efficiency, competition, and capital formation.

At the same time, the Commission continues to recognize that the amendments will introduce costs to relevant parties, including issuers, obligated persons, dealers, and lenders. However, it is the Commission's belief that the costs are justified in light of the benefits. A discussion of the economic costs and benefits of the amendments, including the effects on efficiency, competition, and capital formation, is set forth in more detail below.

1. Anticipated Benefits of Rule 15c2–12 Amendments

i. Benefits to Investors

The Commission believes that these amendments may yield several benefits to municipal securities investors. First, the amendments will facilitate investors' access to more timely and informative disclosures about an issuer's or obligated person's financial obligations, and thereby assist them in making more informed investment decisions when trading in the secondary market.

As discussed in the Proposing Release, the information regarding the events described in the amendments is relevant for investors' investment decision making. For example, the incurrence of a financial obligation that results in an increase or change in an issuer's or obligated person's outstanding debt may impact the issuer's or obligated person's liquidity and overall creditworthiness. For another example, an agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation, any of which affect security holders, may result in, among other things, contingent liquidity and credit risks that potentially impact the issuer's or obligated person's liquidity and overall creditworthiness and reduce value for existing security holders.[359] The occurrence of a default, event of acceleration, termination event, modification of terms, or other similar event under terms of a financial obligation of the issuer or obligated person, any of which reflects financial difficulties, could provide relevant information regarding whether the financial condition of the issuer or the obligated person has changed or worsened, and whether the issuer or obligated person has agreed to new terms that would provide the counterparty with superior rights to assets or revenues that were previously pledged to existing security holders.[360] All these events contain relevant information about the underlying risk of a municipal security, and can have a direct impact on its pricing. Without such information, the prices of municipal securities could be distorted from their fundamental value in both the primary and secondary markets.

However, currently, investors and other market participants may not have any access or timely access to information related to the incurrence of financial obligations and other events included in the amendments. For example, investors and other market participants may not learn of these events if the issuer or obligated person does not provide annual financial information or audited financial statements to EMMA or does not subsequently issue debt in a primary offering subject to Rule 15c2–12 that results in the provision of a final official statement to EMMA. Further, even if investors and other market participants have access to disclosure about these events, such access may not be timely if, for example, the issuer or obligated person has not submitted annual financial information or audited financial statements to EMMA in a timely manner or does not frequently issue debt that results in a final official statement being provided to EMMA. Typically, as discussed above and in the Proposing Release, investors and other market participants do not have access to an issuer's or obligated person's annual financial information or audited financial statements until several months or up to a year after the end of the issuer's or obligated person's applicable fiscal year, and a significant amount of time could pass before an issuer's or obligated person's next primary offering subject to Rule 15c2–12.

Moreover, to the extent the information about financial obligations is disclosed and accessible to investors and other market participants, such information currently may not include certain details. Specifically, the disclosure may include only the existence of the financial obligation that the issuer or obligated person has incurred, but not specified material terms of the financial obligation that can affect security holders, including those terms that, for example, affect security holders' priority rights. Therefore, existing security holders could be making investment decisions without the knowledge that the value of the securities and their contractual rights have been adversely impacted, and potential investors could be buying these securities at an inflated price. As such, the current level of disclosure regarding an issuer's or obligated person's financial obligations is neither timely nor adequately informative.

To the extent that investors in the municipal securities market rely on credit ratings as a meaningful indicator of credit risk, the recent efforts of certain credit rating agencies to collect information from issuers and obligated persons about the incurrence of direct placements may help improve the accuracy of credit ratings and mitigate potential mispricing in the municipal securities market.[361] However, because not all credit rating agencies require information on direct placements to provide a rating, and there are other undisclosed financial obligations and significant events (such as defaults) that may affect the issuers' and obligated persons' creditworthiness besides the incurrence of financial obligations, such efforts alone are unlikely to remove all potential mispricing related to direct placements.

Under the amendments to Rule 15c2–12, Participating Underwriters in an Offering are required to reasonably determine that an issuer or obligated person has agreed in its continuing disclosure agreement to provide notices for the new events within ten business days. Consequently, pursuant to the amendments, municipal securities investors and other market participants will have access to the specified disclosures within ten business days as opposed to waiting for the issuer's or obligated person's next primary offering subject to Rule 15c2–12, waiting for the release of annual financial information or audited financial statements, or having no access to such information at all. In addition, the event notices generally should include a description of material terms of the financial obligations, which might include the date of incurrence, principal amount, maturity and amortization, interest rate, if fixed, or method of computation, if variable (and any default rates),[362] so the disclosures provided to the MSRB should be informative about not just the existence of the incurred financial obligation, but generally should also include additional details about the

[359] *See* Proposing Release *supra* note 3, 82 FR at 13935–36.

[360] *See id.* at 13940.

[361] *See supra* note 336. For academic evidence on pricing effect of credit rating agencies' actions, *see* John R. M. Hand, Robert W. Holthausen, and Richard W. Leftwich, *The Effect of Bond Rating Agency Announcements on Bond and Stock Prices,* 47 J. Fin. 733 (1992).

[362] *See supra* Section III.A.1.iii.

incurred financial obligation. More timely and informative disclosure can help reduce mispricing in the municipal securities market, and allow investors to make more accurate assessments of the risks associated with their investments, and ultimately allow them to make more informed investment decisions.[363]

Second, more timely and informative disclosures may reduce the information disadvantage investors have relative to other more informed parties such as issuers, obligated persons, counterparties, and lenders, and enhance their protection. As discussed above and in the Proposing Release, for example, a bank loan agreement could alter the debt payment priority structure of the issuer's or obligated person's outstanding securities, or give the lender a lien on assets or revenues that also secure the repayment of an issuer's or obligated person's outstanding municipal securities, diluting existing security holders' claims and adversely affecting their contractual rights. However, under the Rule prior to these amendments, existing security holders may not learn about such events and may therefore be unable to take any actions they might have taken had they been informed, such as exiting their position. More timely and informative disclosure of the events covered in the amendments should promote a fairer information environment that allows current investors to monitor whether their contractual rights have been negatively impacted by undisclosed financial obligations and take appropriate actions.

ii. Benefits to Issuers or Obligated Persons

In the Proposing Release, the Commission discussed that the amendments would benefit issuers and obligated persons because greater transparency regarding an issuer's or obligated person's financial obligations might lead to a decrease in borrowing costs, particularly the costs associated with their public debt. One comment the Commission received urged the Commission to further study borrowing costs, because the commenter asserted that the Commission ''does not genuinely address systemic increased borrowing costs that may result from this rule.'' [364] The Commission discussed the potential for increased borrowing costs in its proposal for amendments to Rule 15c2–12.[365]

As discussed in the Proposing Release, in the context of corporate disclosure, economic theories suggest information asymmetry can lead to an adverse selection problem and reduce the level of liquidity.[366] In an asymmetric information environment, uninformed investors recognize that they may be disadvantaged when trading with privately or better informed counterparties, and therefore either price-protect or exit the market to minimize possible losses from trading under such circumstances. Both of these actions can reduce the liquidity in the corporate securities market. Because illiquidity and high bid-ask spreads impose transaction costs on investors, and investors demand compensation for the transaction costs they bear, high illiquidity and information asymmetry lead to high cost of capital.[367] Therefore, by committing to increased levels of disclosure, a firm can reduce information asymmetry, and thereby mitigate the risk of adverse selection faced by investors and the discount they demand, and ultimately decrease the firm's cost of capital. The arguments linking information asymmetry and adverse selection to cost of capital apply to financial markets more generally. In particular, the Commission believes that a similar analysis can be applied to municipal securities, and therefore, the amendments should result in greater municipal securities disclosures and may decrease the cost of public debt for issuers and obligated persons.

The Commission continues to believe that the additional disclosures are likely to reduce borrowing costs for issuers or obligated persons. The Commission has further examined academic studies on the relationship between disclosures and municipal borrowing costs in light of commenter concerns. While relatively limited, most of the available studies on disclosure and municipal borrowing costs provide evidence that more disclosure regulation or stringent accounting and auditing requirements are associated with lower municipal borrowing costs. This literature also supports the Commission's view that disclosure reduces information asymmetry and the cost of capital.[368]

Also in response to the commenter's concern, the Commission further considered the amendments' impact on the cost of issuers' and obligated persons' private debt, including direct placements and other financial obligations. As discussed in the Proposing Release, the amendments should promote competition for investment opportunities between municipal securities investors and private lenders by reducing information asymmetry.[369] Accordingly, it is possible that increased disclosure from municipal issuers and obligated persons may result in lower costs of privately placed debt for them. Additionally, the potential decrease in the cost of public debt as a result of the amendments could also put competitive pressure on loan pricing, and drive down the cost of private debt including direct placements and other financial obligations. Limited existing research on the cost of private debt finds that companies that consistently make detailed, timely, and informative disclosures face lower interest costs on private debt contracts.[370] Other publicly available information such as auditor assurance is also shown to be used by private lenders to determine loan rates.[371] These findings suggest that, despite lenders' ability to gather private information

[363] As discussed above in Section V.B.5, the amendments could be particularly informative in light of the recent changes to federal tax law. The tax reform bill passed in December 2017 eliminated state and local governments' ability to use tax-exempt bonds to advance refund outstanding bonds, which may incentivize some issuers to use complex strategies and derivative products to refund outstanding bond issues. *See supra* note 309 and accompanying text. These derivatives entered into in connection with a debt obligation would be disclosed under the amendments, and keep investors and other market participants informed about the credit risk associated with the derivatives.

[364] *See* Lisante Letter.

[365] *See* Proposing Release, *supra* note 3, 82 FR at 13952.

[366] *See* Proposing Release, *supra* note 3, 82 FR at 13952 (citing Douglas W. Diamond and Robert E. Verrecchia, *Disclosure, Liquidity, and the Cost of Capital,* 46 J. Fin. 1325 (1991)).

[367] *See* Proposing Release, *supra* note 3, 82 FR at 13952.

[368] *See* William R. Baber and Angela K. Gore, *Consequences of GAAP Disclosure Regulation: Evidence from Municipal Debt Issues,* 83 Acct. Rev. 565 (2008). *See also* Robert W. Ingram and Ronald M. Copeland, *Municipal Market Measures and Reporting Practices: An Extension,* 20 J. Acct. Res. 766 (1982). *See also* Earl D. Benson, Barry R. Marks and Krishnamurthy K. Raman, *State Regulation of Accounting Practices and Municipal Borrowing Costs,* 3 J. Acct. & Pub. Pol'y 107 (1984). *See also* Lisa M. Fairchild and Timothy W. Koch, *The Impact of State Disclosure Requirements on Municipal Yields,* 51 Nat'l Tax J. 733 (1998).

For additional reference to borrowing costs in corporate securities markets, *see also* Christian Leuz and Peter D. Wysocki, *The Economics of Disclosure and Financial Reporting Regulation: Evidence and Suggestions for Future Research,* 54 J. Acct. Res. 525 (2016); Thomas E. Copeland and Dan Galai, *Information Effects on the Bid-Ask Spread,* 38 J. Fin. 1457 (1983); David Easley and Maureen O'Hara, *Price, Trade Size, and Information in Securities Markets,* 19 J. Fin. Econ. 69 (1987); David Easley and Maureen O'Hara, *Information and the Cost of Capital,* 59 J. Fin. 1553 (2004); Yakov Amihud and Haim Mendelson, *Asset Pricing and the Bid-Ask Spread,* 17 J. Fin. 223 (1986).

[369] *See* Proposing Release, *supra* note 3, 82 FR at 13954.

[370] *See* Sumon C. Mazumdar and Partha Sengupta, *Disclosure and the Loan Spread on Private Debt,* 61 Fin. Analysts J. 83 (2005).

[371] *See* David W. Blackwell, Thomas R. Noland and Drew B. Winters, *The Value of Auditor Assurance: Evidence from Loan Pricing,* 36 J. Acct. Res. 57 (1998).

from borrowers, they still incorporate the quality of a company's disclosure in their estimation of its default risk, a primary determinant of loan pricing.[372]

Overall, the Commission believes that the amendments could benefit issuers and obligated persons by reducing the cost of both publicly issued and privately placed debt including direct placements and other financial obligations. The Commission also recognizes that borrowing costs could increase in some cases as a result of the amendments, which would constitute a cost to issuers and obligated persons. More discussion on the cost and overall impact of the amendments will be provided in a later section.[373]

iii. Benefits to Rating Agencies and Municipal Analysts

The Commission continues to believe that the amendments will help rating agencies and municipal analysts gain access to more updated information about the issuer's and obligated person's credit and financial position at a lower cost. As discussed in the Proposing Release, rating agencies and municipal analysts have stated on a number of occasions that direct placements can have credit implications for ratings on an issuer's or obligated person's outstanding municipal securities.[374] Rating agencies must expend resources to collect information about financial obligations including direct placements to provide more accurate ratings. One rating agency stated that it would suspend or withdraw ratings if issuers or obligated persons do not provide such notification in a timely manner.[375] The process for suspending or withdrawing ratings could also be costly for a rating agency.[376] The amendments may reduce the need for rating agencies or analysts to separately implement a process to gain more timely access to the information regarding issuers' and obligated persons' financial obligations. Therefore, under the amendments, rating agencies and municipal analysts may have access to information they need to produce more accurate credit ratings and analyses at a lower cost. A portion of any cost savings may be passed through to investors and represent a benefit to them depending on how much they rely on rating agencies for information.

2. Anticipated Costs of the Rule 15c2–12 Amendments

i. Costs to Issuers and Obligated Persons

The Commission expects that, under the amendments, issuers and obligated persons will experience an increase in administrative costs from undertaking in their continuing disclosure agreements to produce the additional event notices. As discussed above,[377] an advantage of a direct placement versus a public offering of municipal securities is the lower costs because, among other things, there is no requirement to prepare a public offering document for the borrowing transaction. Under the amendments, Participating Underwriters in Offerings will be required to reasonably determine that issuers or obligated persons have undertaken in a continuing disclosure agreement to submit event notices to the MSRB within ten business days of the events. Issuers and obligated persons providing notices in a manner consistent with the amendments will incur a cost to do so.

As discussed in Section IV.D.2 and Section IV.E.2, after carefully considering the comments received, the Commission is revising certain estimates of the annual paperwork burden and related cost for all issuers and obligated persons.[378] According to these new estimates, the Commission currently anticipates that issuers and obligated persons will incur an annual total cost of $4,928,000 in the preparation of additional event notices.[379] The Commission also estimates that issuers and obligated persons will incur an additional estimated annual cost of $819,000 in fees for designated agents to assist in the submission of event notices.[380] In addition, the Commission estimates that each issuer or obligated person, if it employs an outside attorney to update its template for continuing disclosure agreements, will incur a cost of approximately $100, for a one-time total cost of $2,800,000 for all issuers and obligated persons.[381]

Another area of inquiry is the potential of the amendments and resulting disclosures to increase the cost of financial obligations for issuers and obligated persons. In response to the comment mentioned above,[382] the Commission has also further considered whether borrowing costs may increase under the amendments. As discussed above and in the Proposing Release, currently, an issuer or obligated person may agree to provide superior rights to the counterparty in assets or revenues that were previously pledged to existing security holders when they incur a financial obligation without disclosing this information to the public. Public disclosure of such arrangements under the amendments, therefore, could potentially reduce opportunities for lenders to move ahead in the priority queue either because issuers and obligated persons are discouraged from providing lenders with priority at the current level, or because investors demand covenants which prevent issuers and obligated persons from doing so and reduce the benefits lenders currently enjoy. Currently, while investors may also claim their rights under the covenants, they may not be aware that their rights have been affected without the disclosures, and therefore may fail to make such claims.

In addition, as also discussed above and in the Proposing Release, existing banking literature suggests that lenders develop proprietary information about the borrower during a lending relationship because they actively engage in information gathering and

[372] *See supra* note 370.

[373] *See infra* Section V.C.2.i.

[374] *See* Moody's Investors Service, *Special Comment: Direct Bank Loans Carry Credit Risks Similar to Variable Rate Demand Bonds for Public Finance Issuers* (Sept. 15, 2011); *see also* Proposing Release, *supra* note 3, 82 FR at 13934 note 81.

[375] *See* Proposing Release, *supra* note 3, 82 FR at 13934 note 81.

[376] *See id.*

[377] *See supra* Section V.A.

[378] *See supra* Section IV.D.2 and Section IV.E.2.

[379] As discussed in Section IV.E.2, the amendments are estimated to generate 2,200 additional event notices, half of which will be prepared internally, at an average of four hours per notice, and half of which will require an average of four hours of internal work and four hours of external work per notice. 1,100 (number of event notices solely using internal compliance attorney) × 4 (estimated time for internal attorney to assist in the preparation of such event notice) × $360 (hourly wage for an internal attorney) + 1,100 (number of event notices requiring both internal compliance attorney and outside counsel) × (4 (estimated time for outside attorney to assist in the preparation of such event notice) × $400 (hourly wage for an outside attorney) + 4 (estimated time for an internal attorney to assist in the preparation of such event notice) × $360 (hourly wage for an internal attorney)) = $4,928,000. The $360 per hour estimate for an internal compliance attorney is from SIFMA's *Management and Professional Earnings in the Securities Industry* (2013), modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, and adjusted for inflation. For a discussion on the cost of retaining outside professionals, *see supra* note 310.

[380] *See supra* Section IV.E.2. As discussed above, the Commission estimated that 65% of issuers may use designated agents to submit some or all of their continuing disclosure documents to the MSRB. Based on the Commission's revised estimates of the number of issuers, the Commission estimates that the average total annual cost that would be incurred by issuers that use the services of a designated agent would be $13,650,000. *See supra* note 294. The Commission estimates that the two amendments would cause issuers that use the services of a designated agent to incur additional costs of six percent, or $819,000 ($13,650,000 × 6% = $819,000), for a total of $14,469,000. *See supra* note 295.

[381] *See supra* note 302.

[382] *See* Lisante Letter.

monitoring.[383] Lenders and borrowers tend to form stable relationships, and such stability provides economies of scale for the lenders to offset the costly information production and monitoring and benefits the borrowers by increasing the availability of financing and lowering overall borrowing costs.

Therefore, to the extent that the disclosure of material terms of financial obligations may reduce lenders' information advantage, there could be incentive for lenders to increase loan rates as a way of compensating for the lost benefit. However, as stated above, the amendments do not specify or dictate the form and content of the disclosure.[384] Therefore, the level of disclosure's impact on the lending relationship and rate will depend partly upon the amount of the disclosure issuers and obligated persons actually provide in their event notices. The Commission also notes that, regardless of the amount of the increase in disclosure, lenders' information advantage over other investors still remains because of the very nature of the lending business—lenders actively engage in information gathering and monitoring of the borrowers and develop proprietary information in the course of the lending relationship, and the loans they make are likely to remain senior to other obligations in the debt priority queue because of the lending relationship they form.[385] The amendments' impact on existing lending relationships thus may be limited.

One commenter expressed concerns over ''the systemic increased borrowing costs that may result from this rule could drastically affect [the] entire municipal direct placement market and possibly shut many smaller actors out of the market completely.'' [386] The Commission has carefully considered the comment and further assessed the amendments' likely effects on issuers' and obligated persons' borrowing costs. While the Commission recognizes that the amendments may potentially increase the cost of private debt including direct placements and other financial obligations as discussed above, it has also identified and elaborated on, in prior sections, the multiple forces that could drive down the borrowing costs as a result of the increased disclosure, and potentially offset the cost increases posited by the commenter.[387] As stated above, the increase in disclosure could decrease the information asymmetry in the market and therefore the cost of public debt.[388] Also as stated above, cheaper public debt may drive down the cost of private debt including direct placements and other financial obligations, because lenders may consider offering lower rates in order to stay competitive.[389] Moreover, as discussed before, existing empirical research does not provide evidence that disclosure increases the cost of the privately placed debt, at least in the case of corporate debt.[390] Therefore, the Commission believes that the increase in disclosure would not necessarily lead to an increase in borrowing costs for issuers and obligated persons when the countervailing effects of the amendments are viewed in totality. The Commission continues to believe that there is a greater likelihood for the overall borrowing costs to decrease than increase.

Regarding the commenter's concern on the amendments' impact on small issuers and obligated persons, the Commission recognizes that certain small issuers and obligated persons that are particularly reliant on private debt including direct placements or other financial obligations may choose to stay out of the public debt market should they find the additional disclosure becomes too burdensome or costly; however, the amendments should not significantly affect their ability to borrow in the private market given that this has been their primary funding source. Therefore, the Commission disagrees with the commenter's assessment that amendments' impact on the municipal direct placement market may ''possibly shut many smaller actors out of the market completely.'' [391]

Currently, the Commission is unable to provide reasonable estimates of the potential change in borrowing costs as a result of the amendments. The same comment also expressed concern that the Commission's attempts to quantify the amendments' potential impact on borrowing costs may be insufficient.[392] The Commission has carefully considered the comment. However, our assessment remains unchanged for several reasons.

First, issuers' and obligated persons' borrowing costs include two components—the cost of public debt and the cost of privately placed debt including direct placements and other financial obligations. Both types of costs may vary significantly depending on a number of factors. For example, yields for municipal bonds offered to the public are affected by, among other things, the size of the issuance, credit rating, underwriter reputation, maturity and credit enhancement for bonds. Loan rate determinants include the characteristics of the issuer or obligated person (*e.g.,* size, credit risk, etc.), loan characteristics (*e.g.,* size of the loan, maturity, priority structure and covenants, etc.), and the issuer's or obligated person's relationship with lenders (*e.g.,* the length of the relationship and the number of lenders). While some of these loan rate determinants are observable, many are not readily available or are unobservable, such as loan level characteristics and issuers' or obligated persons' relationship with lenders. Without such information, we are unable to provide a reasonable estimate on how much borrowing costs may increase or decrease. In addition, as discussed above, the increase in disclosure may have both increasing and decreasing effects on borrowing costs.

Second, the amendments' impact on borrowing costs may vary significantly across different types of issuers or obligated persons. For example, under the current Rule, securities issued by issuers or obligated persons that have incurred a significant amount of previously undisclosed financial obligations may be priced the same by the market as those that did not incur such undisclosed financial obligations. However, if these financial obligations were incurred after the implementation of the amendments, the enhanced disclosure would allow the market to incorporate the credit risk information and differentiate the two types of issuers or obligated persons when pricing their outstanding securities. As a result, all else equal, the issuers or obligated persons that incurred financial obligations could experience an increase in borrowing costs (*e.g.,* bond yields) while those that did not incur financial obligations may not. Similarly, the amendments may also have a

[383] *See* Mitchell A. Petersen and Raghuram G. Rajan, *The Benefits of Lending Relationships: Evidence from Small Business Data,* 49 J. Fin. 3 (1994).

[384] *See supra* Section III.A.1.iii.

[385] According to academic literature, it is a generally accepted fact that bank debt is typically senior to that of other creditors, particularly for small-business borrowers. *See* Stanley D. Longhofer and João A. C. Santos, *The Importance of Bank Seniority for Relationship Lending,* 9 J. Fin. Interm. 57 (2000). *See also* Ivo Welch, *Why Is Bank Debt Senior? A Theory of Asymmetry and Claim Priority Based on Influence Costs,* 10 Rev. Fin. Stud. 1203 (1997). Recent evidence suggests that this is also true for municipalities. *See infra* note 393.

[386] *See* Lisante Letter.

[387] *See supra* Section V.C.1.ii.

[388] *See id.*

[389] *See id.*

[390] *See id.*

[391] *See* Lisante Letter.

[392] *Id.*

differential impact on borrowing costs for issuers or obligated persons depending on their level of reliance on private borrowing. Issuers or obligated persons that are more reliant on private borrowing may experience less benefit or more cost than those that are not. For example, if some issuers or obligated persons are mostly funded by private debt, including direct placements and other financial obligations, and have few public bond issuances outstanding, they may disclose more information regarding their financial obligations under the amendments, assuming they keep the same borrowing pattern or debt structure, but may have little to gain from reductions in the cost of issuing public debt, if any, associated with their disclosures. On the other hand, if issuers or obligated persons are primarily funded by public debt, their compliance costs under the amendments will be relatively lower because they incur fewer financial obligations, while the potential benefit from the decrease in the cost of public debt would be larger. To the extent that this difference in funding structure could be particularly the case for small and large issuers and obligated persons,[393] they may be impacted differentially by the amendments. Again, we are unable to estimate the impact on borrowing costs because of the unavailability of loan-level data. In addition, borrowing costs could also depend on the actual level of the disclosure issuers or obligated persons committed themselves to provide under their continuing disclosure agreements, which could vary significantly across issuers and obligated persons.

Finally, recent changes to federal tax laws [394] may also impact the borrowing costs of issuers and obligated persons in ways that complicate assessment of the likely impacts of the amendments on borrowing costs in the future when certain data (*e.g.,* bond yields) become available. As discussed above,[395] on one hand, because the new law caps the state and local tax deduction allowed to be taken on an individual federal income tax return, the law may increase the demand for tax-free investments such as municipal bonds, driving up bond prices and driving down yields.[396] On the other hand, as also discussed above, a decline in the federal corporate income tax rate may increase the interest rates on issuers' or obligated persons' direct placements because of the diminished relative benefit for the municipal tax exemption as well as certain gross-up provisions being triggered.[397] Because the impacts from the tax law changes and the amendments are likely to overlap, it may not be possible to disentangle the two.

ii. Costs to Dealers

Pursuant to Rule 15c2–12, a dealer acting as a Participating Underwriter in an Offering has an existing obligation to contract to receive the final official statement.[398] The final official statement includes, among other things, a description of any instances in the previous five years in which the issuer or obligated person failed to comply, in all material respects, with any previous undertakings in a written contract or agreement to provide certain continuing disclosures.[399] Dealers acting as Participating Underwriters in an Offering also have an existing obligation under Rule 15c2–12 to reasonably determine that an issuer or obligated person has undertaken in its continuing disclosure agreement, for the benefit of holders of the municipal securities, to provide notice to the MSRB of specified events. In addition, dealers are prohibited under Rule 15c2–12 from recommending the purchase or sale of municipal securities unless they have procedures in place that provide reasonable assurance that they will promptly receive event notices and failure to file notices with respect to the recommended securities. Dealers typically use EMMA or other third party vendors to satisfy this existing obligation.

As a practical matter, dealers' obligations under the Rule 15c2–12 amendments will include verifying that the continuing disclosure agreement contains an undertaking by the issuer or obligated person to provide the additional event notices to the MSRB, verifying whether the issuer or obligated person has complied with its prior undertakings, and verifying whether the final official statement includes, among other things, an accurate description of the issuer's or obligated person's prior compliance with continuing disclosure obligations.

As discussed in Section IV.D.1, the Commission is revising its estimate of the one-time and annual burden on dealers.[400] Meanwhile, the Commission continues to believe that dealers would not incur any additional external costs and that the task of preparing and issuing a notice advising the dealer's employees about the amendments is consistent with the type of compliance work that a dealer typically handles internally.[401] Based on the new estimates, as a result of the amendments, dealers would incur an annual internal compliance cost of $5,366,880 for the first year, and $4,916,880 in subsequent years.[402]

iii. Costs to Lenders

Under the amendments, lenders may incur costs stemming from the disclosure about financial obligations and the terms of the agreements creating such obligations. As discussed above and in the Proposing Release, lenders may enjoy certain priority rights in these financial arrangements which may not be publicly disclosed or reflected in the price of the issuer's or obligated person's outstanding municipal securities. However, as discussed above, while the increased level of disclosure may reduce lenders' information advantage over other investors, it does not eliminate this advantage because private lenders such as banks actively engage in information gathering and monitoring of borrowers and thus develop proprietary information during the lending relationship. Disclosure is also unlikely to alter the lender's senior status in the debt priority queue. To the extent that the benefits from a previously undisclosed financial arrangement are reduced by the increased disclosure, lenders will incur a cost, but such a cost translates into benefits to investors, because the benefit originally accrued to lenders at the expense of investors in municipal securities.

In addition, since the amendments may decrease the costs incurred by issuers and obligated persons in connection with the issuance of public debt and increase the demand for public issuance, lenders may experience reduced investment opportunities, or may have to decrease loan rates in order to stay competitive, either of which

[393] A recent unpublished working paper finds that small municipalities are particularly reliant on private bank financing. *See* Ivan Ivanov and Tom Zimmermann, *Claim Dilution in the Municipal Debt Market,* Finance and Economics Discussion Series 2018–011 (2018), *available at https://doi.org/10.17016/FEDS.2018.011.*

[394] *See supra* note 125.

[395] *See supra* Section V.B.5.

[396] *See, e.g.,* supra note 354 and accompanying text.

[397] *See supra* notes 124, 126, and 355.

[398] 17 CFR 240.15c2–12(a) and (b)(3).

[399] 17 CFR 240.15c2–12(f)(3).

[400] *See supra* Section IV.D.1.

[401] *See supra* Section IV.E.1.

[402] First year costs: 1,250 hours (first year burden on dealers) × $360 (average hourly cost of internal compliance attorney) + 13,658 hours (annual increased hourly burden on dealers due to the amendments) × $360 (average hourly cost of internal compliance attorney) = $5,366,880. Subsequent annual costs: 13,658 hours (annual increased hourly burden on dealers due to the amendments) × $360 (average hourly cost of internal compliance attorney) = $4,916,880.

could generate a cost to them. However, the Commission does not believe the amendments will significantly alter the composition of the existing municipal debt market. While some issuers and obligated persons, seeing the cost of public debt decrease, may have incentives to increase public issuance, issuers and obligated persons that are heavily reliant on direct placements may see the increase in disclosure as more costly than the benefit from the reduced cost of public debt, and therefore choose to use private debt exclusively. For reasons similar to those discussed above, the Commission is unable to quantify the amendments' impact on lenders because of the lack of data on loan characteristics and lending relationships.

iv. Costs to the MSRB

The Rule 15c2–12 amendments will increase the type of event notices submitted to the MSRB which may result in the MSRB incurring costs associated with such additional notices. As discussed in Section IV.D.3, after further discussion with the MSRB, the Commission is revising its burden estimate for the MSRB to implement the necessary modifications to EMMA.[403] According to the MSRB, the total estimated one-time cost to the MSRB of updating EMMA would be $91,358.[404]

3. Effects on Efficiency, Competition, and Capital Formation

The Rule 15c2–12 amendments have the potential to affect efficiency, competition, and capital formation by improving the timeliness and informativeness of municipal securities disclosure and reducing information asymmetry in the market.

As discussed above and in the Proposing Release, lack of disclosure can lead to information asymmetry and mispricing. When the market is not able to incorporate the most recent credit risk information about issuers and obligated persons in the pricing of municipal securities, such prices will not reflect the true risk associated with any particular security. The securities offered by low-risk issuers or obligated persons could be undervalued and the ones offered by high-risk issuers or obligated persons overvalued, and investors may not be able to distinguish between the two.[405] Moreover, as stated in the Proposing Release, the inability of the market to differentiate the high-risk and low-risk issuers and obligated persons could create incentives for some high-risk issuers or obligated persons to further exploit the mispricing by incurring more financial obligations because it is relatively cheaper than a public offering, a scenario that may sustain or even amplify the market inefficiency. Because we believe the amendments will facilitate investors' and other market participants' access to more timely and informative disclosure about financial obligations of issuers and obligated persons, we also believe that as the credit risk information gets incorporated in the pricing of municipal securities in a more timely manner, the level of mispricing will be mitigated, and the municipal securities market will become more efficient.[406]

In addition, as we have also discussed before, at least one rating agency currently requires issuers and obligated persons to provide notification and documentation of the incurrence of certain financial obligations, including direct placements, in order to maintain their credit ratings, a process that may involve duplicative costs, because each rating agency would have to implement a similar process to collect the same information, and issuers and obligated persons would have to provide identical responses multiple times.[407] Therefore, the amendments may improve efficiency in the disclosure process by eliminating such potential duplicative costs.

The Commission also believes that by potentially reducing information asymmetries between municipal securities investors and other more-informed market participants, including issuers, obligated persons and lenders, the Rule 15c2–12 amendments can promote competition in the municipal debt market. One commenter expressed concern that disclosure of pricing terms of loans in ten business days may ''set an unrealistic expectation among other obligated persons as to the appropriate pricing for their direct purchase loan transactions'' and early disclosures may have an ''anti-competitive'' effect that may increase pricing by setting a ''benchmark'' for certain transactions.[408] The Commission disagrees with this comment, and believes that, on balance, disclosing pricing terms should inform issuers and obligated persons about the approximate lending rate in the market.[409] Such disclosure adds to the information lenders, issuers, and obligated persons can use in their negotiations and should help promote competition among suppliers of capital.

The Commission also stated in the Proposing Release that more timely and informative disclosure could reduce a lender's competitive advantage over municipal securities investors under the Rule prior to these amendments, and facilitate competition for investment opportunities in the municipal debt market.[410] Currently, for example, a bank loan agreement could give the lender a lien on assets or revenues that were previously pledged to secure repayment of an issuer's or obligated person's outstanding municipal securities, effectively diluting the cash flow claims of existing security holders and adversely affecting their contractual rights. However, existing security holders may not learn about such events and therefore would be unable to take any action. Accordingly, the Commission continues to believe that the amendments will promote a fairer, more efficient, and more competitive municipal securities market.

In addition, the amendments to Rule 15c2–12 may also promote competition among issuers or obligated persons looking for funding. For example, all else equal, the issuers or obligated persons that have incurred a large amount of undisclosed financial obligations are likely to be riskier than those that have not. However, under the Rule prior to these amendments,

[403] *See supra* Section IV.D.3.

[404] This estimate was provided to the Commission by MSRB staff and reflects the MSRB's assessment of the costs it expects to incur to implement the necessary modifications to EMMA, based on an estimated 1,700 hour schedule. In particular, it reflects an estimate of 1,700 (estimated hours of burden) × $53.74 (the mean hourly wage for a 2,080-hour work-year for Software Developers, Systems Software as provided in the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages, May 2017, available at *https://www.bls.gov/oes/current/oes151133.htm#nat*) = $91,358.

[405] Specifically, when there is asymmetric information about material risks, investors may not be able to distinguish low-risk securities from high-risk securities. In such cases, market participants will only value securities as if they bear an average level of risk, undervaluing low-risk securities and overvaluing high-risk securities. Such mispricing can harm market efficiency and distort capital allocation. *See, e.g.,* Paul M. Healy and Krishna G. Palepu, *Information Asymmetry, Corporate Disclosure, and the Capital Markets: A Review of the Empirical Disclosure Literature,* 31 J. Acct. & Econ. 405 (2001).

[406] Depending on data availability and market conditions, some of these effects could be evaluated after the implementation of the amendments. For example, disclosure of relevant information in event notices may manifest as transaction activity, as market participants update their valuations for municipal securities. Further, reductions in information asymmetry may reduce the dispersion in prices for transactions that occur close in time.

[407] *See supra* note 336.

[408] *See* ABA Letter (stating ''disclosure of pricing on a near ''real time'' basis (*e.g.,* within ten business days of closing) may set an unrealistic expectation among other obligated persons as to the appropriate pricing for their direct purchase loan transactions'').

[409] The Commission has also recognized that to the extent that the lenders' information advantage may be reduced, they would incur a cost. *See* Section V.C.2.iii for relevant discussion.

[410] *See* Proposing Release, *supra* note 3, 82 FR at 13954.

securities offered by issuers or obligated persons with different levels of credit risks may be priced identically by the market due to the lack of disclosure, placing more creditworthy issuers and obligated persons at a competitive disadvantage. Since the increase in disclosure could improve pricing efficiency and reduce mispricing, the amendments may promote competition for capital among issuers and obligated persons.

The Commission continues to believe that the Rule 15c2–12 amendments can help facilitate capital formation by improving market efficiency and liquidity. As illustrated by the example above, mispricing and market inefficiencies can lead to a situation where the securities offered by the high-risk issuers and obligated persons—those that incurred a large amount of undisclosed financial obligations—are priced identically to those offered by the low-risk issuers and obligated persons. The inability to differentiate the two types of investment opportunities by the market could lead to underinvestment in the low-risk securities and overinvestment in the other, leading to suboptimal allocation of capital. By increasing the timeliness and informativeness of disclosure, the amendments can reduce mispricing in the market and thus reduce potential for price inefficiencies, resulting in improved allocation of capital.

More timely and informative disclosure could also improve market liquidity and therefore facilitate capital formation. According to academic research, disclosure policy influences market liquidity because uninformed investors, concerned about asymmetric information, price protect themselves in their securities transactions by offering to sell at a premium or buy at a discount. This price protection could be manifested in higher bid-ask spreads and reduced market liquidity.[411] Therefore, by reducing information asymmetry in the municipal securities market, the amendments can potentially improve liquidity in the municipal market, which could allow capital to be better deployed at an aggregate level and result in more efficient capital allocation. Additionally, as the municipal securities market becomes more transparent, and as investors become aware of stronger protections, they may be more likely to participate in the municipal securities market as a result. Therefore, to the extent that increased participation in the municipal securities market reflects new investment, as opposed to substitution away from other securities markets, enhanced disclosure could also positively affect capital formation.

D. Alternative Approaches

In addition to the Rule 15c2–12 amendments, the Commission has considered several reasonable alternatives, which are discussed below.

1. Voluntary Disclosures

Instead of these amendments, the Commission could encourage issuers and obligated persons to voluntarily disclose on an ongoing basis the new events covered in the amendments. A number of commenters recommended the Commission further explore this approach. For example, one commenter challenged the Commission's characterization of the existing level of the voluntary disclosure as limited, arguing that such conclusion was ''hastily'' drawn and recommended further exploration of voluntary disclosure.[412] Another commenter pointed out that the volume of the voluntary disclosure has increased since the MSRB introduced the new EMMA features in September 2016 to facilitate filings, arguing that the Commission understated the efficacy of voluntary reporting and suggested postponing the amendments for a two-year period to allow for voluntary disclosure to continue to develop or encourage undertakings to include voluntary commitments.[413] While the Commission recognizes that the level of the voluntary disclosure has increased since the new EMMA features were introduced and the Proposing Release was issued, the level of the bank loans to state and local governments has also increased since the estimate set forth in the Proposing Release—from $153.3 billion at the end of 2015 to $190.5 billion at the end of first quarter 2018, a 24% increase. In addition, many of the disclosures provided to EMMA come from a relatively small number of issuers or obligated persons. Therefore, the increase is not uniformly distributed across issuers or obligated persons. Though the Commission recognizes the potential for the level of voluntary disclosure to continue to increase, it believes it is unrealistic to assume that it would reach the same level of disclosure as under these amendments as the commenter suggested.[414]

While the Commission recognizes the benefits of voluntary disclosure for issuers and obligated persons, we continue to believe that voluntary disclosure alone is not sufficient for the level of investor protection the amendments are designed to achieve. The current level of the voluntary disclosure of issuers' and obligated persons' financial obligations is not sufficient, and that is why, as discussed in Section II, municipal market participants, the MSRB, and industry groups have made continuous efforts to elicit more disclosure.[415] It is unclear that any efforts to encourage voluntary disclosure on the Commission's part would provide greater incentives for issuers or obligated persons to disclose than these existing voluntary measures. Therefore, as discussed above, the Commission believes it is unlikely that the voluntary disclosure would reach the same level of timeliness and informativeness as the disclosure under the amendments is designed to achieve.

2. Alternative Timeline

Issuers and obligated persons could be provided additional time (*e.g.,* 15 days, 30 days, etc.) beyond the ten business day requirement that currently applies to the disclosure of material events under the Rule to provide additional event notices resulting from the amendments to the MSRB. Under the amendments, the new event notices must be provided to the MSRB in a timely manner not in excess of ten business days after the occurrence of the event.

As discussed in Section II and Section III.1.i.c, commenters were concerned that ten business days was not enough time to disclose material financial obligations. The Commission is adopting a narrower definition of ''financial obligation'' than proposed, which will reduce the burden on issuers, obligated persons, and dealers by significantly limiting the number of transactions that they will need to identify and assess for materiality. The narrower definition could partially alleviate this concern.

[411] *See* Michael Welker, *Disclosure Policy, Information Asymmetry, and Liquidity in Equity Markets,* 11 Contemp. Acct. Res. 801 (1995) (Welker provides evidence that disclosure policy reduces information asymmetry and increases liquidity in equity markets). *See also* Christian Leuz and Robert E. Verrecchia, *The Economic Consequences of Increased Disclosure,* 38 J. Acct. Res. 91 (2000).

[412] *See* Lisante Letter (commenting that the rejection of voluntary approaches is potentially problematic given that the Commission cannot quantify the economic effects).

[413] *See* NABL Letter (''Reviewing filings under the subcategory 'Bank Loan/Alternative Financings Filings' yielded the following results: 79 disclosures in 2015, 364 disclosures in 2016 and 338 disclosures in 2017 (through April 14, 2017)'' and ''[a]t this rate of increase, even if the Proposed Amendments are not adopted, voluntary disclosures may soon reach the Commission's expected number of annual filings under the Proposed Amendments (2,200)'').

[414] *Id.*

[415] *See supra* Section II; *see also supra* note 34.

Under the alternative timeline approach, issuers' and obligated persons' operational burden could be slightly reduced but their substantive obligation to provide disclosure would remain. Moreover, investors and other market participants would receive less timely disclosure. The alternative would thus provide investors with less protection, and the market would not operate as efficiently as it might be under the amendments.

3. Relief for Small Issuers and Obligated Persons

As discussed above,[416] to the extent that some small issuers and obligated persons could be more reliant on private debt than public debt,[417] these issuers or obligated persons may experience significantly more disclosure-related costs, while incurring a relatively smaller benefit from a decreased cost of public debt. Some commenters expressed concerns over this possible differential impact.[418] In connection with these comments, the Commission considered an exemption for small issuers and obligated persons.

Under this alternative, the disclosure-related costs associated with the amendments would be eliminated for small issuers and obligated persons and their disclosure and borrowing practices would stay the same as the baseline scenario. However, it is possible that over time their securities could become further mispriced and potentially less attractive to investors compared to those issued by issuers and obligated persons that provide more disclosure. But issuers and obligated persons would be able to provide voluntary disclosure if they believe the benefits of more accurate pricing offset the cost of disclosure.

Under this alternative, investors in municipal securities that are exempt from disclosure requirements under the final rules would not experience the full benefits discussed above because they would not receive more timely and informative disclosures about small issuers' and obligated persons' financial obligations than they would otherwise receive under the amendments, as adopted.

4. Adopt as Proposed, the Broader Definition of Financial Obligation

Another alternative approach is to adopt, as proposed, the broader definition of financial obligation. In the Proposing Release, the Commission defined the term ''financial obligation'' to mean a debt obligation, lease, guarantee, derivative instrument, or monetary obligation resulting from a judicial, administrative, or arbitration proceeding, but not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2–12.[419] Commenters criticized the definition as overbroad and vague and expressed concerns that the broad scope of the term financial obligation, as proposed, would impose substantial burdens on issuers, obligated persons, and other market participants.[420]

As discussed above, the Commission is narrowing the definition of ''financial obligation.'' As adopted, ''financial obligation'' means a debt obligation; derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or a guarantee of either a debt obligation or a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation. The term financial obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

If the amendments to the Rule were adopted as proposed, investors and other participants would receive more information related to issuers' and obligated persons' financial obligations because of the proposed broader definition of ''financial obligation.'' This alternative could allow credit rating agencies and municipal analysts to produce more accurate ratings and forecasts, and could yield greater improvements in market efficiency. This alternative could also allow those investors capable of interpreting broader information about issuers' and obligated persons' obligations to make more informed financial decisions. However, the Commission also recognizes that a higher volume of disclosure may not benefit all investors equally. The Commission believes that the information disclosed under this alternative would include information about obligations incurred in an issuer's or obligated person's normal course of operations that do not impact an issuer's or obligated person's liquidity, overall creditworthiness, or an existing security holder's rights and thus may not be as relevant to investment decisions.[421] Additionally, issuers, obligated persons, and Participating Underwriters would incur higher costs and attendant legal exposure associated with disclosing this additional information pursuant to the amendments under this alternative.

VI. Regulatory Flexibility Certification

The Commission certified, under section 605(b) of the Regulatory Flexibility Act,[422] that, when adopted, the proposed amendments to the Rule would not have a significant economic impact on a substantial number of small entities. This certification was set forth in Section VII of the Proposing Release, where the Commission explained that no Participating Underwriters would be small entities.[423] The Commission solicited comments regarding this certification and received no comments. The Commission continues to believe this certification is appropriate.

VII. Statutory Authority

Pursuant to the Exchange Act, and particularly Sections 2, 3(b), 10, 15(c), 15B, 17 and 23(a)(1) thereof, 15 U.S.C. 78b, 78c(b), 78j, 78*o*(c), 78*o*–4, 78q and 78w(a)(1), the Commission is adopting amendments to § 240.15c2–12 of title 17 of the *Code of Federal Regulations* in the manner set forth below.

Text of Rule Amendments

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

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

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

[416] *See supra* Section V.C.2.i.

[417] *See supra* note 393 and accompanying text.

[418] *See* NABL Letter (''smaller issuers will be less able to accommodate the substantial burdens of the Proposed Amendments, and the purported investor benefit will be more substantially outweighed by these burdens''). *See also* ABA Letter (pointing out that direct bank loans provide access to funding at a cost that is lower than accessing the public municipal securities market and it is particularly the case for smaller municipalities; and smaller obligated persons could lack the resources and expertise to process the disclosure); Lisante Letter (stating that smaller actors could be shut out of the market due to the amendments' impact).

[419] *See* Proposing Release, *supra* note 3, 82 FR at 13937.

[420] *See supra* note 81.

[421] The Commission's belief is informed by comments received in response to the proposed amendments and is reflected in the Commission's decision to narrow the adopted definition of the term ''financial obligation'' to debt, debt-like, and debt-related obligations of an issuer or obligated person that could impact an issuer's or obligated person's liquidity, overall creditworthiness, or an existing security holder's rights. *See supra* Section III.A.2.

[422] 5 U.S.C. 605(b).

[423] *See* Proposing Release, *supra* note 3, 82 FR at 13956.

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Section 240.15c2–12 is amended by:

■ a. In paragraph (b)(5)(i)(C)(*14*), removing the word ''and''; and

■ b. Adding paragraphs (b)(5)(i)(C)(*15*) and (*16*) and (f)(11).

The additions read as follows.

§ 240.15c2–12 Municipal securities disclosure.

* * * * *

(b) * * *

(5)(i) * * *

(C) * * *

(*15*) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and

(*16*) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties; and

* * * * *

(f) * * *

(11)(i) The term *financial obligation* means a:

(A) Debt obligation;

(B) Derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or

(C) Guarantee of paragraph (f)(11)(i)(A) or (B).

(ii) The term *financial obligation* shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

* * * * *

By the Commission.

Dated: August 20, 2018.

Brent J. Fields,

Secretary.

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

Exhibit A

Key to Comment Letters Submitted in Connection With the Adopting Release Amendments to Exchange Act Rule 15c2–12 (File No. S7–01–17)

1. Letter from John M. McNally, Hawkins Delafield & Wood LLP, to Brent J. Fields, Secretary, Commission, dated March 21, 2017 (''Hawkins Letter'').
2. Letter from Jody Johnson, to Brent J. Fields, Secretary, Commission, dated April 2, 2017 (''Johnson Letter'').
3. Letter from Clifford M. Gerber, President, National Association of Bond Lawyers, to Shagufta Ahmed, Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, and to Brent J. Fields, Secretary, Commission, dated April 11, 2017 (''NABL OMB Letter'').
4. Letter from Lynnette Kelly, Executive Director, Municipal Securities Rulemaking Board, to Brent J. Fields, Secretary, Commission, dated April 14, 2017 (''MSRB Letter'').
5. Letter from David Lisante, J.D. Candidate 2017, Cornell Law School, to Brent J. Fields, Secretary, Commission, dated April 20, 2017 (''Lisante Letter'').
6. Letter from Ken Martin, Assistant Commissioner Financial Services/CFO, Texas Higher Education Coordinating Board, to Brent J. Fields, Secretary, Commission, dated May 1, 2017 (''THECB Letter'').
7. Letter from Tyler Brown, J.D. Candidate, Boston College Law School, to Brent J. Fields, Secretary, Commission, dated May 1, 2017 (''Brown Letter'').
8. Letter from Michael Phemister, Vice President, Treasury Management, Dallas Fort Worth International Airport, to Brent J. Fields, Secretary, Commission, dated May 4, 2017 (''DFW Letter'').
9. Letter from Michael A. Genito, Commissioner of Finance, City of White Plains, New York, to Brent J. Fields, Secretary, Commission, dated May 5, 2017 (''White Plains Letter'').
10. Letter from Brian C. Massey, Finance Director, Outagamie County, Wisconsin, to Brent J. Fields, Secretary, Commission, dated May 5, 2017 (''Outagamie Letter'').
11. Letter from Erich Mueller, Finance Director, City of Troutdale, Oregon, to Brent J. Fields, Secretary, Commission, dated May 8, 2017 (''Troutdale Letter'').
12. Letter from Neal D. Suess, President/CEO, Loup River Public Power District, to Brent J. Fields, Secretary, Commission, dated May 9, 2017 (''Loup Power Letter'').
13. Letter from Tracy Ginsburg, Executive Director, Texas Association of School Business Officials, to Brent J. Fields, Secretary, Commission, dated May 9, 2017 (''TASBO Letter'').
14. Letter from Marina Scott, City Treasurer, Salt Lake City, Utah, to Brent J. Fields, Secretary, Commission, dated May 9, 2017 (''Salt Lake City Letter'').
15. Letter from Chad D. Gee, Superintendent, Yorktown Independent School District, Texas, to Brent J. Fields, Secretary, Commission, dated May 9, 2017 (''Yorktown SD Letter'').
16. Letter from Julie Egan, Chair, and Lisa Washburn, Chair, Industry Practices Procedures, National Federation of Municipal Analysts, to Brent J. Fields, Secretary, Commission, dated May 10, 2017 (''NFMA Letter'').
17. Letter from Robert Scott and Keith Dagen, Co-Chairs, Financial Reporting and Regulatory Response Committee, Government Finance Officers Association of Texas, to Brent J. Fields, Secretary, Commission, dated May 10, 2017 (''GFOA TX Letter'').
18. Letter from Jeff N. Heiner, President, Board of Education, Ogden City School District, Utah, to Brent J. Fields, Secretary, Commission, dated May 10, 2017 (''Ogden Letter'').
19. Letter from Martin W. Bates, Ph.D., J.D., Superintendent, and Terry Bawden, Board President, Granite School District, Utah, to Brent J. Fields, Secretary, Commission, dated May 11, 2017 (''Granite SD Letter'').
20. Letter from Grant Whitaker, President & CEO, Utah Housing Corporation, to Brent J. Fields, Secretary, Commission, dated May 11, 2017 (''UHC Letter'').
21. Letter from Ann Mackiernan, Chief Financial Officer, Tualatin Hills Park & Recreation District of Oregon, to Brent J. Fields, Secretary, Commission, dated May 12, 2017 (''THPRD Letter'').
22. Letter from Arthur J. ''Grant'' Lacerte, Vice President and General Counsel, Kissimmee Utility Authority, Florida, to Brent J. Fields, Secretary, Commission, dated May 12, 2017 (''Kissimmee Letter'').
23. Letter from Dr. Marcelo Cavazos, Superintendent, Arlington Independent School District, Texas, to Brent J. Fields, Secretary, Commission, dated May 12, 2017 (''Arlington SD Letter'').
24. Letter from Cynthia A. Nichol, Chief Financial Officer, Port of Portland, Oregon, to Brent J. Fields, Secretary, Commission, dated May 12, 2017 (''Port Portland Letter'').
25. Letter from Kristin M. Bronson, City Attorney, City and County of Denver, Colorado, to Brent J. Fields, Secretary, Commission, dated May 12, 2017 (''Denver Letter'').
26. Letter from Ted Wheeler, Mayor, City of Portland, Oregon, to Brent J. Fields, Secretary, Commission, dated May 12, 2017 (''Portland Letter'').
27. Letter from Michele Trongaard, Assistant Superintendent for Finance and Operation, Wylie Independent School District, Texas, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''Wylie SD Letter'').
28. Letter from Dorothy Donohue, Deputy General Counsel, Securities Regulation, Investment Company Institute, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''ICI Letter'').
29. Letter from Dennis M. Kelleher, President & CEO, Better Markets, Inc., to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''BM Letter'').
30. Letter from David W. Osburn, General Manager, Oklahoma Municipal Power Authority, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''OMPA Letter'').
31. Letter from Kurt J. Nagle, President and CEO, American Association of Port Authorities, to Brent J. Fields, Secretary,

Commission, dated May 15, 2017 (''AAPA Letter'').

32. Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry Financial Markets Association, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''SIFMA Letter'').

33. Letter from Clifford M. Gerber, President, National Association of Bond Lawyers, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''NABL Letter'').

34. Letter from Charisse Mosely, Deputy City Controller, City of Houston, Texas, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''Houston Letter'').

35. Letter from Joanne Wamsley, Vice President for Finance and Deputy Treasurer, Arizona State University, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''AZ Universities Letter'').

36. Letter from Leo Karwejna, Managing Director and Chief Compliance Officer, PFM, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''PFM Letter'').

37. Letter from Robert W. Doty, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''Doty Letter'').

38. Letter from Noreen Roche-Carter, Chair, Tax and Finance Task Force, Large Public Power Council, Sacramento, California, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''LPPC Letter'').

39. Letter from Rebecca L. Peace, Deputy Executive Director and Chief Counsel, Pennsylvania Housing Finance Agency, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''PHFA Letter'').

40. Letter from John J. Wagner, Kutak Rock LLP, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''Kutak Rock Letter'').

41. Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''BDA Letter'').

42. Letter from Kevin M. Burke, President and CEO, Airports Council International, North America, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''ACI Letter'').

43. Letter from Marty Dreischmeier, Chief Financial Officer, WPPI Energy, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''WPPI Letter'').

44. Letter from Diana Pope, Director, Financing and Investment Division, and Lee McElhannon, Director, Bond Finance, Financing and Investment Division, Georgia State Financing and Investment Commission, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''GA Finance Letter'').

45. Letter from Ken Miller, NAST President, Treasurer, State of Oklahoma, National Association of State Treasurers, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''NAST Letter'').

46. Letter from Timothy Cameron, Esq. Head, and Lindsey Weber Keljo, Esq., Managing Director and Associate General Counsel, Asset Management Group, SIFMA, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''SIFMA AMG Letter'').

47. Letter from Cristeena G. Naser, Vice President, Center for Securities, Trust & Investments, American Bankers Association, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''ABA Letter'').

48. Letter from Robert W. Scott, Director of Finance, City of Brookfield, Wisconsin, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''Brookfield Letter'').

49. Letter from Richard Doyle, City Attorney, City of San Jose, California, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''San Jose Letter'').

50. Letter from Donna Murr, President, National Association of Health and Educational Facilities Finance Authorities, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''NAHEFFA Letter'').

51. Form Letter from Issuers in the State of Oregon (''Form Letter'').

52. Letter from Christopher Alwine, Head of Municipal Money Market and Bond Groups, The Vanguard Group, Inc., to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''Vanguard Letter'').

53. Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''NAMA Letter'').

54. Letter from Emily S. Brock, Director, Federal Liaison Center, Government Finance Officers Association, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''GFOA Letter'').

55. Letter from Walker R. Stapleton, State Treasurer, and Ryan Parsell, Deputy Treasurer, State of Colorado, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''CO Treasury Letter'').

56. Letter from Glenn Hegar, Texas Comptroller of Public Accounts, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''TCPA Letter'').

57. Letter from Tracy Olsen, Business Administrator, Nebo School District, Utah, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''Nebo SD Letter'').

58. Letter from Garth Rieman, Director of Housing Advocacy and Strategic Initiatives, National Council of State Housing Agencies, to Brent J. Fields, Secretary, Commission, dated May 15, 2017 (''NCSHA Letter'').

59. Letter from Paula Stuart, Chief Executive Officer, Digital Assurance Certification, to Brent J. Fields, Secretary, Commission, dated May 16, 2017 (''DAC Letter'').

60. Letter from Sophia D. Skoda, Director of Finance, East Bay Municipal Utility District, California, to Brent J. Fields, Secretary, Commission, dated May 17, 2017 (''East Bay Letter'').

61. Letter from Keith Paul Bishop, Former California Commission of Corporations, to Brent J. Fields, Secretary, Commission, dated June 1, 2017 (''Bishop Letter'').

62. Letter from Michael Cohen, Director, California Department of Finance, to Brent J. Fields, Secretary, Commission, dated June 28, 2017 (''CA Finance Letter'').

63. Letter from Clifford M. Gerber, President, National Association of Bond Lawyers, to Brent J. Fields, Secretary, Commission, dated August 29, 2017 (''NABL II Letter'').

64. Letter from Alexandra M. MacLennan, President, National Association of Bond Lawyers, to Brent J. Fields, Secretary, Commission, dated June 13, 2018 (''NABL III Letter'').

65. Letter from School Improvement Partnership to Pamela Dyson, Director/Chief Information Officer, Commission, dated May 31, 2018 (''SIP Letter'').

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Part III

Environmental Protection Agency

40 CFR Parts 51, 52, and 60

Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, and 60

[EPA–HQ–OAR–2017–0355; FRL–9982–89–OAR]

RIN 2060–AT67

Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing three distinct actions, including Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units (EGUs). First, EPA is proposing to replace the Clean Power Plan (CPP) with revised emissions guidelines (the Affordable Clean Energy (ACE) rule) that inform the development, submittal, and implementation of state plans to reduce greenhouse gas (GHG) emission from certain EGUs. In the proposed emissions guidelines, consistent with the interpretation described in the proposed repeal of the CPP, the Agency is proposing to determine that heat rate improvement (HRI) measures are the best system of emission reduction (BSER) for existing coal-fired EGUs. Second, EPA is proposing new regulations that provide direction to both EPA and the states on the implementation of emission guidelines. The new proposed implementing regulations would apply to this action and any future emission guideline issued under section 111(d) of the Clean Air Act (CAA). Third, the Agency is proposing revisions to the New Source Review (NSR) program that will help prevent NSR from being a barrier to the implementation of efficiency projects at EGUs.

DATES:

Comments. Comments must be received on or before October 30, 2018. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before October 1, 2018.

Public hearing: EPA is planning to hold at least one public hearing in response to this proposed action. Information about the hearing, including location, date, and time, along with instructions on how to register to speak at the hearing, will be published in a second **Federal Register** document.

ADDRESSES: *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0355, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* See **SUPPLEMENTARY INFORMATION** for detail about how EPA treats submitted comments. *Regulations.gov* is our preferred method of receiving comments.[1] However, other submission methods are accepted:

- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2017–0355 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2017–0355.
- *Mail:* To ship or send mail via the United States Postal Service, use the following address: U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2017–0355, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* Use the following Docket Center address if you are using express mail, commercial delivery, hand delivery, or courier: EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. Delivery verification signatures will be available only during regular business hours.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Nicholas Swanson, Sector Policies and Programs Division (Mail Code D205–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4080; fax number: (919) 541–4991; and email address: *swanson.nicholas@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2017–0355. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0355. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. This type of information should be submitted by mail as discussed below.

EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov* website allows you to submit your comments anonymously, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

[1] Comments submitted on the proposed repeal will be considered in the promulgation of this rulemaking so there is no need to resubmit comments that have already been timely submitted.

digital storage media you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Throughout this proposal, EPA is soliciting comment on numerous aspects of the proposed rule. EPA has indexed each comment solicitation with an alpha-numeric identifier (*e.g.,* ''C–1'', ''C–2'', ''C–3'', . . .). EPA included similar identifiers in the advance notice of proposed rulemaking (ANPRM) and asked commenters to identify the main topic area that corresponded with their comment. In this proposal, we are modifying this approach to include a unique identifier for each individual comment solicitation to provide a consistent framework for effective and efficient provision of comments.

Accordingly, we ask that commenters include the corresponding identifier when providing comments relevant to that comment solicitation. We ask that commenters include the identifier in either a heading, or within the text of each comment (*e.g.,* ''In response to solicitation of comment C–1, . . .'') to make clear which comment solicitation is being addressed. We emphasize that we are not limiting comment to these identified areas and encourage provision of any other comments relevant to this proposal.

Submitting CBI. Do not submit information containing CBI to EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2017–0355.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, EPA defines the following terms and acronyms here:

ACE Affordable Clean Energy Rule
AEO Annual Energy Outlook
ANPRM Advance Notice of Proposed Rulemaking
BACT Best Available Control Technology
BSER Best System of Emission Reduction
Btu British Thermal Unit
CAA Clean Air Act
CBI Confidential Business Information
CCS Carbon Capture and Storage (or Sequestration)
CFR Code of Federal Regulation
CO_2 Carbon Dioxide
CPP Clean Power Plan
EGU Electric Utility Generating Unit
EIA Energy Information Administration
EPA Environmental Protection Agency
FIP Federal Implementation Plan
FR Federal Register
GHG Greenhouse Gas
HRI Heat Rate Improvement
IGCC Integrated Gasification Combined Cycle
kW Kilowatt
kWh Kilowatt-hour
MW Megawatt
MWh Megawatt-hour
NAAQS National Ambient Air Quality Standards
NGCC Natural Gas Combined Cycle
NO_X Nitrogen Oxides
NSPS New Source Performance Standards
NSR New Source Review
OMB Office of Management and Budget
$PM_{2.5}$ Fine Particulate Matter
PRA Paperwork Reduction Act
PSD Prevention of Significant Deterioration
RIA Regulatory Impact Analysis
RTC Response to Comments
SIP State Implementation Plan
SO_2 Sulfur Dioxide
UMRA Unfunded Mandates Reform Act of 1995
U.S. United States
VFD Variable Frequency Drive

Organization of this document. The information in this preamble is organized as follows:

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I. General Information

A. Executive Summary

EPA is proposing the Affordable Clean Energy (ACE) rule as a replacement to the CPP (promulgated on October 23, 2015, 80 FR 64662), which sets GHG emission guidelines for existing EGUs. This proposal relies in part on the legal analysis presented in the CPP repeal that was proposed on October 16, 2017, 82 FR 48035. In the proposed repeal, EPA asserted that the BSER in the CPP exceeded EPA's authority because it established the BSER using measures that applied to the power sector as whole, rather than measures that apply at and to, and can be carried out at the level of, individual facilities. This proposed action aligns with EPA's statutory authority and obligation because, as EPA has done in the dozens of NSPSs issued to date, the BSER is to be determined by evaluating technologies or systems of emission reduction that are applicable to, at, and on the premises of the facility for an affected source. This proposal will ensure that coal-fired power plants (the most carbon dioxide (CO_2) intensive portion of the electricity generating fleet) address their contribution to climate change by reducing their CO_2 intensity (*i.e.,* the amount of CO_2 they emit per unit of electricity generated).

Accordingly, the proposed ACE rule consists of three discrete sections. First, EPA is proposing to determine the BSER for existing EGUs based on HRI measures that can be applied at an affected source. EPA also proposes a corresponding emission guideline clarifying the roles of EPA and the states under CAA section 111(d). EPA's primary role in implementing CAA section 111(d) is to provide emission guidelines that inform the development, submittal, and implementation of state plans, and to subsequently determine whether submitted state plans are approvable. Per the CAA, once EPA publishes a final emission guideline, states have the primary role of developing standards of performance consistent with application of the BSER. Congress also expressly required that EPA allow states to consider source-specific factors—including, among other factors, the remaining useful life of the affected source—in applying a standard of performance. In this way, the state and federal roles complement each other as EPA has the authority and responsibility to determine a nationally applicable BSER while the states have the authority and responsibility to establish and apply existing source standards of performance, in consideration of source-specific factors.

Second, EPA is proposing new implementing regulations that apply to this action and any future emission guidelines promulgated under CAA section 111(d). The purpose of proposing new implementing regulations is to harmonize our 40 CFR part 60 subpart B regulations with the statute by making it clear that states have broad discretion in establishing and applying emissions standards consistent with the BSER. The discussion for the proposed revisions is found in Section VII below.

Third, EPA is proposing to give the owners/operators of EGUs more latitude to make the efficiency improvements that are consistent with EPA's proposed BSER without triggering onerous and costly NSR permit requirements. This change will allow states, in establishing standards of performance, to consider HRIs that would otherwise not be cost-effective due to the burdens incurred from triggering NSR. The discussion of this issue is included in Section VII.

As with other regulations of this nature, this notice concludes with a summary of the impacts of this proposal and is supported by a Regulatory Impact Analysis (RIA) that can be found in the docket for this action. As reported in the RIA, EPA evaluated three illustrative policy scenarios modeling HRI at coal-fired EGUs. EPA estimates that there are cost savings under two of the three illustrative scenarios, with average annual compliance costs ranging from a cost savings of about $0.5 billion to a cost of about $0.3 billion. As noted previously, this action is preceded by a proposed repeal of the CPP.[2] That proposal included a detailed legal analysis demonstrating that ''building blocks'' two and three of the CPP exceeded EPA's authority. That analysis is incorporated into this proposal. Because two of the three ''building blocks'' used to establish the CPP emission guidelines were legally flawed (and because ''building block'' one was not designed in such a manner that it could or was intended to stand on its own without the other building blocks), EPA proposed that the CPP emission guidelines be withdrawn. With the ACE rule, EPA proposes to possibly replace the CPP with a rule that corrects the fundamental legal flaws in the CPP to more appropriately balance federal and state responsibilities under CAA section 111(d), and revise the NSR program as it applies to affected EGUs to better accommodate energy efficiency projects.

This proposed action has been informed by comments submitted in response to the ANPRM, published December 28, 2017, *see* 82 FR 61507. EPA notes that it does not intend to respond to the comments received on the ANPRM. If commenters believe that any of their previously submitted comments are still applicable, they should resubmit those comments to this rulemaking to ensure they are considered.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/electric-utility-generating-units-emission-guidelines-greenhouse.* Following publication in the **Federal Register**, EPA will post the **Federal Register** version of the proposal and key technical documents at this same website.

II. Background

A. Regulatory and Judicial History of GHG Requirements for EGUs

When passing and amending the CAA, Congress sought to address and remedy the dangers posed by air pollution to human beings and the environment. While the text of the CAA does not reflect an explicit intent on the part of Congress to address the potential effects of elevated atmospheric GHG concentrations, the Supreme Court in *Massachusetts* v. *EPA,* 549 U.S. 497 (2007), concluded that Congress had drafted the CAA broadly enough so that GHGs constituted air pollutants within the meaning of the CAA. EPA subsequently determined that emissions of GHGs from new motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. *See* 74 FR 66496 (December 15, 2009). This determination required EPA to regulate GHG emissions from motor vehicles.

In 2009, and again in 2016, the EPA Administrator issued findings under sections 202(a) and 231(a)(2)(A) of the Clean Air Act, respectively, that the current, elevated concentrations of six well-mixed GHGs in the atmosphere may reasonably be anticipated to endanger public health and welfare of current and future generations in the

[2] The accompanying RIA focuses on presenting the difference between the CPP and the concepts in ACE, but also includes a scenario with no CPP, providing sufficient information to understand the impact of a full repeal of the CPP, a two-step approach in which the CPP is repealed and then an alternative BSER is put in place or a case in which the Agency revises the BSER promulgated in the CPP.

United States.[3] In 2015, after determining that GHGs from EGUs merited regulation under CAA section 111, EPA promulgated standards of performance for new, modified, and reconstructed EGUs under section 111(b). 80 FR 64510. Consequentially, this led to EPA's obligation to develop a 111(d) rule for existing EGUs, as described in Section III. EPA believes that the BSER in ACE is consistent both with our legal authorities under 111(d) and with what is technically feasible and appropriate for coal-fired power plants. Therefore, EPA believes that the emission reductions required from state plans are the appropriate amount for a 111(d) rule.

While the market in the power sector is driving GHG emissions down, the EPA, by proposing this emission guideline, is reinforcing the market in many respects and also ensuring that available emission reductions that are not market driven are achieved. Many regulations are promulgated to correct market failures, which otherwise lead to a suboptimal allocation of resources within the free market. Air quality and pollution control regulations address ''negative externalities'' whereby the market does not internalize the full opportunity cost of production borne by society as public goods such as air quality are unpriced.

While recognizing that optimal social level of pollution may not be zero, GHG emissions impose costs on society, such as negative health and welfare impacts, that are not reflected in the market price of the goods produced through the polluting process. For this regulatory action the good produced is electricity. If a fossil fuel-fired electricity producer pollutes the atmosphere when it generates electricity, this cost will be borne not by the polluting firm but by society as a whole, thus the producer is imposing a negative externality, or a social cost of emissions. The equilibrium market price of electricity may fail to incorporate the full opportunity cost to society of generating electricity. Consequently, absent a regulation on emissions, the EGUs will not internalize the social cost of emissions and social costs will be higher as a result. This regulation will work towards addressing this market failure by causing affected EGUs to begin to internalize the negative externality associated with CO_2 emissions.

Further discussion of GHG impacts, as well as the benefits of this proposal, can be found in the RIA for this action. As detailed in Chapter 3 of the RIA, EPA evaluated three illustrative policy scenarios representing ACE. These scenarios are projected to result in a decrease of annual CO_2 emissions of about 7 million to 30 million short tons relative to a future without a CAA section 111(d) regulation affecting the power sector.

Along with the 111(b) standard, EPA issued, under CAA section 111(d), its ''Clean Power Plan,'' consisting of GHG emission guidelines for *existing* EGUs, which states would use to develop emission standards as mentioned above. 80 FR 64662 (October 23, 2015). In February 2016, the U.S. Supreme Court stayed implementation of the CPP pending judicial review. *West Virginia* v. *EPA,* No. 15A773 (S.Ct. Feb. 9, 2016).

In March 2017, President Trump issued Executive Order 13873, which among other things, directed EPA to reconsider the CPP. After considering the statutory text, context, legislative history and purpose, and in consideration of EPA's historical practice under CAA section 111 as reflected in its other existing CAA section 111 regulations and of certain policy concerns, EPA proposed to repeal the CPP. *See* 82 FR 48035. In a separate but related action, EPA published an ANPRM to solicit comment on what EPA should include in a potential new existing source regulation under CAA section 111(d), including soliciting comment on aspects of the respective roles of the states and EPA in that process, on the BSER in context of the statutory interpretation contained in the proposed repeal of the CPP, on what systems of emission reduction might be available and appropriate, and the potential flexibility that could be afforded under the NSR program to improve the implementation of a potential new existing source regulation for EGUs under CAA section 111(d). 82 FR 61507 (December 28, 2017). EPA received more than 270,000 comments on the ANPRM, which have informed this proposed rulemaking.

In ACE, EPA is proposing to determine that the BSER for GHG emissions from existing coal-fired EGUs is heat rate improvements that can be applied at the source, consistent with the legal interpretation expressed in the proposed repeal. The Agency is also, in this action, clarifying the respective roles of the states and EPA under CAA section 111(d), including by proposing revisions to the regulations, in 40 CFR part 60 subpart B, implementing that section. Section 111(d)(1) of the CAA states that EPA's ''Administrator shall prescribe regulations which shall establish a procedure . . . under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant . . . to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance.'' *See* 42 U.S.C. 7411(d). CAA section 111(d)(1) also requires the Administrator to ''permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.'' *Id.*

As the plain language of the statute provides, EPA's authorized role under CAA section 111(d)(1) is to develop a procedure for states to establish standards of performance for existing sources. Indeed, the Supreme Court has acknowledged the role and authority of states under section 111(d): This provision allows ''each State to take the first cut at determining how best to achieve EPA emissions standards within its domain.'' *Am. Elec. Power Co.* v. *Connecticut,* 131 S. Ct. 2527, 2539 (2011). The Court addressed the statutory framework as implemented through regulation, under which EPA promulgates emission guidelines and the states establish performance standards: ''For existing sources, EPA issues emissions guidelines; in compliance with those guidelines and subject to federal oversight, the States then issue performance standards for stationary sources within their jurisdiction, [42 U.S.C.] § 7411(d)(1).'' *Id.* at 2537–38.

As contemplated by CAA section 111(d)(1), states possess the authority and discretion to establish appropriate standards of performance for existing sources. CAA section 111(a)(1) defines ''standard of performance'' as ''a standard of emissions of air pollutants which reflects'' what is colloquially referred to as the ''Best System of Emission Reduction'' or ''BSER''—*i.e.,* ''the degree of emission limitation achievable through the application of the *best system of emission reduction* which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.'' 42 U.S.C. 7411(a)(1) (emphasis added).

[3] ''Finding that Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated to Endanger Public Health and Welfare,'' 81 FR 54422 (August 15, 2016).

In order to effectuate the Agency's role under CAA section 111(d)(1), EPA promulgated implementing regulations in 1975 to provide a framework for subsequent EPA rules and state plans under section 111(d). *See* 40 CFR part 60, subpart B (hereafter referred to as the ''implementing regulations''). The implementing regulations reflect EPA's principal task under CAA section 111(d)(1), which is to develop a procedure for states to establish standards of performance for existing sources through state plans. EPA is proposing to promulgate an updated version of the implementing regulations as part of ACE (see Section VII). Per the new proposed implementing regulations, EPA effectuates its role by publishing, an ''emission guideline'' [4] that, among other things, contains EPA's determination of the BSER for the category of existing sources being regulated. *See* 40 CFR 60.22a(b) [''Guideline documents published under this section will provide information for the development of State plans, such as: . . . (4) An emission guideline that reflects the application of the best system of emission reduction (considering the cost of such reduction) that has been adequately demonstrated.''] In undertaking this task, EPA ''will specify different emissions guidelines . . . for different sizes, types and classes of . . . facilities when costs of control, physical limitations, geographic location, or similar factors make subcategorization appropriate.'' 40 CFR 60.22(b)(5).

In short, under EPA's new proposed regulations implementing CAA section 111(d), which tracks with the existing implementing regulations in this regard, the guideline document serves to ''provide information for the development of state plans.'' 40 CFR 60.22a(b), with the ''emission guideline,'' reflecting BSER as determined by EPA, being the principal piece of information states rely on to develop their plans that establish standards of performance for existing sources.

Because the CAA cannot necessarily be applied to GHGs in the same manner as other pollutants, *Utility Air Regulatory Group,* 134 S. Ct. 2427, 2455 (2014) (Alito, J., concurring in part and dissenting in part), it is fortuitous that CAA section 111(d) recognizes that states possess considerable flexibility in developing their plans in response to the emissions guideline(s) established by EPA. Specifically, the Act requires that EPA permit states to consider, ''among other factors, the remaining useful life'' of an existing source in applying a standard of performance to such sources. CAA section 111(d)(1).

Additionally, while CAA section 111(d)(1) clearly authorizes states to develop state plans that establish performance standards and provides states with certain discretion in determining appropriate standards, CAA section 111(d)(2) provides EPA specifically a role with respect to such state plans. This provision authorizes EPA to prescribe a plan for a state ''in cases where the State fails to submit a satisfactory plan.'' CAA section 111(d)(2)(A). EPA therefore is charged with determining whether state plans developed and submitted under section 111(d)(1) are ''satisfactory,'' and the proposed new implementing regulations at 40 CFR 60.27a accordingly provides timing and procedural requirements for EPA to make such a determination. Just as guideline documents may provide information for states in developing plans that establish standards of performance, they may also provide information for EPA to consider when reviewing and taking action on a submitted state plan, as the new proposed implementing regulations at 40 CFR 60.27a(c) references the ability of EPA to find a state plan as ''unsatisfactory because the requirements of (the implementing regulations) have not been met.'' [5]

B. Executive Order 13783 and EPA's Review of the CPP

On March 28, 2017, President Trump issued Executive Order 13783, which affirms the ''national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.'' *See* Executive Order 13783, Section 1(a). The Executive Order directs all executive departments and agencies, including EPA, to ''immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.'' *Id.* Section 1(c). The Executive Order further affirms that it is ''the policy of the United States that necessary and appropriate environmental regulations comply with the law.'' *Id.* Section 1(e). Moreover, the Executive Order specifically directs EPA to review and initiate reconsideration proceedings to ''suspend, revise, or rescind'' the CPP, ''as appropriate and consistent with law.'' *Id.* Section 4(a)–(c).

In a document signed the same day as Executive Order 13783, and published in the **Federal Register** at 82 FR 16329 (April 4, 2017), EPA announced that, consistent with the Executive Order, it was initiating its review of the CPP and providing notice of forthcoming proposed rulemakings consistent with the Executive Order.[6] In the course of EPA's review of the CPP, the Agency also reevaluated its interpretation of CAA section 111, and, on that basis, the Agency proposed to repeal the CPP. *See* 82 FR 48035.

This action proposes a BSER for GHGs from existing EGUs in line with the interpretation presented in the proposed CPP repeal. *See* 82 FR 48038–42. Comments submitted on the proposed repeal will be considered in the promulgation of this rulemaking so there is no need to resubmit comments that have already been timely submitted.

C. Industry Trends

Carbon dioxide emissions in the power sector have steadily declined in recent years due to a variety of power industry trends, which are expected to continue. The reduction in power sector CO_2 emissions is the result of industry trends away from coal-fired generation and toward low- and zero-emitting generation sources. These trends have been driven by market factors, reduced electricity demand, and policy and regulatory efforts. These trends have resulted in a notable change to the country's overall generation mix, as more natural gas and renewable energy is used to generate electricity relative to coal-fired electricity. The price of natural gas is expected to remain low for the foreseeable future as improvements in drilling technologies and techniques continue to reduce the cost of extraction. In addition, the existing fleet of coal-fired EGUs is aging and there are very few new coal-fired generation

[4] *See* Section VII.A. for proposed changes to the definition of ''emission guideline'' as part of EPA's proposed new implementing regulations.

[5] *See also* 40 FR 53343 (''If there is to be substantive review, there must be criteria for the review, and EPA believes it is desirable (if not legally required) that the criteria be made known in advance to the States, to industry, and to the general public. The emission guidelines, each of which will be subjected to public comment before final adoption, will serve this function.'').

[6] EPA also withdrew the proposed federal plan and model trading rules, proposed amendments to certain regulations under 40 CFR part 60, subpart B, implementing CAA section 111(d), and proposed rule regarding the Clean Energy Incentive Plan. 82 FR 16144 (April 3, 2017).

projects under development. With a continued (but reduced) tax credit and declining capital costs, solar capacity will continue to grow through 2050 while tax credits that phase out for plants entering service through 2024 provide incentives for new wind capacity in the near-term. Some power plant generators have announced that they expect to continue to change their generation mix away from coal-fired generation toward natural-gas fired generation, renewables and more deployment of energy efficiency measures. All of these trends, in total, are expected to result in declining power sector CO_2 emissions.

In the near-term, according to the U.S. Energy Information Administration's (EIA) 2018 Annual Energy Outlook, ''the cumulative effect of increased coal plant retirements, lower natural gas prices and lower electricity demand in the AEO2018 Reference case is a reduction in the projected [CO_2] emissions from electric generators, even without the [CPP]. In 2020, electric power sector CO_2 emissions are projected to be 1.72 billion metric tons, which is 120 million metric tons (7 percent) lower than the projected level of CO_2 emissions in the AEO2017 Reference case without the CPP.'' [7] In other words, these declining emission trends have continued to develop even in the absence of implementation of the CPP.

In consideration of these ongoing and projected power sector trends and a resulting decline in power sector CO_2 emissions, EPA is soliciting comment on whether and how to consider such trends in developing CO_2 emission guidelines for the power sector. A comparison of EIA projections to EPA analysis for the original proposed CPP demonstrates that the rapid changes in the power sector are leading to CO_2 emission reductions at a faster rate than projected even a few years ago when the CPP was promulgated (Comment C–1). EPA also notes that CO_2 emissions are projected to increase over time in some EIA AEO side cases, and, given the uncertainties associated with long-term emission projections, solicits comments on the applicability of those alternative results.

Because of the rapid pace of these power sector changes, it is difficult for sector analysts to fully account for these changing trends in near-term and long-term sector-wide projections. This means that regulatory decisions made today could be based on information that may very well be outdated within the next several years. If that is the case, work put in by federal and state regulatory agencies—as well as by the affected sources themselves—to address section 111(d) requirements could quickly be overtaken by external market forces which could make those efforts redundant or, even worse, put them in conflict with industry trends that are already reducing CO_2 emissions.

III. Legal Authority

A. Authority To Revisit Existing Regulations

EPA's ability to revisit existing regulations is well-grounded in the law. Specifically, EPA has inherent authority to reconsider, repeal or revise past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. The CAA complements EPA's inherent authority to reconsider prior rulemakings by providing the Agency with broad authority to prescribe regulations as necessary. 42 U.S.C. 7601(a); *see also* Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 FR 59276, 59277–78 (August 29, 2016). The authority to reconsider prior decisions exists in part because EPA's interpretations of statutes it administers ''[are not] instantly carved in stone,'' but must be evaluated ''on a continuing basis.'' *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863–64 (1984). This is true when, as is the case here, review is undertaken ''in response to . . . a change in administrations.'' *National Cable & Telecommunications Ass'n* v. *Brand X Internet Services,* 545 U.S. 967, 981 (2005). Indeed, ''[a]gencies obviously have broad discretion to reconsider a regulation at any time.'' *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8–9 (D.C. Cir. 2017).

B. Authority To Regulate EGUs

In the CPP, EPA stated that EPA's then-concurrent promulgation of standards of performance regulating CO_2 emissions from new, modified, and reconstructed EGUs triggered the need to regulate existing sources under CAA section 111(d). 80 FR 64715. In ACE, we are not re-opening any issues related to this conclusion, but for the convenience of stakeholders and the public, we will summarize our explanation here.

We explained in the CPP that CAA section 111(d)(1) requires EPA to promulgate regulations under which states must submit state plans regulating ''any existing source'' of certain pollutants ''to which a standard of performance would apply if such existing source were a new source.'' *Id.* Under CAA section 111(a)(2) and 40 CFR 60.15(a), a ''new source'' is defined as any stationary source, the construction, modification, or reconstruction of which is commenced after the publication of proposed regulations prescribing a standard of performance under CAA section 111(b) applicable to such source. We noted that, at that time, we were concurrently finalizing a rulemaking under CAA section 111(b) for CO_2 emissions from affected EGUs, which provided the requisite predicate for applicability of CAA section 111(d). *Id.*

EPA explained in the 111(b) rule (80 FR 64529) that ''CAA section 111(b)(1)(A) requires the Administrator to establish a list of source categories to be regulated under section 111. A category of sources is to be included on the list 'if in [the Administrator's] judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health and welfare.' '' This determination is commonly referred to as an ''endangerment finding'' and that phrase encompasses both the ''causes or contributes significantly'' component and the ''endanger public health and welfare'' component of the determination. Then, for the source categories listed under section 111(b)(1)(A), the Administrator promulgates, under section 111(b)(1)(B), ''standards of performance for new sources within such category.'' EPA further explained that, because EGUs had previously been listed, it was unnecessary to make an additional finding. The Agency also noted that, under section 111(b)(1)(A), findings are category specific and not pollutant specific, so a new finding is not needed with regard to a new pollutant. The Agency further asserted that, even if it were required to make a finding, given the large amount of CO_2 emitted from this source category (the largest single stationary source category of emissions of CO_2 by far) that EGUs would easily meet that standard. The Agency further noted that, given the large amount of emissions from the source category, it was not necessary in that rule ''for the EPA to decide whether it must identify a specific threshold for the amount of emissions from a source category that constitutes a significant contribution.'' 80 FR 64531.

That CAA section 111(b) rulemaking remains on the books, although EPA is currently considering revising it. Accordingly, it continues to provide the requisite predicate for applicability of CAA section 111(d). Any comments on the issues discussed in this subsection would be more appropriately addressed

[7] U.S. EIA, *Annual Energy Outlook 2018 with projections to 2050* (February 6, 2018), at 102, available at *https://www.eia.gov/outlooks/aeo/pdf/AEO2018.pdf.*

to the docket on EPA's intended forthcoming proposal with regard to the new source rule.

C. Legal Authority for Determination of the BSER

As discussed above, EPA's authorized role under CAA section 111(d) is to establish a procedure under which states submit plans establishing standards of performance for existing sources, reflecting the application of the best system of emission reduction that EPA has determined is adequately demonstrated for the source category. In the CPP, EPA determined that the BSER for CO_2 emissions from existing fossil fuel-fired power plants was the combination of emission rate improvements and limitations on overall emissions by affected power plants that can be accomplished through a combination of three sets of measures, which the EPA called ''building blocks'':

1. Improving heat rate at affected coal-fired steam generating units;
2. Substituting increased generation from lower-emitting existing natural gas combined cycle units for decreased generation from higher-emitting affected steam generating units; and
3. Substituting increased generation from new zero-emitting renewable energy generating capacity for decreased generation from affected fossil fuel-fired generating units.

While building block 1 constituted measures that could be applied directly to a source—that is, integrated into its design or operation—building blocks 2 and 3 employed generation-shifting measures that departed from this traditional, source-specific approach to regulation.

As explained in the proposed repeal, after reconsidering the statutory text, context and legislative history, and in consideration of EPA's historical practice under CAA section 111 as reflected in its other existing section 111 regulations, the Agency proposes to return to a reading of section 111(a)(1) (and its constituent term, ''best system of emission reduction'') as being limited to emission reduction measures that can be applied to or at an individual stationary source. That is, such measures must be based on a physical or operational change to a building, structure, facility or installation at that source rather than measures the source's owner or operator can implement at another location. For a more detailed discussion of EPA's proposed interpretation, see 82 FR 48039–42.

In proposing ACE, EPA offers additional legal rationale to support its determination that heat-rate improvements constitute the BSER. EPA solicits comment on these additional legal interpretations (Comment C–2).

First, as explained in the CPP preamble, reduced utilization ''does not fit within our historical and current interpretation of the BSER.'' *See* 80 FR 64780; *see also id.* at 64762 (''EPA has generally taken the approach of basing regulatory requirements on controls and measures designed to reduce air pollutants from the production process without limiting the aggregate amount of production.'') Whereas some emission reduction measures (such as a scrubber) may have an incidental impact on a source's production levels, reduced utilization is directly correlated with a source's output. Moreover, predicating a CAA section 111 standard on a source's non-performance would inappropriately inject the Agency into an owner/operator's production decisions. In returning to our historical understanding of and practice under section 111, we reiterate that reduced utilization is not a valid system of emission reduction for purposes of establishing a standard of performance. EPA believes our proposed interpretation that the BSER be limited to measures that can be applied at or to a source does not command a different result.

Second, as explained in the proposed repeal notice, interpretative constraints that may apply to interpreting CAA section 111(a)(1) (*i.e.,* determining what types of measures that may be considered as the BSER) for purposes of setting a new source performance standard under section 111(b) reasonably may be applied to interpreting the BSER for purposes of setting existing source standards under section 111(d) as well (and, given that ''standard of performance'' is given a unitary definition for purposes of the entire statutory section, applying the same interpretative constraints may in fact be required). For example, we proposed that ''the BSER should be interpreted as a source-specific measure, in light of the fact that [Best Available Control Technology, or BACT] standards, for which the BSER is expressly linked by statutory text, are unambiguously intended to be source-specific.'' [8] *See* 82 FR 48042.

Under the CAA and applicable regulations, certain preconstruction permits must contain emissions limitations based on application of BACT for certain regulated pollutants. EPA recommends that permitting authorities follow a five-step ''top-down'' BACT analysis, which calls for all available control technologies for a given pollutant to be identified and ranked in descending order of control effectiveness.[9] The options are then assessed in consideration of technical, energy, environmental and economic factors until an option is selected as BACT.

In reviewing our BACT guidance, we have identified additional interpretive constraints that may be applied to CAA section 111. Specifically, in EPA's *PSD and Title V Permitting Guidance for Greenhouse Gases,* we explained that a BACT analysis ''need not necessarily include inherently lower polluting processes *that would fundamentally redefine the nature of the source* proposed by the permit applicant.'' *Id.* at 26 (emphasis added). Furthermore, we explained that ''BACT should generally not be applied to regulate the applicant's purpose or objective for the proposed facility.'' *Id.* Indeed, ''EPA has recognized that the initial list of control options for a BACT analysis does not need to include 'clean fuel' options that would fundamentally redefine the source. Such options include those that would require a permit applicant to switch to a primary fuel type (*i.e.,* coal, natural gas or biomass) other than the type of fuel that an applicant proposes to use for its primary combustion process.'' *Id.* at 27. EPA has even noted that ''applicants proposing to construct a coal-fired electric generator, have not been required by EPA as part of a BACT analysis to consider building a natural gas-fired electric turbine although the turbine may be inherently less polluting per unit product (in this case electricity).'' [10] Although in the CPP we believed that EPA's ''redefining the source'' policy was not relevant for purposes of section 111(d), *see* CPP RTC Chapter 1A, 170–72, we now believe that such a policy is relevant in light of the relationship between BACT and BSER. In the response to comments accompanying the CPP, EPA rejected the relevance to BSER under section 111 of the Agency's general policy against ''redefining the source'' in the context of PSD/BACT. EPA now believes that it was incorrect in its response, and that it is worth examining this point in some detail because it encapsulates several key aspects of the CPP's interpretation

[8] *See* 40 CFR 52.21(b)(12); *see also* 42 U.S.C. 7479(3).

[9] The five steps are: (1) Identify all available control technologies; (2) eliminate technically infeasible options; (3) rank remaining control technologies; (4) evaluate most effective controls and document results; and (5) select the BACT.

[10] New Source Review Workshop Manual, at B.13 (Draft) (October 1990), available at *https://www.epa.gov/sites/production/files/2015-07/documents/1990wman.pdf.*

of section 111 in general and section 111(d) in particular that EPA now proposes to conclude in ACE are not appropriate interpretations of the statute.

In its response to comments, EPA largely based its rejection of the relevance of PSD to BSER on what it saw as the salient distinctions between the sources subject to, and mode of operation of, the two statutory programs. In this regard, EPA spoke of the ''distinct context of the PSD program, which involves the case-by-case review of the construction of an *individual stationary source.* . . . BACT is not applicable to unmodified existing sources *nor is it applied on a source category basis.* The CAA's PSD program is *administered primarily by state and local permitting authorities* as [an] individualized preconstruction requirement under CAA section 165. Under section 111(d), the Administrator identifies a list of adequately demonstrated control options in use by the industry, selects the best of those control options after considering cost and other factors, *then selects an achievable limit for the category* through the application of the BSER across the industry. . . .'' (Emphases added.)

Here, EPA's response disregarded the fact that under CAA section 111(d), the statute explicitly tasks states—not the Administrator—with ''establishing standards of performance'' for existing sources, and that the statute expressly requires EPA to allow the state to take into account source-specific factors when doing so. A ''standard of performance'' is defined at section 111(a)(1) as ''a standard for emissions of air pollutants which reflects the *degree of emission limitation achievable* through the application of the'' BSER. (Emphasis added.) Therefore, it is the state, not EPA, that is tasked in the first instance with ''select[ing] an achievable limit'' for existing sources—and section 111(d)'s emphasis on source-specific factors at the very least renders questionable EPA's unqualified assertion that BSER for existing sources ''is applied on a source category basis.'' In the instant proposal, EPA proposes to give full meaning to these textual and structural features of the existing-source program under section 111(d) that render it in important respects distinct from the new-source program under section 111(b) and similar to the source-by-source PSD program: Section 111(d), unlike section 111(b), is implemented in the first instance by the states, and it is expressly linked to source-specific factors. These similarities counsel against EPA's prior rejection of the relevance of the general policy under PSD against ''redefining the source.''

Furthermore, speaking of the generation-shifting measures that constituted the second and third ''building blocks'' of the CPP, EPA asserted that ''those measures are part of the business purposes and objectives *within the power sector.* Accordingly, the BSER, which incorporates building blocks 2 and 3, cannot be said to force a fundamental redefinition *of the business of generating electric power.*'' (Emphases added.) The emphasized phrases reveal the influence of EPA's statutory interpretation underlying the CPP: That EPA can regulate under CAA section 111 at the level of an entire industrial sector, and that the business that it is regulating is ''generating electric power'' writ large—rather than a recognition in line with the statute's text and structure, and EPA's practice prior to the CPP, of regulating the performance of individual sources through measures carried out at and by the individual source.

EPA rested on its discretionary prerogative: ''EPA's policies under CAA section 165 regarding the construction of individual sources are not controlling for purposes of establishing *category-wide standards for existing sources* under CAA section 111(d). Even if the PSD 'redefining the source' policies were applicable in this context, *it would be within the Administrator's discretion to consider requiring a fundamental redesign* of a newly constructed or modified source[ ]. EPA's case-by-case application of CAA section 165 in the PSD program does not limit the Administrator's *discretion in establishing an emission guideline for an entire category of existing sources* under CAA section 111(d).'' (Emphases added.) EPA has explained, both in the proposed repeal and the instant proposal, why it is proposing to conclude that the statute does not, in fact, delegate discretion to the Administrator to ''establish . . . for an entire category of existing sources'' standards that can only be accomplished by ''a fundamental redesign'' of that category, of the generation mix, and of the division of jurisdiction over electricity generation within the federal government and between the federal government and the states. But to the extent that the Agency, due to the fact that Congress did not expressly forbid such an approach, does possess that discretion, today it proposes not to exercise it.

Third, notwithstanding the relationship between BACT and BSER, we believe that measures ''redefining the source'' should be excluded from consideration for purposes of CAA section 111(d). *See, e.g., Sierra Club* v. *EPA,* 499 F.3d 653, 655 (7th Cir. 2007) (''Refining the statutory definition . . . to exclude redesign is the kind of judgment by an administrative agency to which a reviewing court should defer.''). Indeed, the policy against redefining a source is even more sensible when applied to existing sources. Under section 111(d), regulated sources are well past the proposal stage and redefining such sources would likely require, at a minimum, significant modification and could even require decommissioning, redesign and new construction. Accordingly, we propose to recognize that the BSER analysis need not include options that would ''fundamentally redefine the source,'' irrespective of the application of that policy under PSD. For purposes of ACE, therefore, we did not consider natural gas repowering (*i.e.,* converting from a coal-fired boiler to a gas-fired turbine) or refueling (*i.e.,* converting from a coal-fired boiler to a natural gas-fired boiler) as a system of emission reduction for coal-fired steam generating units.

Fourth, the legislative history underlying CAA section 111 confirms that Congress intended this provision to be source oriented. The Senate Committee Report on Senate Bill 4358 explained that ''[t]he provisions for new source performance standards [*i.e.,* S. 4538, section 113] [11] are designed to insure [sic] that new stationary sources *are designed, built, equipped, operated, and maintained* so as to reduce emissions to a minimum.'' S. Committee Rep. to accompany S. 4358 (Sept. 17, 1970), 1970 CAA Legis. Hist. at 415–16 (emphasis added). Similarly, ''[e]mission standards developed under [S. 4538, section 114] would be applied to existing stationary sources. However, the Committee recognizes that *certain old facilities may use equipment and processes which are not suited to the application of control technology.*'' *Id.* at 1970 CAA Legis. Hist. at 419 (emphasis added) (noting further that in such cases, the application of standards could be waived).

The proposed interpretive scope of the BSER is reasonable because it focuses the BSER on the performance of the emitting unit itself, rather than the performance of the emitting unit and the transmission system to which it belongs. EPA's area of expertise is control of emissions at the source. EPA is not the expert agency with regard to electricity management. FERC is the expert at the

[11] Section 113 of Senate Bill 4538 would become CAA section 111; section 114 of the Senate Bill would become CAA section 111(d).

federal level and public utility commissions are the experts at the state and local level. Numerous factors might be considered in determining which power plants dispatch on a given system or operate at any given time (*e.g.,* cost of service, voltage support, electricity demand, availability of renewable resources, *etc.*). Moreover, numerous factors are relevant in determining how much new/replacement generation capacity is needed and what types of generating resources best satisfy that need. EPA has no express legal authority and no particular expertise in any of these areas. This is particularly relevant because, as noted below, there are already significant changes taking place within the power sector that are resulting in shifts away from coal-fired generation to new technologies such as renewables. This shift is creating tremendous strain on the power infrastructure even without the added pressures of an EPA mandate to further shift away from additional coal-fired generation. Many experts have expressed concern that these pressures could create reliability problems. As DOE noted in a 2017 report on electricity markets and reliability, ''Ultimately, the continued closure of traditional baseload power plants calls for a comprehensive strategy for long-term reliability and resilience. States and regions are accepting increased risks that could affect the future reliability and resilience of electricity delivery for consumers in their regions. Hydropower, nuclear, coal, and natural gas power plants provide essential reliability services and fuel assurance critical to system resilience. A continual comprehensive regional and national review is needed to determine how a portfolio of domestic energy resources can be developed to ensure grid reliability and resilience.'' [12] Because EPA believes it is not appropriate to further challenge the nation's electricity system while these important technical and policy issues are being addressed. EPA believes that it is reasonable to focus on a ''BSER'' limited to consideration of emission control measures that can be applied at or to coal-fired units, ensuring that regardless of how much coal-fired generation remains, that generation is operated to minimize CO_2 emissions.

Also, the proposed interpretive scope of the BSER is reasonable considering the several important economic, policy and technology shifts occurring in the power sector. The first change is being driven by low natural gas prices that make lower carbon-emitting NGCC units more competitive as compared to higher carbon-emitting coal plants. Another important change is driven by both technology changes and by state and national energy policy decisions that have made renewable energy (*e.g.,* solar and wind energy) more competitive compared to coal and natural gas. The third notable change is driven by aging coal plants, which considering the economic competitive pressures driven by natural gas and renewable generation, are leading companies to conclude that a significant number of coal plants are reaching the end of their useful economic life or are no longer economic to operate.

These trends have driven down GHG emissions from power plants, which were also key components to the BSER as defined in the CPP. In fact, the analysis that EPA has done for ACE (see RIA), as well as analysis by many others (including EIA), show that these trends have already well outpaced the projections that went into the CPP for many states. For this reason, establishing a BSER on assumptions for generation by various sources that accounts for the continuation of these trends into the future would create significant work for both states and sources that may or may not result in emission reductions from ACE if the actual trends once again prove to be stronger than projected.

While some might suggest that this argues that the BSER in ACE should still follow the same approach as the CPP, adjusting this proposal to be even more stringent ignores the fact that the uncertainties that have resulted in faster than projected emission reductions are also uncertain in the opposite direction. From 2005 to 2008, gas prices experienced several unexpected peaks that were not anticipated. If this were to happen in the future, it would make any rule based on CPP-type assumptions significantly more expensive. Similarly, while the recent past has shown continued advances in renewable cost and performance, it is not certain that those trends will be sustained. It should be noted that federal tax subsidies that have been key to this trend are set to expire over the next several years which may play a role in the future.

Because of these significant uncertainties that can have large impacts on electric reliability and the cost of electricity to consumers, EPA believes that this further supports the unreasonableness of basing the BSER on generation-shifting measures. Regardless of the path that the power sector takes, coal-fired power plants are likely to be an important part of the generation mix for the foreseeable future, therefore EPA believes it is reasonable to ensure that the remaining coal-fired generation (which is also the most CO_2 intensive portion of the power sector) focuses on reducing that CO_2 emission intensity to the extent technically feasible considering cost.

EPA believes that a BSER focused on making these plants as efficient as possible is the best way to ensure GHG emission reductions regardless of other factors such as technology changes for other types of generation, changes in fuel price, changes in electricity demand or changes in energy policy that neither environmental regulators nor power companies have the power to control.

IV. Affected Sources

EPA is proposing that an affected EGU subject to regulation upon finalization of ACE is any fossil fuel-fired electric utility steam generating unit (*i.e.,* utility boilers) that is not an integrated gasification combined cycle (IGCC) unit (*i.e.,* utility boilers, but not IGCC units) that was in operation or had commenced construction as of August 31, 2018,[13] and that meets the following criteria.[14] To be an affected EGU, a fossil fuel-fired electric utility steam generating unit must serve a generator capable of selling greater than 25 MW to a utility power distribution system and have a base load rating greater than 260 GJ/h (250 MMBtu/h) heat input of fossil fuel (either alone or in combination with any other fuel).

EPA is proposing different applicability criteria than in the CPP to reflect EPA's determination of the BSER for only fossil fuel-fired electric utility steam generating units. In ACE, EPA does not identify a BSER for stationary combustion turbines and IGCC units and, thus, such units are not affected EGUs for purposes of this action (see discussion below in Section V.B). It should be noted, in the CPP's identification of the BSER, no HRIs were identified as the BSER for stationary combustion turbines and IGCC units. Nevertheless, EPA solicits comment on systems of emission reduction that might be the BSER for these types of

[12] U.S. DOE, *Staff Report to the Secretary on Electricity Markets and Reliability* (August 2017) at 14, available at *https://www.energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf.*

[13] Under section 111(a) of the CAA, determination of affected sources is based on the date that EPA proposes action on such sources. January 8, 2014 is the date the proposed GHG standards of performance for new fossil fuel-fired EGUs were published in the **Federal Register** (79 FR 1430).

[14] To be clear, this definition of an affected EGU does not, at this time, include stationary combustion turbines for reasons discussed later in this document.

EGUs (Comment C–3). EPA notes that, under the CPP, certain EGUs were not considered to be affected EGUs, and therefore were exempt from inclusion in a state plan. Similarly, EPA is proposing for ACE, the following EGUs would be excluded from a state's plan: (1) Those units subject to 40 CFR 60 subpart TTTT as a result of commencing modification or reconstruction; (2) steam generating units subject to a federally enforceable permit limiting net-electric sales to one-third or less of their potential electric output or 219,000 MWh or less on an annual basis; (3) non-fossil units (*i.e.,* units capable of combusting at least 50 percent non-fossil fuel) that have historically limited the use of fossil fuels to 10 percent or less of the annual capacity factor or are subject to a federally enforceable permit limiting fossil fuel use to 10 percent or less of the annual capacity factor; (4) units that serve a generator along with other steam generating unit(s) where the effective generation capacity (determined based on a prorated output of the base load rating of each steam generating unit) is 25 MW or less; (5) municipal waste combustor unit subject to 40 CFR part 60, subpart Eb; or (6) commercial or industrial solid waste incineration units that are subject to 40 CFR part 60, subpart CCCC. EPA solicits comment on whether there should be a different definition of affected EGUs for ACE (Comment C–4).

V. Determination of the BSER

CAA section 111(d)(1) directs EPA to promulgate regulations establishing a CAA section 110-like procedure under which states submit state plans that establish ''standards of performance'' for emissions of certain air pollutants from sources which, if they were new sources, would be subject to new source standards under section 111(b), and that provide for the implementation and enforcement of those standards of performance. The term ''standard of performance'' is defined in section 111(a)(1) as ''a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction [BSER] which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.''

Thus, EPA is authorized to determine the BSER for affected sources. *See also* 40 CFR 60.22. In making this determination, EPA identifies all ''adequately demonstrated'' [15] ''system[s] of emission reduction'' for a particular source category and then evaluates those systems to determine which is the ''best'' [16] while ''taking into account'' the factors of ''cost . . . nonair quality health and environmental impact and energy requirements.'' Because CAA section 111 does not set forth the weight that should be assigned to each of these factors, courts have granted the Agency a great degree of discretion in balancing them. *Lignite Energy Council* v. *EPA,* 198 F.3d 930, 933 (D.C. Cir. 1999) (internal citations omitted).

CAA section 111(d)(1) assigns responsibility to the states for establishing standards of performance for affected existing sources—in contrast to section 111(b), which directs EPA to set standards of performance for affected new sources.

A. Identification of the BSER

In ACE, EPA identified several systems of emission reduction for existing fossil-fuel fired steam generating EGUs (*i.e.,* heat rate improvements; carbon capture and storage; and fuel co-firing, including with natural gas and biomass) and evaluated each of these systems to determine which is the ''best'' while taking into account cost, nonair quality health and environmental impact and energy requirements.

EPA proposes to identify ''heat rate improvements'' (which may also be referred to as ''efficiency improvements'') as the BSER for existing fossil-fuel fired steam generating EGUs. The basis for this determination is discussed below. A discussion of other potential CO_2 reduction measures that EPA has determined are not BSER (but which states may allow sources to use for compliance purposes) is also provided below.

The U.S. fleet of existing coal-fired EGUs is a diverse group of units with unique individual characteristics, spread across the country. Coal-fired power plants are customized facilities that were designed and built to meet local and regional electricity needs over the past 100 years, with no two plants being identical. Geography and elevation, unit size, coal type, pollution controls, cooling system, firing method and utilization rate are just a few of the parameters that can impact the overall efficiency and performance of individual units. As a result, heat rates of existing coal-fired EGUs in the U.S. vary substantially. The variation in heat rates among EGUs with similar design characteristics, as well as year-to-year variation in heat rate at individual EGUs, indicate that there is potential for HRIs that can improve CO_2 emission performance for the existing coal-fired EGU fleet, but that this potential may vary considerably at the unit level.

EPA does not currently have sufficient information on adequately demonstrated systems of emission reduction—including HRI opportunities—for existing natural gas-fired stationary combustion turbines. As such, the Agency is currently unable to determine the BSER for such units. In this action, EPA solicits information on adequately demonstrated systems of GHG emission reduction for such units—especially on the efficiency, applicability, and cost of such systems (Comment C–5). This is discussed in greater detail below.

B. HRIs for Steam-Generating EGUs

As mentioned above, EPA proposes in ACE to identify ''heat rate improvements'' as the BSER for existing steam generating fossil fuel-fired EGUs. Heat rate is a measure of efficiency that is commonly used in the power sector. The heat rate is the amount of energy input, measured in British thermal units (Btu), required to generate one kilowatt-hour (kWh) of electricity. The lower an EGU's heat rate, the more efficiently it operates. As a result, an EGU with a lower heat rate will consume less fuel per kWh generated and emit lower amounts of CO_2 and other air pollutants per kWh generated as compared to a less efficient unit. An EGU's heat rate can be affected by a variety of design characteristics, site-specific factors, and operating conditions, including:

- Thermodynamic cycle of the boiler;

[15] Case law under CAA section 111(b) explains that ''[a]n adequately demonstrated system is one which has been shown to be reasonably reliable, reasonably efficient, and which can reasonably be expected to serve the interests of pollution control without becoming exorbitantly costly in an economic or environmental way.'' *Essex Chemical Corp.* v. *Ruckelshaus,* 486 F.2d 427, 433–34 (D.C. Cir. 1973). While some of these cases suggest that ''[t]he Administrator may make a projection based on existing technology,'' *Portland Cement Ass'n* v. *Ruckelshaus,* 486 F.2d 375, 391 (D.C. Cir. 1973), the D.C. Circuit has also noted that ''there is inherent tension'' between considering a particular control technique as both ''an emerging technology and an adequately demonstrated technology,'' *Sierra Club* v. *Costle,* 657 F.2d 298, 341 n.157 (D.C. Cir. 1981). *See also NRDC* v. *Thomas,* 805 F.2d 410, n. 30 (D.C. Cir. 1986) (suggesting that ''a standard cannot both require adequately demonstrated technology and also be technology-forcing.''). Nevertheless, EPA appears to ''have authority to hold the industry to a standard of improved design and operational advances, so long as there is substantial evidence that such improvements are feasible.'' *Sierra Club,* 657 F.2d at 364.

[16] The D.C. Circuit recognizes that EPA's evaluation of the ''best'' system must also include ''the amount of air pollution as a relevant factor to be weighed . . . .'' *Id.* at 326.

- Boiler and steam turbine size and design;
- Cooling system type;
- Auxiliary equipment, including pollution controls;
- Operations and maintenance practices;
- Fuel quality; and
- Ambient conditions.

In the CPP, EPA quantified emission reductions achievable through heat rate improvements on a regional basis (*i.e.,* building block 1). The Agency concluded that EGUs can achieve on average a 4.3 percent improvement in the Eastern Interconnection, a 2.1 percent improvement in the Western Interconnection and a 2.3 percent improvement in the Texas Interconnection. *See* 80 FR 64789. The Agency then applied all three of the building blocks to 2012 baseline data and quantified, in the form of CO_2 emission rates, the reductions achievable in each interconnection in 2030 and selected the least stringent as a national performance rate. *Id.* at 64811–819. EPA noted that building block 1 measures could not by themselves constitute the BSER because of a potential ''rebound effect.'' [17] *Id.* at 64787.

EPA believes that building block 1, as constructed in CPP, does not represent an appropriate BSER, and ACE better reflects important changes in the formulation and application of the BSER in accordance with the CAA. For example, the percent improvement applied as the BSER under CPP was determined at the interconnect-level, and did not take into account remaining useful life or other source-specific factors, which are addressed in this proposed rule.[18] The current fleet of existing fossil fuel-fired EGUs is quite diverse in terms of size, age, fuel type, operation (*e.g.,* baseload, cycling), boiler type, *etc.* Many coal-fired EGUs now operate under load-following and cycling conditions as opposed to the steady baseload operating conditions that were more common a decade ago.

There are available technologies and equipment upgrades, as well as best operating and maintenance practices, that EGU owners or operators may utilize to improve an EGU's heat rate. In the ANPRM, EPA solicited information on a number of technology and equipment upgrades and good practices (specifically including, but not limited to, those that were listed in Tables 1 and 2 of the ANPRM, *see* 82 FR 61514) that have the potential to reduce an EGU's heat rate.

Specifically, the Agency solicited information on: (1) Potential HRIs from technologies and best operating and maintenance practices; (2) costs of deploying the technologies and the best operating and maintenance practices, including applicable planning, capital and operating and maintenance costs; (3) owner and operator experiences deploying the technologies and employing best operating and maintenance practices; (4) barriers to or from deploying the technologies and operating and maintenance practices; and (5) any other technologies or operating and maintenance practices that may exist for improving heat rate, but were not listed in the ANPRM.

EPA received useful information in the comments submitted in response to the ANPRM. Many commenters contended that any evaluation of the HRI potential of the coal-fired EGU fleet must be done on a unit-by-unit basis since the opportunities for HRI are source-specific and dependent upon the individual unit's design, configuration, and operating and maintenance history. Many commenters emphasized the significant influence that the operating mode (*i.e.,* whether the unit operates at consistent baseload conditions or in cycling or load-following mode or as a low capacity factor unit that is subject to frequent startups and shutdowns) has on an individual EGU's heat rate and HRI potential. Many commenters also claimed that owners and operators of fossil fuel-fired EGUs already routinely conduct HRI efforts and, as a result, there are relatively few economic improvement opportunities available.

1. Potential HRI Measures—Technologies and Equipment Upgrades

As mentioned above, numerous technologies and equipment upgrades, as well as best operating and maintenance practices (which are discussed in the next section), have been identified as potential measures to improve an EGU's heat rate. In the ANPRM, EPA solicited information on a large number of technology and equipment upgrades and best operating and maintenance practices that have the potential to reduce an EGU's heat rate. *See* Tables 1 and 2 of the ANPRM, 82 FR 61514.

In this action, EPA is proposing to determine that heat rate improvement is the BSER for affected existing coal-fired EGUs and is proposing a list of ''candidate technologies'' of HRI measures for states to use in establishing standards of performance under CAA section 111(d)(1). States can use the information that EPA provides on the ''degree of emission limitation achievable through application of the [BSER]'' to establish standards of performance for affected EGUs covered by a state's plan.[19] While a large number of HRI measures have been identified in a variety of studies conducted by government agencies and outside groups (*see* Table 3 in ANPRM, 82 FR 61515), some of those identified technologies have limited applicability and many provide only negligible HRI. EPA believes that it would be overly burdensome to require States to evaluate the degree of emission limitation achievable from the application of every single identified HRI measure—including those with negligible benefits—at each source (or subcategory of sources) within their borders. Therefore, EPA has identified a list of the ''most impactful'' HRI measures that we are proposing to serve as technologies, equipment upgrades and best operating and maintenance practices that form the list of ''candidate technologies'' constituting the BSER. The candidate technologies of the BSER is listed in Table 1 below. Best operating and maintenance practices are discussed in the next section. States are expected to evaluate each of the BSER HRI measures in the candidate technologies in establishing a standard of performance for any particular source. The States, in applying a standard of performance, may take into consideration, among other factors, the remaining useful life of the existing source to which the standard would apply. EPA solicits comments on whether other unlisted HRI measures should also be included as part of the BSER and added to the candidate technologies (Comment C–6). EPA also solicits comment on each of the candidate technologies described further below, including whether any additional technologies should be added to the list, and whether there is additional information that EPA should be aware of and consider in determining the BSER and establishing the candidate technologies for HRI measures (Comment C–7).

The technologies and operating and maintenance practices listed and

[17] As discussed below, EPA modeled a range of potential HRIs for ACE and the Agency's analysis indicates that system-wide emission decreases from heat rate improvements will likely outweigh any potential system-wide emission increases. Accordingly, EPA proposes to conclude that the ''rebound effect'' does not preclude a determination that HRIs constitute the BSER.

[18] The Agency solicits comments, nonetheless, on whether and how to retain building block 1 in lieu of the proposed approach.

[19] The states, in applying the unit-specific standard, may also take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies. *See* CAA section 111(d)(1).

described below may not be available or appropriate for all types of EGUs; and some owners or operators will have already deployed some of the technologies and employed some of the best operating and maintenance practices.

TABLE 1—SUMMARY OF MOST IMPACTFUL HRI MEASURES AND RANGE OF THEIR HRI POTENTIAL (%) BY EGU SIZE

HRI measure	<200 MW		200–500 MW		>500 MW	
	Min	Max	Min	Max	Min	Max
Neural Network/Intelligent Sootblowers	0.5	1.4	0.3	1.0	0.3	0.9
Boiler Feed Pumps	0.2	0.5	0.2	0.5	0.2	0.5
Air Heater & Duct Leakage Control	0.1	0.4	0.1	0.4	0.1	0.4
Variable Frequency Drives	0.2	0.9	0.2	1.0	0.2	1.0
Blade Path Upgrade (Steam Turbine)	0.9	2.7	1.0	2.9	1.0	2.9
Redesign/Replace Economizer	0.5	0.9	0.5	1.0	0.5	1.0
Improved O&M Practices	Can range from 0 to >2.0% depending on the unit's historical O&M practices.					

a. Neural Network/Intelligent Sootblower

Neural networks. Computer models, known as neural networks, can be used to simulate the performance of the power plant at various operating loads. Typically, the neural network system ties into the plant's distributed control system for data input (process monitoring) and process control. The system uses plant specific modeling and control modules to optimize the unit's operation and minimize the emissions. This model predictive control can be particularly effective at improving the plants performance and minimizing emissions during periods of rapid load changes. The neural network can be used to optimize combustion conditions, steam temperatures, and air pollution control equipment.

Intelligent Sootblowers. During operations at a coal-fired power plant, particulate matter (ash or soot) builds up on heat transfer surfaces. This build-up degrades the performance of the heat transfer equipment and negatively affects the efficiency of the plant. Power plant operators use steam injection ''sootblowers'' to clean the heat transfer surfaces by removing the ash build-up. This is often done on a routine basis or as needed based on monitored operating characteristics. Intelligent sootblowers (ISB) are automated systems that use process measurements to monitor the heat transfer performance and strategically allocate steam to specific areas to remove ash buildup.

The cost to implement an ISB system is relatively inexpensive if the necessary hardware is already installed. The ISB software/control system is often incorporated into the neural network software package mentioned above. As such, the HRIs obtained via installation of neural network and ISB systems are not necessarily cumulative.

The efficiency improvements from installation of intelligent sootblowers are often greatest for EGUs firing subbituminous coal and lignite due to more significant and rapid fouling at those units as compared to EGUs firing bituminous coal.

b. Boiler Feed Pumps

A boiler feed pump (or boiler feedwater pump) is a device used to pump feedwater into a boiler. The water may be either freshly supplied or returning condensate produced from condensing steam produced by the boiler. The boiler feed pumps consume a large fraction of the auxiliary power used internally within a power plant. Boiler feed pumps can require power in excess of 10 MW on a 500–MW power plant. Therefore, the maintenance on these pumps should be rigorous to ensure both reliability and high-efficiency operation Boiler feed pumps wear over time and subsequently operate below the original design efficiency. The most pragmatic remedy is to rebuild a boiler feed pump in an overhaul or upgrade.

c. Air Heater and Duct Leakage Control

The air pre-heater is a device that recovers heat from the flue gas for use in pre-heating the incoming combustion air (and potentially for other uses such as coal drying). Properly operating air pre-heaters play a significant role in the overall efficiency of a coal-fired EGU. A major difficulty associated with the use of regenerative air pre-heaters is air leakage from the combustion air side to the flue gas side. Air leakage affects boiler efficiency due to lost heat recovery and affects the axillary load since any leakage requires additional fan capacity. The amount of air leaking past the seals tends to increase as the unit ages. Improvements to seals on regenerative air pre-heaters have enabled the reduction of air leakage.

d. Variable Frequency Drives (VFDs)

VFD on ID Fans. The increased pressure required to maintain proper flue gas flow through add-on air pollutant control equipment may require additional fan power, which can be achieved by an induced draft (ID) fan upgrade/replacement or an added booster fan. Generally, older power plant facilities were designed and built with centrifugal fans.

The most precise and energy-efficient method of flue gas flow control is use of VFD. The VFD controls fan speed electrically by using a static controllable rectifier (thyristor) to control frequency and voltage and, thereby, the fan speed. The VFD enables very precise and accurate speed control with an almost instantaneous response to control signals. The VFD controller enables highly efficient fan performance at almost all percentages of flow turndown.

Due to current electricity market conditions, many units no longer operate at base-load capacity and, therefore, VFDs, also known as variable-speed drives on fans can greatly enhance plant performance at off-peak loads. Additionally, because utilities are phasing in their environmental equipment upgrades, new fans are oversized and operated at lower capacities until all additional equipment has been added. Under these scenarios, VFDs can significantly improve the unit heat rate. VFDs as motor controllers offer many substantial improvements to electric motor power requirements. The drives provide benefits such as soft starts, which reduce initial electrical load, excessive torque, and subsequent equipment wear during startups; provide precise speed control; and enable high-efficiency operation of motors at less than the maximum efficiency point. During load turndown, plant auxiliary power could

be reduced by 30–60 percent if all large motors in a plant were efficiently controlled by VFD. With unit loads varying throughout the year, the benefits of using VFDs on large-size equipment, such as FD or ID fans, boiler feedwater and condenser circulation water pumps, can have significant impacts. Because plants today usually use either new booster ID fans or new ID fans, the option of investing in VFDs generally appeals to plant operators since they are incurring long outages to install the either new or additional air emission controls equipment. There are circumstances in which the HRI has been estimated to be much higher than that shown in Table 1, depending on the operation of the unit. Cycling units realize the greatest gains representative of the upper range of HRI, whereas units which were designed with excess fan capacity will exhibit the lower range.

VFD on Boiler Feed Pumps. VFDs can also be used on boiler feed water pumps as mentioned previously. Generally, if a unit with an older steam turbine is rated below 350 MW the use of motor-driven boiler feedwater pumps as the main drivers may be considered practical from an efficiency standpoint. If a unit cycles frequently then operation of the pumps with VFDs will offer the best results on heat rate reductions, followed by fluid couplings. The use of VFDs for boiler feed pumps is becoming more common in the industry for larger units. And with the advancements in low pressure steam turbines, a motor-driven feed pump can improve the thermal performance of a system up to the 600–MW range, as compared to the performance associated with the use of turbine drive pumps. Smaller and older units will generally not upgrade to a VFD boiler feed pump drive due to high capital costs.

e. Blade Path Upgrade (Steam Turbine)

Upgrades or overhauls of steam turbines offer the greatest opportunity for HRI on many units. Significant increases in performance can be gained from turbine upgrades when plants experience problems such as steam leakages or blade erosion. The typical turbine upgrade depends on the history of the turbine itself and its overall performance. The upgrade can entail myriad improvements, all of which affect the performance and associated costs. The availability of advanced design tools, such as computational fluid dynamics (CFD), coupled with improved materials of construction and machining and fabrication capabilities have significantly enhanced the efficiency of modern turbines. These improvements in new turbines can also be utilized to improve the efficiency of older steam turbines whose efficiency has degraded over time. Upgrades or overhauls of steam turbines may offer the greatest opportunity for HRI on many units. Significant increases in performance can be gained from turbine upgrades when plants experience problems such as steam leakages or blade erosion. The typical turbine upgrade depends on the history of the turbine itself and its overall performance. The upgrade can entail myriad improvements, all of which affect the performance and associated costs.

f. Redesign/Replace Economizer

In steam power plants, economizers are heat exchange devices used to capture waste heat from boiler flue gas which is then used to heat the boiler feedwater. This use of waste heat reduces the need to use extracted energy from the system and, therefore, improves the overall efficiency or heat rate of the unit. As with most other heat transfer devices, the performance of the economizer will degrade with time and use, and power plant representatives contend that economizer replacements are often delayed or avoided due to concerns about triggering NSR requirements. In some cases, economizer replacement projects have been undertaken concurrently with retrofit installation of selective catalytic reduction (SCR) systems because the entrance temperature for the SCR unit must be controlled to a specific range.

2. Potential HRI Measures—Best Operating and Maintenance Practices

Many unit operators can achieve additional HRI by adopting best operating and maintenance practices. The amount of achievable HRI will vary significantly from unit to unit. In setting a standard of performance for a specific unit or subcategory of units, states should consider the opportunities for HRI from the following actions.

a. Adopt HRI Training for O&M Staff

EGU operators can obtain HRI by adopting ''awareness training'' to ensure that all O&M staff are aware of best practices and how those practices affect the unit's heat rate.

b. Perform On-Site Appraisals To Identify Areas for Improved Heat Rate Performance

Some large utilities have internal groups that can perform on-site evaluations of heat rate performance improvement opportunities. Outside (*i.e.,* third party) groups can also provide site-specific/unit-specific evaluations to identify opportunities for HRI.

c. Improved Steam Surface Condenser—Cleaning

Effective operation of the steam surface condenser in a power plant can significantly improve a unit's heat rate. In fact, in many cases it can pose the most significant hindrance to a plant trying to maintain its original design heat rate. Since the primary function of the condenser is to condense steam flowing from the last stage of the steam turbine to liquid form, it is most desirable from a thermodynamic standpoint that this occurs at the lowest temperature reasonably feasible. By lowering the condensing temperature, the backpressure on the turbine is lowered, which improves turbine performance.

Condenser Cleaning. A condenser degrades primarily due to fouling of the tubes and air in-leakage. Tube fouling leads to reduced heat transfer rates, while air in-leakage directly increases the backpressure of the condenser and degrades the quality of the water. Condenser tube cleaning can be performed using either on-line methods or more rigorous off-line methods. A full economic analysis should be performed to determine which off-line cleaning method is to be used. Such an analysis would result in an optimum offline or reduced-load cleaning schedule that could average between two and three cleanings a year. These analyses consider inputs such as operating data, plant performance, loads, time of year, etc., to accurately assess cleaning schedules for optimum economic performance.

3. Cost of HRI

a. Reasonableness of Cost

As mentioned earlier, under CAA section 111(a)(1), EPA is required to determine ''the best system of emission reduction which (taking into account the cost . . .) . . . has been adequately demonstrated.'' In several cases, the D.C. Circuit has elaborated on this cost factor in various ways, stating that EPA may not adopt a standard for which costs would be ''exorbitant,'' [20] ''greater than the industry could bear and survive,'' [21] ''excessive,'' [22] or ''unreasonable.'' [23] These formulations appear to be synonymous and suggest a cost-reasonableness standard. Therefore, in this action, EPA has evaluated

[20] *Lignite Energy,* 198 F.3d at 933.

[21] *Portland Cement,* 513 F.2d at 508.

[22] *Sierra Club,* 657 F.2d at 343.

[23] *Id.*

whether the costs of HRI are considered to be reasonable.

Any efficiency improvement made by an EGU will also reduce the amount of fuel consumed per unit of electricity output; fuel costs can account for as much as 70 percent of production costs of power. The cost attributable to CO_2 emission reductions, therefore, is the net cost of achieving HRIs after any savings from reduced fuel expenses. So, over some time period (depending upon, among other factors, the extent of HRIs, the cost to implement such improvements, and the unit utilization rate), the savings in fuel cost associated with HRIs may be sufficient to cover the costs of implementing the HRI measures. Thus, the net costs of HRIs associated with reducing CO_2 emissions from affected EGUs can be relatively low depending upon each EGUs' individual circumstances. It should be noted that this cost evaluation is not an attempt to determine the affordability of the HRI in a business or economic sense (*i.e.,* the reasonableness of the imposed cost is not determined by whether there is an economic payback within a predefined time period). However, the ability of EGUs to recoup some of the costs of HRIs through fuel savings supports a finding that cost recovery is a reasonable factor in determining cost effectiveness.[24]

Most often, when evaluating costs for criteria pollutants—in a BACT analysis, for example—the emphasis is focused on the cost of control relative to the amount of pollutant removed—a metric typically referred to as the ''cost-effectiveness.'' There have been relatively few BACT analyses evaluating GHG reduction technologies for coal-fired EGUs; and, therefore not a large number of GHG cost-effectiveness determinations to compare against as a measure of the cost reasonableness. Nevertheless, in PSD and Title V permitting guidance for GHG emissions, EPA noted that ''it is important in BACT reviews for permitting authorities to consider options that improve the overall energy efficiency of the source or modification—through technologies, processes and practices at the emitting unit. In general, a more energy efficient technology burns less fuel than a less energy efficient technology on a per unit of output basis.'' [25] EPA has also noted that a ''number of energy efficiency technologies are available for application to both existing and new coal-fired EGU projects that can provide incremental step improvements to the overall thermal efficiency.'' [26]

b. Cost of the HRI Candidate Technologies Measures

The estimated costs for the BSER candidate technologies are presented below in Table 2. These are cost ranges from the 2009 S&L Study [27] updated to $2016. These costs correspond to ranges of HRI (percent) presented earlier in Table 1.

TABLE 2—SUMMARY OF COST ($2016/kW) OF HRI MEASURES

HRI measure	<200 MW		200–500 MW		>500 MW	
	Min	Max	Min	Max	Min	Max
Neural Network/Intelligent Sootblowers	4.7	4.7	2.5	2.5	1.4	1.4
Boiler Feed Pumps	1.4	2.0	1.1	1.3	0.9	1.0
Air Heater & Duct Leakage Control	3.6	4.7	2.5	2.7	2.1	2.4
Variable Frequency Drives	9.1	11.9	7.2	9.4	6.6	7.9
Blade Path Upgrade (Steam Turbine)	11.2	66.9	8.9	44.6	6.2	31.0
Redesign/Replace Economizer	13.1	18.7	10.5	12.7	10.0	11.2
Improved O&M Practices	Minimal capital cost.					

In the CPP, EPA estimated the potential national average net HRI by coal-fired EGUs to between 2.1 to 4.3 percent for each interconnection, or about 4 percent nationally, with the improvements coming from some combination of best operating practices and equipment upgrades. The Agency noted in the CPP that the maximum cost of HRI from Table 2 is expected to be less than the $100/kW value used in the CPP proposal, especially as the EGU size increases; and, therefore, the Agency assessed the economic effects of HRI costs that might range from $50 to $100/kW. The technical applicability and efficacy of HRI measures and the cost of implementing them are dependent upon site specific factors and can vary widely from site to site. Because there is inherent flexibility provided to the states in applying the standards of performance, there is a wide range of potential outcomes that are highly dependent upon how the standards are applied (and to what degree states take into consideration other factors, including remaining useful life).

In the RIA accompanying this proposal, the Agency evaluates three illustrative scenarios that recognize the inherent flexibility provided to states in applying standards of performance and provide insight on potential outcomes. For those illustrative scenarios, EPA evaluates costs ranging from $50/kW to $100/kW. EPA requests comment, with analysis, on other cost ranges that may be appropriate.

4. Nonair Quality Health and Environmental Impacts, Energy Requirements, and Other Considerations

As directed by CAA section 111(a)(1), EPA has taken into account nonair quality health and environment requirements, and energy requirements for each of the candidate BSER technologies listed in Tables 1 and 2. None of the candidate technologies, if implemented at a coal-fired EGU, would be expected to result in any deleterious effects on any of the liquid effluents (*e.g.,* scrubber liquor) or solid by-products (*e.g.,* ash, scrubber solids). All of these candidate technologies, when

[24] While some EGUs may not realize the full potential of cost recuperation from fuel savings, we expect that the net costs of implementing heat rate improvements as an approach to reducing CO_2 emissions from fossil fuel-fired EGUs are reasonable.

[25] See page 21, ''PSD and Title V Permitting Guidance for Greenhouse Gases,'' EPA–457/B–11–001, March 2011; *https://www.epa.gov/sites/production/files/2015-12/documents/ghgpermittingguidance.pdf.*

[26] See page 25, ''Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from Coal-fired Electric Generating Units,'' October 2010; *https://www.epa.gov/sites/production/files/2015-12/documents/electricgeneration.pdf.*

[27] ''Coal-Fired Power Plant Heat Rate Reductions'' Sargent & Lundy report SL–009597 (2009) *https://www.epa.gov/sites/production/files/2015-08/documents/coalfired.pdf.*

implemented, would have the effect of improving the efficiency of the coal-fired EGUs to which they are applied. As such, the EGU would be expected to use less fuel to produce the same amount of electricity as it did prior to the efficiency (heat rate) improvement. None of candidate technologies is expected to impose any significant additional auxiliary energy demand.

Implementation of heat rate improvement measures also would achieve reasonable reductions in CO_2 emissions from affected sources in light of the limited cost-effective and technically feasible emissions control opportunities. In the same vein, because existing sources face inherent constraints that new sources do not, existing sources present different, and in some ways more limited, opportunities for technological innovation or development. Nevertheless, the proposed emissions guidelines encourage technological development by promoting further development and market penetration of equipment upgrades and process changes that improve plant efficiency.

5. Potential HRI at Existing Coal-Fired EGUs

Government agencies and laboratories, industry research organizations, engineering firms, equipment suppliers, and environmental organizations have conducted studies examining the potential for improving heat rate in the U.S. EGU fleet or a subset of the fleet. Table 3 below provides a list of some reports, case studies, and analyses about HRI opportunities in the United States. EPA is seeking comment on how these studies (and any others that the Agency should be aware of) can inform our understanding of potential HRI opportunities (Comment C–8).

TABLE 3—HRI REPORTS, CASE STUDIES, AND ANALYSES

HRI report organization/publication (author, if known)—title—year [URL]
Government Studies:
Congressional Research Service (Campbell)—Increasing the Efficiency of Existing Coal-fired Power Plants (R43343)—2013 [*https://fas.org/sgp/crs/misc/R43343.pdf*].
EIA—Analysis of Heat Rate Improvement Potential at Coal-Fired Power Plants—2015 [*https://www.eia.gov/analysis/studies/powerplants/heatrate/pdf/heatrate.pdf*].
EPA—Greenhouse Gas Mitigation Measures—2015 [*https://www.regulations.gov/document?D=EPA-HQ-OAR-2013-0602-37114*].
NETL—Opportunities to Improve the Efficiency of Existing Coal-fired Power Plants—2009 [*http://www.netl.doe.gov/File%20Library/Research/Energy%20Analysis/Publications/OpportImproveEfficExistCFPP-ReportFinal.pdf*].
NETL—Improving the Thermal Efficiency of Coal-Fired Power Plants in the United States—2010 [*http://www.netl.doe.gov/File%20Library/Research/Energy%20Analysis/Publications/ThermalEfficCoalFiredPowerPlants-TechWorkshopRpt.pdf*].
NETL—Improving the Efficiency of Coal-Fired Power Plants for Near Term Greenhouse Gas Emissions Reductions (DOE/NETL–2010/1411)—2010 [*http://www.netl.doe.gov/File%20Library/Research/Energy%20Analysis/Publications/DOE-NETL-2010-1411-ImpEfficCFPP GHGRdctns-0410.pdf*].
NETL—Options for Improving the Efficiency of Existing Coal-Fired Power Plants (DOE/NETL–2013/1611)—2014 [*https://www.netl.doe.gov/energy-analyses/temp/FY14_OptionsforImprovingtheEfficiencyofExistingCoalFiredPowerPlants_040114.pdf*].
IEA (Reid)—Retrofitting Lignite Plants to Improve Efficiency and Performance (CCC/264)—2016 [*http://bookshop.iea-coal.org/reports/ccc-264/83861*].
IEA (Henderson)—Upgrading and Efficiency Improvement in Coal-fired Power Plants (CCC/221)—2013 [*http://bookshop.iea-coal.org/reports/ccc-221/83186*].
European Commission—Integrated Pollution Prevention and Control Reference Document on Best Available Techniques for Large Combustion Plants—2006 [*http://eippcb.jrc.ec.europa.eu/reference/BREF/lcp_bref_0706.pdf*].
Industry/Industrial Groups:
EPRI—Range of Applicability of Heat Rate Improvements—2014 [*https://www.epri.com/#/pages/product/000000003002003457*].
ABB Power Generation—Energy Efficient Design of Auxiliary Systems in Fossil-Fuel Power Plants [*https://library.e.abb.com/public/5e627b842a63d389c1257b2f002c7e77/Energy%20Efficiency%20for%20Power%20Plant%20Auxiliaries-V2_0.pdf*].
Alstom Engineering (Sutton)—CO_2 Reduction Through Energy Efficiency in Coal-Fired Boilers—2011 [*http://www.mcilvainecompany.com/Universal_Power/Subscriber/PowerDescriptionLinks/Jim%20Sutton%20-%20Alstom%20-%203-31-2011.pdf*].
GE—Comments of the General Electric Company—2014 [*https://www.regulations.gov/document?D=EPA-HQ-OAR-2013-0602-22971*].
National Petroleum Council—Electric Generation Efficiency—2007 [*http://www.npc.org/Study_Topic_Papers/4-DTG-ElectricEfficiency.pdf*].
S&L—Coal-fired Power Plant Heat Rate Reductions (SL–009597)—2009 [*https://www.regulations.gov/document?D=EPA-HQ-OAR-2013-0602-36895*].
S&L—Coal Fired Power Plant Heat Rate Reduction—NRECA (SL–012541)—2014 [*https://www.regulations.gov/document?D=EPA-HQ-OAR-2013-0602-22767 Supp 33*].
Storm Technologies—Applying the Fundamentals for Best Heat Rate Performance of Pulverized Coal Fueled Boilers—2009 [*http://www.stormeng.com/pdf/EPRI2009HeatRateConference%20FINAL.pdf*].
Environmental Groups/Academic Studies:
Lehigh University—Reducing Heat Rates of Coal-fired Power Plants—2009 [*http://www.lehigh.edu/~inenr/leu/leu_61.pdf*].
NRDC—Closing the Power Plant Carbon Pollution Loophole: Smart Ways the Clean Air Act Can Clean Up America's Biggest Climate Polluters (12–11–A)—2013 [*https://www.nrdc.org/sites/default/files/pollution-standards-report.pdf*].
Resources for the Future (Lin *et al.*)—Regulating Greenhouse Gases from Coal Power Plants Under the Clean Air Act (RFF–DP–13–05)—2014 [*http://www.rff.org/files/sharepoint/WorkImages/Download/RFF-DP-13-05.pdf*].
Sierra Club (Buckheit & Spiegel)—Sierra Club 52 Unit Study—2014 [*http://content.sierraclub.org/environmentallaw/sites/content.sierraclub.org.environmentallaw/files/Appendix%201%20-%20Rate%20v%20Load%20Summary.pdf*].
Other Publications:
Power Engineering International (Co_X)—Dry Sorbent Injection for SO_X Emissions Control—2017 [*http://www.powerengineeringint.com/articles/print/volume-25/issue-6/features/dry-sorbent-injection-for-sox-emissions-control.html*].
Power Mag (Korellis)—Coal-Fired Power Plant Heat Rate Improvement Options, Parts 1 & 2—2014 [*http://www.powermag.com/coal-fired-power-plant-heat-rate-improvement-options-part-2*] [*http://www.powermag.com/coal-fired-power-plant-heat-rate-improvement-options-part-1*].
Power Mag (Peltier)—Steam Turbine Upgrading: Low-hanging Fruit—2006 [*http://www.powermag.com/steam-turbine-upgrading-low-hanging-fruit*].

It has been noted that unit-level HRIs, with the resulting reductions in variable operating costs at those improved EGUs, could lead to increases in utilization of those EGUs as compared to other generating options (*i.e.,* ''rebound effect''). *See generally* 80 FR 64745.

As part of the cost-benefit analysis in the RIA for this proposed action, EPA modeled a range of potential HRIs (percent improvement, as described in the RIA). The results of the modeling, for the years of analysis for this rule, predict that there will be no cumulative increases in system-wide emissions relative to a scenario where no action is taken. While the RIA shows that, under certain assumptions, sources that adopt HRI may increase generation, due to their improved efficiency and relatively improved economic competitiveness, they also generally reduce emissions (as a group) because they can generate higher levels of electricity with a lower overall emission rate. Hence, EPA analysis indicates that the system-wide emission decreases due to reduced heat rate are likely to be larger than any system-wide increases due to increased operation. EPA solicits comment on this conclusion (Comment C–9).

C. HRI for Natural Gas-Fired Stationary Combustion Turbines

EPA has also considered opportunities for emission reductions at natural gas-fired stationary combustion turbines as a part of the BSER—at both simple cycle turbines and combined cycle turbines—and previously determined that the available emission reductions would likely be expensive or would likely provide only small overall reductions relative to those that were predicted through application of other systems of emission reduction identified in the CPP building blocks. In the development of the CAA section 111(b) standards of performance for new, modified, and reconstructed EGUs, several commenters provided information on options that may be available to improve the efficiency of existing natural gas-fired stationary combustion turbines. *See* 80 FR 64620. Commenters—including turbine manufacturers—described specific technology upgrades for the compressor, combustor, and gas turbine components that operators of existing combustion turbines may deploy. The commenters noted that these state-of-the-art gas path upgrades, software upgrades, and combustor upgrades have the potential to reduce GHG emissions by a significant amount. In addition, one turbine manufacturer stated that existing combustion turbines can achieve the largest efficiency improvements by upgrading existing compressors with more advanced compressor technologies, potentially improving the combustion turbine's efficiency by an additional margin. *See* 80 FR 64620.

In addition to upgrades to the combustion turbine, the operator of a NGCC unit may have the opportunity to improve the efficiency of the heat recovery steam generator and steam cycle using retrofit technologies that may reduce the GHG emissions by 1.5 to 3 percent. These include: (1) Steam path upgrades that can minimize aerodynamic and steam leakage losses; (2) replacement of the existing high-pressure turbine stages with state-of-the-art stages capable of extracting more energy from the same steam supply; and (3) replacement of low-pressure turbine stages with larger diameter components that extract additional energy and that reduce velocities, wear, and corrosion.

In the ANPRM, EPA requested comment on the broad availability and applicability of any HRIs for natural gas combustion turbine EGUs. EPA also solicited comment on the Agency's previous determination in the CPP that the available GHG emission reduction opportunities would likely provide only small overall GHG reductions as compared to those from HRIs at existing coal-fired EGUs. *See* 80 FR 64756.

Several commenters suggested that there are significant opportunities for emission reductions via HRIs at natural gas combined cycle EGUs while many other commenters contended that any such emission reductions would be minimal and too expensive. Still, other commenters noted that operational changes—such as lower capacity factor or fluctuations in load (cycling)—affect the heat rate and make it difficult to accurately gauge the availability of HRI opportunities for NGCC EGUs.

However, while numerous comments suggested that there are available HRI opportunities at existing NGCC EGUs, no commenters provided specific information on the availability, applicability, or cost of HRI opportunities for NGCC units—nor did any commenters provide any information on the magnitude of expected heat rate reductions.

To assess potential HRI of existing NGCC EGUs, EPA looked at 11 years of historical gross heat rate data from 2007 to 2017 for existing NGCC EGUs that reported both heat input and gross electricity output to the Agency in 2017. The Agency used the 2007 to 2016 data to calculate a ''benchmark'' heat rate for each unit. EPA evaluated the HRI potential using an approach that is similar to the method used to determine a unit-specific standard that was finalized for modified coal-fired EGUs. The Agency evaluated the HRI potential by comparing the 2017 national annual heat rate with the best annual heat rate in the years from 2007 to 2016 year. The HRI potential was calculated nationally and at each regional interconnection: East, West, and Texas. Nationally the HRI evaluation suggested an average HRI potential of 3.4 percent.

EPA also conducted a literature search and found some papers suggesting potential for improvement in the heat rate. The literature suggested that most HRIs would be accompanied by commensurate capacity increases.[28] EPA takes comment on the estimates in this paper and is seeking any other information commenters have about the performance and cost of potential HRIs for turbines (Comment C–10). We also take comment on whether if EPA determined that HRIs in that range were available for similar costs, it would be appropriate for EPA to reconsider its determination that there are no HRIs that represent the BSER (Comment C–11).

D. Other Considered Systems of GHG Emission Reductions

EPA also considered other systems of GHG emission reductions that may be applied to affected EGUs but is not proposing that they should be part of the BSER for the reasons discussed below. EPA acknowledges that there may be other methods and technologies suitable for adoption at some specific sources, but states and sources are best suited to determine if those alternative measures and technologies are appropriate and/or allowable compliance measures.

1. Carbon Capture and Storage (CCS) [29]

EPA has previously determined that CCS (or partial CCS) should not be a part of the BSER for existing fossil fuel-fired EGUs because it was significantly more expensive than alternative options for reducing emissions and may not be a viable option for many individual facilities. *See* 80 FR 64756. Even assuming that CAA section 111(d) may be used to project technological

[28] Phillips, J.; Levine, P.; ''Gas Turbine Performance Upgrade Options'', FERN Engineering Paper, available at *http://www.fernengineering.com/pdf/gt_upgrade_options.pdf.*

[29] CCS is sometimes referred to as Carbon Capture and Sequestration. It is also sometimes referred to as CCUS or Carbon Capture Utilization and Storage (or Sequestration), where the captured CO_2 is utilized in some useful way and/or permanently stored (for example, in conjunction with enhanced oil recovery). In this document, we consider these terms to be interchangeable and for convenience will exclusively use the term CCS.

advances, EPA must balance innovative technologies against their economic, energy, nonair health and environmental impacts. EPA continues to believe that neither CCS nor partial CCS are technologies that can be considered the BSER for existing fossil fuel-fired EGUs. However, if there is any new information regarding the availability, applicability, costs, or technical feasibility of CCS technologies, commenters are encouraged to provide that information to EPA (Comment C–12).

Similarly, EPA considered whether CCS or partial CCS should be the BSER for natural gas-fired stationary combustion turbines and have determined that, currently, the technology is exorbitantly expensive, has not been adequately demonstrated, and would not be available for a large number of existing sources. Similar technologies—such as use of the novel Allam Cycle [30]—are, while seemingly promising, still in the early demonstration phase.

2. Fuel Co-Firing

EPA has previously determined that co-firing of alternative fuels (biomass or natural gas) in coal-fired utility boilers is not part of BSER for existing fossil fuel-fired sources due to cost and feasibility considerations. *See* 80 FR 64756. Although some fuel co-firing methods are technically feasible for some affected sources, there are factors and considerations that prevent its inclusion as BSER. In general, fuel use opportunities are dependent upon many regional considerations and characteristics (*e.g.,* access to biomass, or natural gas pipeline infrastructure limitations), that prevent its adoption as BSER on a national level (whereas nearly all sources can or have implemented some form of heat rate improvement measures). Another important factor is cost, and broader application of fuel co-firing methods has been shown to be costly. While this proposal does not include fuel co-firing methods as BSER, EPA proposes that they be allowed as compliance options that states may consider (see Section VI). EPA solicits comment, nevertheless, on whether co-firing methods should be included among the list of BSER candidate technologies for states to evaluate when establishing a standard of performance for each affected source in their jurisdiction.

a. Natural Gas Co-Firing

Coal-fired power plants typically use natural gas or other clean fuel (such as low sulfur fuel oil) for start-up operations and, if needed, to maintain the unit in ''warm stand-by.'' Some plants co-fire natural gas simultaneously with coal—either directly as a combustion fuel or in configuration referred to as natural gas reburn, which is used for NOx control. During periods of natural gas co-firing, an EGU's CO_2 emission rate is reduced as natural gas is a less carbon intensive fuel than coal. For example, at 10 percent natural gas co-firing, the net emissions rate (lb/MWh-net) of a typical unit would decrease by approximately 4 percent. On the other hand, co-firing can negatively impact a unit's efficiency due to the high hydrogen content of natural gas and the resulting production of water as a combustion by-product. And depending on the design of the boiler and extent of modifications, some boilers may be forced to de-rate (a reduction in generating capacity) in order to maintain steam temperatures at or within design limits, or for other technical reasons.

In evaluating BSER technology options, CAA section 111(a)(1) directs EPA to take into account nonair quality health and environmental impacts, and energy requirements. EPA is unaware of any significant nonair quality health or environmental impacts associated with natural gas co-firing. However, in taking energy requirements into account, EPA notes that co-firing natural gas in coal-fired utility boilers is not the best, most efficient use of natural gas and, as noted above, can lead to inefficient operation of utility boilers. NGCC stationary combustion turbine units are much more efficient at using natural gas as a fuel for the production of electricity and it would not be an environmentally positive outcome for utilities and owner/operators to redirect natural gas from the more efficient NGCC EGUs to the less efficient coal-fired EGUs in order to satisfy an emission standard at the coal-fired unit.

Moreover, unlike coal, natural gas cannot be stored in quantities sufficient for sustained utilization on site. Accordingly, delivery of natural gas via pipeline is essential for using natural gas at coal-fired EGUs. Many existing coal-fired plants, however, do not have access to natural gas transportation infrastructure and gaining access would be either infeasible (due to technical or timing considerations) or unreasonably costly.[31] For plants that currently co-fire natural gas and have access to an existing natural gas pipeline, many may be capacity constrained (*i.e.,* they are not able to greatly increase purchase volumes with the existing infrastructure). Accordingly, although natural gas fuel prices are currently low and some sources currently co-fire natural gas, on balance, there are notable challenges and concerns with instituting natural gas co-firing on a wide variety of units across the country. Therefore, EPA is not proposing that natural gas co-firing should be part of the BSER.

b. Co-Firing Biomass

The infrastructure, proximity and cost aspects of co-firing biomass at existing coal EGUs are similar in nature and concept to those of natural gas. While there are some existing coal-fired EGUs that currently co-fire with biomass fuel, those are in relatively close proximity to cost-effective biomass supplies; and, there are regional supply and demand dynamics at play. As with the other emission reduction measures discussed in this section, EPA expects that use of some types of biomass may be economically attractive for certain individual sources. However, on a broader scale, biomass co-firing is more expensive and/or less achievable than the measures determined to be part of the BSER. As such, EPA is not proposing that the use of biomass fuels is part of the BSER because too few individual sources will be able to employ that measure in a cost-reasonable manner.

VI. State Plan Development

A. Establishing Standards of Performance

1. Application of the BSER

As discussed in Section III above, EPA has the authority to determine the BSER as part of regulations it promulgates pursuant to CAA section 111(d)(1) (providing that states shall submit plans to EPA establishing ''standards of performance'' for existing sources); *see also* CAA section 111(a)(1) (defining ''standard of performance'' with reference to the ''best system of emission reduction which . . . the Administrator determines has been adequately demonstrated''). For such regulations, EPA has traditionally promulgated emission guidelines governing the process for states to

[30] *https://www.netpower.com/.*

[31] In addition to new pipeline infrastructure, conversion to natural gas co-firing in a coal-fired boiler typically involves installation of new gas burners and supply piping, modifications to combustion air ducts and control dampers, and possibly modifications to the boiler's steam superheater, reheater, and economizer heating surfaces that transfer heat from the hot flue gas exiting the boiler furnace. The conversion may also involve modification and possible deactivation of some downstream air pollution emission control equipment.

submit plans which establish standards of performance which reflect the degree of emission limitation achievable through application of the BSER to each affected source within the state, in addition to the implementing regulations EPA initially promulgated in 1975 to set the general framework under which it would administer section 111(d). The implementing regulations that are also being proposed in this action (see Section VII below for a discussion on the proposed new implementing regulations) contain certain requirements for EPA in promulgating an emission guideline under section 111(d). One requirement of the new proposed implementing regulations (consistent with the previous implementing regulations and section 111(d) of the CAA) is that an EPA-promulgated emission guideline provide information on the degree of emission reduction which is achievable with each system, together with information on the costs, and nonair health and environmental effects, and energy requirements of applying each system to designated facilities.[32] This means that EPA will provide, in addition to the BSER, *information* on the degree of emission reduction that is achievable when the BSER is applied. In the case of this proposed rulemaking and as described above in Section V, EPA is proposing that the BSER is HRI made at the unit level. To meet the requirements of the new proposed implementing regulations, EPA is proposing candidate technologies for HRI measures corresponding to a range of reductions and costs as information regarding the degree of emission reduction achievable through application of the BSER. Because affected EGUs in each state are different and the application of different HRI measures may take into account source-specific factors, EPA is providing expected ranges of HRIs. These ranges are shown in Table 1.

EPA expects that states can use the information that EPA provides on the degree of emission limitation in developing standards of performance for affected EGUs as part of establishing a standard of performance for inclusion in a state's plan pursuant to the requirements of section 111(d)(1). In this case, the ranges of HRIs are provided as guidance for states to use in evaluating the efficacy of implementing each measure identified as part of the BSER candidate technologies at each affected EGU. While the HRI potential range is provided as guidance for the states, the actual HRI performance for each of the candidate technologies will be unit-specific and will depend upon a range of unit-specific factors. The states will use the information provided by EPA as guidance, but will be expected to conduct unit-specific evaluations of HRI potential, technical feasibility, and applicability for each of the BSER candidate technologies. Once a state evaluates the HRIs identified as part of the BSER in establishing a standard of performance for a particular affected EGU, it is within the state's discretion to take certain factors concerning that source, such as remaining useful life, into consideration when determining how the standard of performance should be applied. The next section describes how states may derive a standard of performance reflecting the degree of emission limitation achievable through application of the BSER.

Additionally, the new proposed implementing regulations require that an emission guideline identify information such as a timeline for compliance with standards of performance that reflect the application of the BSER. *See* proposed 40 CFR 60.22a. However, given the source-specific nature of this proposed emission guideline and reasonably anticipated variation between standards established for sources within a state, EPA believes it more appropriate that a state establish tailored compliance deadlines for its sources based on the standard ultimately determined for each source. Accordingly, the EPA proposes to supersede this aspect of proposed 40 CFR 60.22a, as allowed under the applicability provision under proposed 60.20a, and allow for states to include appropriate compliance deadlines for sources based on the standards of performance determined as part of the state plan process.

EPA is proposing, consistent with the new proposed implementing regulations (subpart Ba), that states will include custom compliance schedules for affected EGUs as part of their state plan. This is another area that states have latitude for taking into account unit specific factors. It should be noted however, that per the proposed new implementing regulations, if a state chooses to include a compliance schedule for a source that extends more than twenty-four months from the submittal of the state plan, the plan must also include legally enforceable increments of progress for that source (*See* proposed 40 CFR 60.24a(d)(1)). The EPA solicits comment on whether states should determine source-specific compliance schedules under this emission guideline, or if a uniform compliance schedule is appropriate, and if so, what length of time is appropriate. (Comment C–13).

2. Determination of a Unit's Standard of Performance

As described in other parts of this section, while EPA's role is to determine the BSER, section 111(d)(1) squarely places the responsibility of establishing a standard of performance for an existing source on the state as part of developing a state plan. EPA is proposing that once EPA determines the BSER, states are expected to evaluate each of the BSER HRI measures that EPA has determined represent BSER in establishing a standard of performance for each source within their jurisdiction. The states, in applying the standards of performance, may take into consideration, among other factors, the remaining useful life of the existing source to which the standard would apply (see Section VI.B.1 for further discussion on remaining useful life and other factors). The proposed BSER is a list of candidate technologies that are HRI measures, which states should evaluate, and potentially apply to existing sources as appropriate based upon the specific characteristics of those units. In general, EPA envisions that, under the proposed program, the states would set standards based on considerations most appropriate to individual sources or groups of sources (*e.g.,* subcategories). These may include consideration of historical emission rates, effect of potential HRIs (informed by the information in EPA's candidate technologies described earlier in Section V), or changes in operation of the units, among other factors the state believes are relevant. As such, states have considerable flexibility in determining emission standards for units, as contemplated by the express statutory text.

Several commenters on the ANPRM suggested that EPA should develop a default methodology for determining appropriate standards of performance that are consistent with the BSER. More specifically, commenters suggested that EPA should use a methodology that is similar to the one finalized for major modifications at coal-fired EGUs under the section 111(b) program—*i.e.,* based on the use of historical heat rate or emissions data for the individual

[32] This is consistent with the statutory definition of ''standard of performance'' at CAA section 111(a)(1) (emphases added): ''a standard for emissions of air pollutants which reflects the *degree of emission limitation achievable* through the application of the best system of emission reduction which (*taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements*) the Administrator determines has been adequately demonstrated.''

source. Commenters also suggested that any approach covering all existing units should use at least ten years' worth of historical data and should be based on rolling averages for multiple year periods (*e.g.,* the fourth highest three-year average during the historical look-back period). Other commenters suggested that the approach used for major modifications was too stringent to apply to all units. EPA understands that if the Agency were to provide a specific and presumptively-approvable methodology for establishing standards of performance, that approach would provide states with certainty in how to develop plans. EPA is not proposing a specific methodology or formula for establishing standards of performance for existing sources in this action. EPA believes that such a presumptive standard could be viewed as limiting a state's ability to deviate from the prescribed methodology and that the approach could ultimately be more limiting than helpful. While EPA is not proposing a presumptive formulaic approach in this action, the Agency is soliciting comment on approaches based on the use of historical heat rate or emissions data for the individual source (Comment C–14). The circumstances and considerations for establishing standards of performance under CAA 111(b) for affected sources that have undergone a modification (*i.e.,* any physical change in or change in the method of operation that increases the hourly emissions of GHG) are not the same as the circumstances and considerations for states should take into account in establishing standards of performance under these proposed emission guidelines, but there are certainly parallels and similarities.

As mentioned earlier, states may take into consideration other factors, including remaining useful life, when applying unit-specific standards of performance. Consideration of these factors may result in the application of the standard of performance in a less stringent manner than would otherwise be suggested by strict implementation of the BSER technologies. This topic is discussed in detail in Section VI.B.

As previously described, this proposal seeks to clarify the Agency's and states' roles under section 111(d). The statute is clear that EPA determines the BSER, and states submit plans that establish standards of performance for existing sources that, under the definition of ''standard of performance in CAA section 111(a)(1), reflect the degree of emission limitation achievable though the application of the BSER. Consistent with the statute, EPA's proposed implementing regulations at 40 CFR 60.22a(b)(2) specify that an emission guideline must include *information* on the degree of emission reduction which is achievable, but does not require that EPA must provide a standard of performance that presumptively reflects such degree of emission reduction which is achievable through application of the BSER, as that is appropriately the states' role. EPA is proposing to clarify that the implementing regulations do not require EPA to provide a presumptive numerical standard as part of its emission guidelines and that the ranges of expected emission reductions that can be achieved in EPA's BSER determination adequately provide sufficient information to the states on the degree of emission limitation that will result from application of the BSER to existing sources to appropriately inform the states' exercise of their authority to develop plans under 111(d).

Given that section 111(d)(1) requires states to submit plans that establish standards of performance for affected sources, EPA believes it is consistent with the spirit of cooperative federalism to provide information sufficient to assist states in the development of state plans, which in turn will provide both states and sources with regulatory certainty via a plan that is approvable under section 111(d)(2) and applicable regulations. As mentioned above, EPA is proposing to provide information regarding ranges of expected reductions associated with the various HRIs identified as the BSER, which will assist states in establishing appropriate standards of performance for affected EGUs. EPA proposes to determine providing such information is consistent with both the implementing regulations at 40 CFR 60.22(b) and CAA section 111(d) regarding the roles of states and EPA determining the degree of emission limitation achievable through application of the BSER.

As described below in Section VI.B, under the statute, the proposed new implementing regulations, and these proposed emission guidelines, states have considerable flexibility in developing their plans and establishing and applying standards of performance to existing sources. One of the areas of flexibility described is in the standard setting process for EGUs. As part of this flexibility, EPA is proposing that states should have broad flexibility on whether and how the state chooses to group, sort, or subcategorize affected EGUs within the state to establish standards of performance. In evaluating affected EGUs, if a state finds that there is an overlap in circumstances around a group of EGUs, it might make sense to implement a uniform methodology for setting a standard of performance across that group. Another area of flexibility is explicitly provided in the statutory text of 111(d)(1) itself. The statute requires that EPA's regulations implementing section 111(d) shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

3. Forms of Standards of Performance

As described further in Section VII.C of this preamble, EPA is proposing a new implementing regulation for section 111(d) which includes a proposed definition of ''standard of performance that aligns with the statutory definition of the term under CAA section 111(a)(1). EPA is further proposing, as part of the new implementing regulations, that a specific emission guideline may contain provisions that supersede the applicability of the implementing regulations. In the context of these emission guidelines, EPA is proposing that an allowable emission rate (*i.e.,* rate-based standard in, for example, lb CO_2/MWh-gross) be the form of standard of performance that states would include in their state plans for affected EGUs. Primarily, an allowable emission rate most closely aligns to EPA's BSER determination for these emission guidelines. When HRIs are made at an EGU, by definition, the CO_2 emission rate will decrease as described above in Section V.B. There is a natural correspondence between the BSER and an allowable emission rate as the standard of performance in this action. Secondly, EPA is proposing that state plans include only the one form of standard of performance (*i.e.,* proposing only an allowable emission rate) to create continuity across states, prevent ambiguity, and to ensure as much simplicity as possible. However, EPA solicits comment on whether other forms of standards of performance should be allowed in state plans and whether a different form of standard should be the primary form that is authorized for state plans under a final emission guideline in response to this proposal (Comment C–15).

EPA is proposing an allowable emission rate of CO_2 as the form of the standard of performance because it creates the most straightforward system for states to determine standards and ensure compliance. This also creates a more streamlined evaluation for EPA to consider in state plan evaluation as there are fewer variables to consider (*e.g.,* projections of utilization which

would be required if the standard of performance took a mass-based form).

4. Gross Versus Net Emission Standards

EPA also requests comment on the merits of differentiating between gross and net heat rate (Comment C–16). This may be particularly important when considering the effects of part load operations (*i.e.,* net heat rate would include inefficiencies of the air quality control system at a part load whereas gross heat rate would not). This will also be important in recognizing the improved efficiency obtained from upgrades to equipment that reduce the auxiliary power demand.

B. Flexibilities for States and Sources

Once EPA determines the BSER, section 111(d)(1) of the CAA requires that ''each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source [. . .], and (B) provides for the implementation and enforcement of such standards of performance.'' Section 111(d)(1) further requires EPA to ''permit the State in applying a standard of performance to any particular source under a plan [. . .] to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.''

In light of the cooperative-federalist structure of section 111(d) and its express language requiring that EPA allow states to take into account source-specific factors when establishing standards of performance for existing sources, EPA believes it is appropriate in this proposal to provide considerable flexibility for states to set standards of performance for units and also allow states to have considerable latitude for implementing measures and standards for affected EGUs. A detailed discussion of the flexibility that states have in developing standards of performance is provided below in Section VI.B.1. States also have flexibility in the measures and processes that they put in place for affected EGUs to meet their compliance obligations. One of the examples of this is discussed in Section VI.B.2 on averaging and trading. As previously discussed, the BSER's candidate technologies affords states considerable flexibility to determine how to apply standards of performance to affected sources. Several commenters noted in the ANPRM that flexibility for States and affected sources should be part of any replacement rule, with States being able to choose from a wide variety of possible methods for developing a standard of performance, along with options for how to implement the standard through their state plans. Other commenters suggested that any flexible compliance opportunities provided should be directly linked to the determination of the BSER, such that increased compliance flexibility in the state's establishment of a standard of performance for an existing source can only be included to the extent that the flexibility is included as part of the BSER.

Another important and distinctly different element of flexibility in this proposal is the availability of compliance options for affected sources in meeting their standards of performance. To the extent that a state develops a standard of performance for an affected source within its jurisdiction, the state is free to give the source flexibility to meet that standard of performance using either BSER technologies or some other non-BSER technology or strategy. In other words, an affected source may have broad discretion in meeting its standard of performance within the requirements of a state's plan. For example, there are technologies, methods, and/or fuels that can be adopted at the affected source to allow the source to comply with its standard of performance that were not determined to be the BSER, but which may be applicable and prudent for specific units to use to meet their compliance obligations. Examples of non-BSER technologies and fuels include HRI technologies that were not included as candidate technologies, CCS, and fuel co-firing (natural gas or certain biomass). In keeping with past programs that regulated affected sources using a standard of performance, EPA takes no position regarding whether there may be other methods or approaches to meeting such a standard, since there are likely various approaches to meeting the standard of performance that EPA is either unable to include as part of the BSER, or is unable to predict. EPA proposes that affected sources may use both BSER and non-BSER measures to achieve compliance with their state plan obligations.

To demonstrate that measures taken to meet compliance obligations for a source actually reduce its emission rate, EPA proposes that the measures should meet two criteria: (1) They are implemented at the source itself, and (2) they are measurable at the source of emissions using data, emissions monitoring equipment or other methods to demonstrate compliance, such that they can be easily monitored, reported and verified at a unit. There may be other technologies or compliance measures that meet these general criteria. EPA solicits comment on whether these two criteria are appropriate or not and why, and whether there may be compliance flexibilities that might meet the two proposed criteria (Comment C–17). This proposed rule is intended to generally allow compliance flexibility in state plans where appropriate, to the extent they contribute to meeting any particular standard of performance, consistent with the criteria. EPA is further soliciting comment on whether there are certain non-BSER measures that should be disallowed for compliance, and if so, under what criteria or rationale should measures be disallowed for compliance (Comment C–18).

Section 111(d)(1)(B) additionally requires state plans to include measures that provide for the implementation and enforcement of standards of performance. EPA believes states can meet these requirements by including measures as described in Section VI.C of this proposal regarding state plan components, such as monitoring, reporting, and recordkeeping requirements. EPA solicits comments on what other implementation and enforcement measures may be necessary for states to meet the requirements of section 111(d)(1)(B) (Comment C–19). Additionally, as part of ensuring that regulatory obligations appropriately meet statutory requirements such as enforceability, EPA has historically and consistently required that obligations placed on sources be quantifiable, non-duplicative, permanent, verifiable, and enforceable. EPA is similarly proposing that standards of performance places on affected EGUs as part of a state plan be quantifiable, non-duplicative, permanent, verifiable, and enforceable.

The Agency specifically recognizes that some entities may be interested in using biomass as a compliance option for meeting the state determined emission standard.[33] As with the other non-BSER measures discussed in this section, EPA expects that use of biomass may be economically attractive for certain individual sources even though on a broader scale it may be more expensive or less achievable than the measures determined to be part of the BSER (and therefore EPA is not proposing to determine that it should be included within the BSER, which is properly limited to measures likely to be cost-reasonable for a greater proportion

[33] EPA believes that biomass co-firing can meet the two criteria above because the biomass can be burned at the source and there are different methods that can be used to monitor or calculate the amount of biogenic CO_2 emissions associated with biomass use at a unit.

of existing sources than we believe biomass to be at this time).

Certain kinds of biomass, including that from managed forests, have the potential to offer a wide range of economic and environmental benefits, including carbon benefits. However, these benefits can typically only be realized if biomass feedstocks are sourced responsibly, which can include ensuring that forest biomass is not sourced from lands converted to non-forest uses. States that intend to propose the use of forest-derived biomass for compliance by affected units may refer to EPA's April 2018 statement on its intended treatment of biogenic CO_2 emissions from stationary sources that use forest biomass for energy production.[34] [35] As discussed in the recent statement, EPA's policy is to treat biogenic CO_2 emissions resulting from the combustion of biomass from managed forests at stationary sources for energy production as carbon neutral.36 EPA will continue to evaluate the applicability of this policy of treating forest-biomass derived biogenic CO_2 as carbon neutral based on relevant information, including data from interagency partners on updated trends in forest carbon stocks.

EPA solicits comments on the inclusion of forest-derived biomass as a compliance option for affected units to meet state plan standards under this rule (Comment C–20). The Agency also solicits comment on the inclusion of non-forest biomass (*e.g.,* agricultural, waste stream-derived) for energy production as a compliance option, and what value to attribute to the biogenic CO_2 emissions associated with non-forest biomass feedstocks (Comment C–21). EPA recognizes that CCS technology (described above in this section) could be applied in conjunction with biomass use.

1. State Discretion To Consider Remaining Useful Life and Other Factors in Setting Standards of Performance

Section 111(d)(1) requires that EPA's regulations must permit states to take into account, among other factors, an affected source's remaining useful life when establishing an appropriate standard of performance. In other words, Congress explicitly envisioned under section 111(d)(1) that states could implement standards of performance that vary from EPA's emission guidelines under appropriate circumstances.

Congress explicitly mentions consideration of remaining useful life in 111(d). Ultimately remaining useful life impacts cost. When EPA develops a BSER, EPA typically considers factors such as cost relative to assumptions about a typical unit. If the remaining useful life of a particular unit is less, that will generally increase the cost of control because the time to amortize capital costs is less. When congress mentions other factors, EPA believes that these are generally other factors that may substantially increase costs relative to a more typical unit.

As such, EPA is proposing, as part of the proposed implementing regulations, to permit states to take into account remaining useful life, among other factors, in establishing a standard of performance for a particular affected source, consistent with section 111(d)(1)(B). EPA solicits comments on the manner in which states should be permitted to exercise their statutory authority to take into account remaining useful life and on what ''other factors'' might appropriately be besides remaining useful life (Comment C–22). As described in Section VII.F., EPA further proposes as part of the new implementing regulations that the following factors give meaning to section 111(d)(1)(B):

- Unreasonable cost of control resulting from plant age, location, or basic process design;
- Physical impossibility of installing necessary control equipment; or

Other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable. Given that there are unique attributes and aspects of each affected source, there are important factors that influence decisions to invest in technologies to meet a potential performance standard. These include timing considerations like expected life of the source, payback period for investments, the timing of regulatory requirements, and other unit-specific criteria. The state may find that there are space or other physical barriers to implementing certain HRIs at specific units. Or the state may find that some heat rate improvement options are either not applicable or have already been implemented at certain units. EPA understands that many of these ''other factors'' that can affect the application of the BSER candidate technologies distill down to a consideration of cost. Applying a specific candidate technology at an affected EGU can be a unit-by-unit determination that weighs the value of both the cost of installation and the CO_2 reductions. Accordingly, EPA proposes that these factors are the types that are specific to the facility (or class of facilities) that make a variance from the emission guideline significantly more reasonable, as allowed under proposed 40 CFR 60.24a(e)(3). EPA, therefore, proposes to allow states to take these factors into account in establishing a standard of performance for state plans in response to this emission guideline. EPA further solicits comments on what are other factors that states should be allowed to consider in establishing a standard of performance, per the proposed variance provision (Comment C–23).

As previously described, EPA proposes that states that utilize the proposed variance provision in the new implementing regulations to establish a less stringent standard of performance for an affected EGU and/or a compliance schedule that is longer than that contemplated in EPA's final emission guideline must demonstrate as part of their state plan submission that such application of the provision meets the criteria described in the factors in Section VII.D. EPA also recognizes that for some sources, the criteria may result in determining that no measures in the candidate technologies are applicable. Two examples of this might be a unit with a very short remaining useful life or a unit that has already implemented all of the candidate technologies of the BSER. In cases such as these, a state should still establish a standard of performance. In the case of a unit with a short remaining useful life, EPA takes comment on what such a standard might look like (Comment C–24). For instance, a state could set a standard using both an emission rate and a compliance deadline to address this instance. The emission standard would only be applicable if a source did not shut down by the compliance deadline. In the case of an affected EGU that has already implemented all of the candidate technologies, EPA would expect that a state set a standard of performance that would reflect an emission rate that is at least as stringent as ''business as usual'' for that source without allowing for any backsliding on performance. EPA requests comment on these proposed treatments of a source that either has a short remaining useful

[34] *https://www.epa.gov/sites/production/files/2018-04/documents/biomass_policy_statement_2018_04_23.pdf.*

[35] This policy statement aligns with provisions in the Consolidated Appropriations Act, 2018, which calls for EPA, the Department of Energy and the Department of Agriculture to establish policies that, consistent with their missions, jointly ''reflect the carbon-neutrality of forest bioenergy and recognize biomass as a renewable energy source, provided the use of forest biomass for energy production does not cause conversion of forests to non-forest use.'' *https://www.congress.gov/115/bills/hr1625/BILLS-115hr1625enr.pdf.*

life or has already implemented all of the HRIs identified as the BSER.

EPA is also generally soliciting comment on whether there are considerations in allowing states to utilize this proposed variance provision in the new implementing regulations in response to the final emission guideline, including the potential interaction of the compliance flexibilities proposed in this proposal with utilization of the provision (Comment C–25). For example, could states authorize trading as a compliance mechanism for affected EGUs and additionally invoke this provision, or would utilizing both trading and this provision in establishing standards in a state plan potentially result in such standards going beyond what section 111(d) permits (*i.e.,* would allowing for both trading and a variance with respect to the same standard result in a standard that is impermissibly less stringent than what application of the BSER in conjunction with invocation of this provision would result in)? EPA welcomes comments on the legality and appropriateness of utilizing this provision generally, and in the context of specific compliance flexibilities that states may employ in developing their plans (Comment C–26).

Another consideration for states in determining a standard of performance with consideration to unique aspects at an affected EGU is the interaction between BSER and NSR. EPA is aware that the prospect of triggering NSR, and its associated permitting requirements, may have discouraged sources from implementing some heat rate improvements previously. In Section VIII of this preamble, EPA discusses proposed changes to alleviate NSR burdens for EGUs undertaking heat rate improvements. The proposed action on NSR would ultimately impact the level of reductions reflected in the standard of performance that a state establishes for its sources. In considering each of the candidate technologies, EPA believes it is appropriate for states to consider the potential that the application of HRI may trigger NSR for some sources, and associated NSR requirements could ultimately impact the cost of HRI and the way the state applies standards to an affected EGU. EPA solicits comment on any factors that may play a role in a state setting a standard of performance with consideration to NSR (Comment C–27).

2. Averaging and Trading

EPA solicits comment on the question of whether CAA section 111(d) authorizes states to include averaging and trading between existing sources in the plans they submit to meet the requirements of a final emission guideline (Comment C–28). Section 111(d)(1) provides that states shall submit a plan which (A) establishes standards of performance for any existing source of certain air pollutants to which a 111(b) standard would apply if they were new sources, and (B) provides for the implementation and enforcement of such standards of performance. EPA's regulations under section 111(d) must permit the state, in applying a standard of performance to any particular existing source under a state plan, to consider, among other factors, the remaining useful life of that source.

To be clear, this section discusses averaging in the context of averaging across a facility and across multiple existing sources. For a discussion on EPA allowing individual EGU emissions averaging over a period of time, see Section VI.C.

EPA is proposing to allow states to incorporate, as a part of their plan, emissions averaging among EGUs across a single facility. The Agency's determination of the BSER is predicated on measures that can be implemented at the facility level and averaging across a facility is consistent with the proposed BSER. EPA is proposing that averaging at a facility only be applicable to affected EGUs (*i.e.* coal-fired steam EGUs) for several reasons. First, if averaging could include non-affected EGUs, this might not result in real reductions, but simply result in averaging with lower-emitting emitting fossil-fuel-fired EGUs such as NGCC units that would have been operating anyway. Further, even if it did result in generation shifting to lower emitting units it is contrary to the intention of the rule which is to focus on reducing the rate at coal-fired EGUs when they run, not to reduce the amount they run. Second, EPA is currently considering whether NGCC units should become affected EGUs. How NGCC units fit into an averaging program will be determined if a determination is made that they are affected EGUs in this program. Third, EPA is proposing that facility-wide averaging only apply to affected EGUs because it would mirror the BSER determination for this rule. The EPA solicits comment on whether this type of facility-wide averaging of affected EGUs is appropriate and whether there should be other types of considerations involved (Comment C–29). EPA is also taking comment on the possibility of averaging affected EGUs with non-affected EGUs within a facility in the limited case when they represent incremental new non-emitting capacity (Comment C–30). This would be consistent with a compliance option such as integrated solar.

Notwithstanding EPA's discussion above, EPA believes that there are both legal and practical concerns may weigh against the inclusion of averaging and trading between existing sources in state plans at any level more broad than averaging between sources across a particular facility. First, EPA is concerned that averaging and trading across affected sources (or between affected sources and non-affected sources, *e.g.,* wind turbines) would be inconsistent with our proposed interpretation of the BSER as limited to measures that apply at and to an individual source. Because state plans must establish standards of performance—which by definition ''reflect . . . the application of the [BSER],'' CAA section 111(a)(1)—implementation and enforcement of such standards should correspond with the approach used to set the standard in the first place. Applying a different analytical approach to standard-setting may result in asymmetrical regulation (for example, a state's implementation measures might result in a more stringent standard than could otherwise be derived from application of the BSER).[37]

Second, EPA believes that if section 111(d) authorized states to include trading and averaging between sources in their plans, the express provision under 111(d)(1) authorizing states to consider existing sources' remaining useful life and other factors when establishing and applying standards of performance could be viewed as superfluous. Once a state takes into consideration a source's remaining useful life and other factors (*e.g.,* unreasonable cost of control resulting from plant age, location, or basic process design; physical impossibility of installing necessary control equipment; whether the source has already undertaken some of the measures encompassed in the BSER; or other factors), then additional compliance flexibilities may not be required or otherwise appropriate. Indeed, averaging and trading by themselves would appear to eliminate the need to take into consideration a source's remaining useful life: If a source cannot meet a performance standard (or if it is impractical or inadvisable to require that source to do so), but if the state, in its plan, is authorized to permit that

[37] While CAA section 116 allows for states to adopt more stringent state laws, and provides that the CAA does not preempt such state laws, it does not provide that those more stringent standards are federalized.

source to average or otherwise obtain credits for its performance with other sources' performance, there may have been no need for Congress to specifically require EPA to permit states to conduct a remaining-useful-life analysis. Moreover, the source-focused language in 111(d)(1) both generally weighs in favor of EPA's proposed interpretation of the BSER as limited to source-specific measures, and specifically weighs against interpreting section 111(d) to authorize state plans to include averaging and trading.

Third, multiple practical concerns regarding emissions averaging and trading between sources inform EPA's concerns regarding inclusion of those mechanisms in state plans under section 111(d) and its solicitation of comment on this issue. These concerns include the relative complexity of development and implementation of a state plan that includes averaging or trading, as well as the difficulty in ensuring robust compliance with standards of performance by means of averaging or trading. Trading programs necessitate developing adequate means of evaluation, monitoring, and verification (EM&V) to ensure that standards of performance are actually complied with, and these programmatic aspects increase the burden on states in developing a satisfactory state plan, and on sources in demonstrating compliance. Additionally, either a mass-based or rate-based trading program potentially brings into question of whether the state has established standards of performance that appropriately reflect the BSER. Under a trading program, a single source could potentially shut down or reduce utilization to such an extent that its reduced or eliminated operation generates adequate compliance instruments for a state's remaining sources to meet their standards of performance without implementing any additional measures at any other source. This compliance strategy might undermine EPA's BSER, which EPA is proposing to determine as a menu of heat rate improvements. It would also undermine the purpose of section 111 in a broader sense. The section is directed toward the *improvement* of performance of new sources, and, through section 111(d)'s specific procedures, of existing sources. It is *not,* under EPA's proposed interpretation of section 111 (and contrary to the interpretation underlying the CPP), directed toward the aggregate emissions of an industrial sector as a whole, at either the state or national level. Adopting an interpretation of section 111(d) that could lead to relying on the shutdown or reduced operation of one or a small handful of sources in order to cap or limit the source category's aggregate emissions, while not resulting in the improved performance of any other source, may be contrary to the structure and purpose of section 111 as a whole and section 111(d) specifically.

However, EPA recognizes that there are significant benefits of averaging and trading across affected sources and is interested in whether emissions averaging could be a way to provide flexibility while still focusing on a core tenet of the BSER for this rule: Reducing emissions per MWH of coal-fired generation. Since averaging traditionally focuses only on the emission rate during hours of operation, it focuses on encouraging lowering emissions per MW generated and not on encouraging generation shifting away from the affected source category. The EPA welcomes comment on whether there is a way to allow trading between affected EGUs across affected sources while not encouraging generation shifting (Comment C–31).

EPA is soliciting comment on whether section 111(d) should be read not to authorize states to include trading and averaging between sources, EPA is also interested in affording flexibility to states and sources in meeting their respective obligations and solicits public comment on whether this proposed interpretation and conclusion is compatible with that goal. EPA is primarily interested in comments pertaining to whether averaging could and should be allowed for trading, and to what degree (*i.e.,* averaging across a state, or trading) (Comment C–32). If a commenter believes that averaging across multiple affected sources should be allowed as part of a state's plan, EPA requests comment on how the averaging system should conceptually work (Comment C–33). EPA requests comment on how allowing averaging across multiple affected sources would or would not undermine the BSER determination (Comment C–34). If a commenter believes that trading should be allowed as part of a state's plan, EPA requests comment on what type of EM&V criteria should be included for the compliance instruments (Comment C–35). If a commenter believes that trading should be allowed as part of a state's plan, EPA requests comment on whether sources should be allowed to bank compliance instruments (Comment C–36). If a commenter believes that averaging across multiple affected sources should be allowed as part of a state's plan, EPA requests comment on what mechanisms states would need to employ to ensure compliance is maintained and tracked for purposes of providing for the implementation and enforcement of the standards of performance (Comment C–37). If a commenter believes that averaging across multiple affected sources should be allowed as part of a state's plan, EPA requests comment on which and/or if technology should be limited in the averaging program (Comment C–38). If a commenter believes that averaging across multiple affected sources should be allowed as part of a state's plan, EPA requests comment on whether affected EGUs across state lines could be able to average and what measures state plans should include to provide for the implementation and enforcement of such multi-state averaging (Comment C–39). EPA further requests comment on the issues of statutory interpretation laid forth above, whether they are appropriate interpretations of section 111(d) specifically and section 111 generally, in terms of the provision's text, structure, and purpose (Comment C–40). EPA additionally solicits comment on whether such averaging, trading, or ''bubbling'' compliance flexibilities as are available under other sections of title I of the CAA suggest that such flexibilities should be afforded under state plans under section 111(d) (Comment C–41).

C. Submission of State Plans

Section 111(d)(1) of the Clean Air Act requires that in addition to establishing standards of performance for affected sources, such plans must also provide for the implementation and enforcement of such standards. As described in Section VII, EPA is proposing new implementing regulations for section 111(d), which in part carry over a number of the same provisions currently present in the existing implementing regulations under 40 CFR part 60, subpart B. EPA is proposing that these provisions apply for states to meet the requirement that state plans include implementation and enforcement measures. EPA requests comment on whether these provisions are appropriate to apply for purposes of meeting obligations under a final rule in response to this proposal, or whether other implementation or enforcement measures should be required (Comment C–42).

Additionally, EPA is proposing that states must include appropriate monitoring, reporting, and recordkeeping requirements to ensure that state plans adequately provide for the implementation and enforcement of standards of performance. Each state will have the flexibility to design a

monitoring program for assessing compliance with the standards of performance identified in the plan. Most potentially affected coal-fired EGUs already continuously monitor CO_2 emissions, heat input, and gross electric output and report hourly data to EPA under 40 CFR part 75. Accordingly, if a state plan establishes a standard of performance for a unit's CO_2 emissions rate (*e.g.,* lb/MWh), EPA proposes that states may elect to use data collected by EPA under 40 CFR part 75 to meet the required monitoring, reporting, and recordkeeping requirements under this emission guideline.

EPA also notes that states have it within their discretion to establish averaging times for affected EGUs. Averaging the emission rate of an affected EGU over different time periods may have different effects on the demonstration of compliance for an EGU to the state. EPA solicits comment on whether there should be any bounds or consideration to the averaging times that states are allowed to consider (Comment C–43).

EPA is further proposing to apply generally the proposed new implementing regulations for timing, process and required components for state plan submissions and implementation for state plans required under for affected EGUs. The new implementing regulations are described in detail in Section VII. In addition to application of the implementing regulations to state plans in response to a final emission guideline under this proposal, EPA is also proposing that state plans be comprehensively submitted electronically through an EPA provided platform. EPA solicits comment on whether electronic submittals are appropriate and less burdensome to states (Comment C–44) and whether this should be the sole means of submitting state plans (Comment C–45). EPA believes that electronic submittals will ease the burden of state plan submittals for both states and EPA.

In section 60.5740a of the regulatory text for this proposal, there is description and list of what a state plan must include. EPA solicits comment on whether this list is comprehensive to submit a state plan (Comment C–46).

VII. Proposed New Implementing Regulations for Section 111(d) Emission Guidelines

Distinct from EPA's proposed emission guidelines for the regulation of GHGs for existing affected EGUs, EPA is also proposing to promulgate new regulations to implement section 111(d) regulations. As previously described, the current implementing regulations at 40 CFR part 60, subpart B were promulgated in 1975 [*See* 40 FR 53346.]. Section 111(d)(1) of the CAA explicitly requires that EPA establish regulations similar to those under section 110 of the CAA to establish a procedure for states to submit plans to EPA. The implementing regulations have not been significantly revised since their original promulgation in 1975. Notably, the implementing regulations do not reflect section 111(d) in its current form as amended by Congress in 1977, and do not reflect section 110 in its current form as amended by Congress in 1990. Accordingly, EPA believes that certain portions of the implementing regulations do not appropriately align with section 111(d), contrary to that provision's mandate that EPA's regulations be ''similar'' to the provisions under section 110. Therefore, EPA is proposing to promulgate new implementing regulations that are in accordance with the statute in its current form. As previously discussed, agencies have the ability to revisit prior decisions, and EPA believes it is appropriate to do so here in light of the potential mismatch between certain provisions of the implementing regulations and the statute.[38]

EPA is proposing to largely carry over the current implementing regulations in 40 CFR part 60, subpart B to a new subpart that will be applicable to EPA's emission guidelines and state plans or federal plans associated with such emission guidelines, both those contemplated in this proposal and for any others that may be published or promulgated either concurrently or subsequent to final promulgation of the new implementing regulations. For purposes of regulatory certainty, EPA believes it is appropriate to apply these new implementing regulations prospectively, and retain the existing implementing regulations as applicable to section 111(d) emission guidelines and associated state plans that were promulgated previously. Additionally, the existing implementing regulations at 40 CFR part 60, subpart B are applicable to regulations promulgated under CAA section 129, and associated state plans. EPA intends to retain the applicability of the existing implementing regulations with respect to rules and state plans associated with section 129, and the proposed new implementing regulations are intended to apply only to section 111(d) regulations and associated state plans issued solely under the authority of section 111(d). EPA requests comments on this proposed applicability of both the existing and new implementing regulations (Comment C–47).

EPA is aware that there are a number of cases where state plan submittal and review processes are still ongoing for existing 111(d) emission guidelines. Because EPA is proposing changes to the timing requirements to more closely align 111(d) with both general SIP submittal timing requirements and because of the realities of how long these actions take, EPA is proposing to apply the changes to timing requirements to both emission guidelines published after the new implementing regulations are finalized, and to all ongoing emission guidelines already published under section 111(d). EPA is soliciting comment on the proposed timing requirements for prospective emission guidelines under the new implementing regulations and the alignment of ongoing emission guidelines by amending their respective regulatory text to incorporate the new timing requirements. (Comment C–48). EPA is proposing to apply the timing changes to all ongoing 111(d) regulations for the same reasons that EPA is changing the timing requirements prospectively. Based on years of experience with working with states to develop SIPs under section 110, EPA believes that given the comparable amount of work, effort, coordination with sources, and the time required to develop state plans that more time is necessary for the process. Giving states three years to develop state plans is more appropriate than the nine months provided for under the existing implementing regulations considering the workload. These practical considerations regarding the time needed for state plan development are also applicable and true for recent emission guidelines where the state plan submittal and review process are still ongoing.

For those provisions that are being carried over from the existing implementing regulations into the new implementing regulations, EPA believes the placement of those provisions under a new subpart is a ministerial action that does not require reopening the substance of those provisions for notice and comment. EPA is not intending to substantively change those provisions from their original promulgation, and continues to rely on the record under

[38] The authority to reconsider prior decisions exists in part because EPA's interpretations of statutes it administers ''[are not] instantly carved in stone,'' but must be evaluated ''on a continuing basis.'' *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863–64 (1984). Indeed, ''[a]gencies obviously have broad discretion to reconsider a regulation at any time.'' *Clean Air Council* v. *Pruitt,* 862 F.3d 1, 8–9 (DC Cir. 2017).

which they were promulgated. Therefore, EPA is not soliciting comment on the following provisions, which remain substantively the same from their original promulgation: 40 CFR 60.21a(a)–(d), (g)–(j) (Definitions); 60.22a(a), 60.22a(b)(1)–(3), (b)(5), (c) (Publication of emission guidelines); 60.23a(a)–(c), (d)(3)–(5), (e)–(h) (Adoption and submittal of State plans; public hearings); 60.24a(a)–(d), (f) (Standards of performance and compliance schedules); 60.25a (Emission inventories, source surveillance, reports); 60.26a (Legal authority); 60.27a(a), (e)–(f) (Actions by the Administrator); 60.28a(b) (Plan revisions by the State); 60.29a (Plan revisions by the Administrator).

EPA is also sensitive to potential confusion over whether these new implementing regulations would apply to an emission guideline previously promulgated or to state plans associated with a prior emission guideline, so EPA is proposing that the new implementing regulations are applicable only to emission guidelines and associated plans developed after promulgation of this regulation, including the emission guideline being proposed as part of this action for GHGs and existing affected EGUs. EPA solicits comment on this proposed applicability of the new implementing regulations (Comment C–49).

While EPA is carrying over a number of requirements from the existing implementing regulations, EPA is proposing specific changes to better align the regulations with the statute. These changes are reflected in the proposed regulatory text for this action, and EPA solicits comments on both the substance of these changes and the proposed regulatory text (Comment C–50). These changes include:

- An explicit provision allowing a specific emission guideline to supersede the requirements of the new implementing regulations;
- Changes to the definition of ''emission guideline'';
- Updated timing requirements for the submission of state plans;
- Updated timing requirements for EPA's action on state plans;
- Updated timing requirements for EPA's promulgation of a federal plan;
- Updated timing requirement for when increments of progress must be included as part of a state plan;
- Completeness criteria and a process for determining completeness of state plan submissions similar to CAA section 110(k)(1) and (2);
- Updated definition replacing ''emission standard'' with ''standard of performance;''
- Usage of the internet to satisfy certain public hearing requirements;
- No longer making a distinction between public health-based and welfare-based pollutants in an emission guideline; and,
- Updating the variance provision to be consistent with CAA section 111(d)(1)(B).

EPA is proposing to include a provision in the new implementing regulations that expressly allows for any emission guideline to supersede the applicability of the implementing regulations as appropriate. EPA cannot foresee all of the unique circumstances and factors associated with a particular future emission guideline, and therefore different requirements may be necessary for a particular 111(d) rulemaking that EPA cannot envision at this time. The proposed provision is parallel to one contained in the 40 CFR part 63 General Provisions implementing section 112 of the CAA. EPA solicits comments on the inclusion of such provision as part of the implementing regulations for section 111(d) (Comment C–51).

Because EPA is updating the implementing regulations and many of the provisions from the existing implementing regulations are being carried over, EPA wants to be clear and transparent with regard to the changes that are being made to the implementing regulations. As such, EPA is providing Table 4 that summarizes the changes being made. EPA also has included in the docket for this action a red-line-strike-out of the changes that are being proposed.

TABLE 4—SUMMARY OF CHANGES TO THE IMPLEMENTING REGULATIONS

New implementing regulations—subpart Ba for all future 111(d) emission guidelines	Existing implementing regulations—subpart B for all previously promulgated 111(d) emission guidelines
Explicit authority for a new 111(d) emission guideline requirement to supersede these implementing regulations.	No explicit authority.
Use of term ''guideline document''; does not require EPA to provide a presumptive emission standard.	Use of term ''emission guideline''; arguably required EPA to provide a presumptive emission standard.
Use of term ''standard of performance''	Use of term ''emission standard''.
''Standard of performance'' allows states to include design, equipment, work practice, or operational standards when EPA determines it's not feasible to prescribe or enforce a standard pf performance, consistent with the requirements of CAA section 111(h).	''Emission standard'' allows states to prescribe equipment specifications when EPA determines it's clearly impracticable to establish an emission standard.
State submission timing: 3 years from promulgation of a final emission guideline.	State submission timing: 9 months from promulgation of a final emission guideline.
EPA action on state plan submission timing: 12 months after determination of completeness.	EPA action on state plan submission timing: 4 months after submittal deadline.
Timing for EPA promulgation of a federal plan, as appropriate: 2 years after finding of failure to submit a complete plan, or disapproval of state plan.	Timing for EPA promulgation of a federal plan, as appropriate: 6 months after submittal deadline.
Increments of progress are required if compliance schedule for a state plan is longer than 24 months after the plan is due.	Increments of progress are required if compliance schedule for a state plan is longer than 12 months after the plan is due.
Completeness criteria and process for state plan submittals	No previous discussion.
Usage of the internet to satisfy certain public hearing requirements	No previous discussion.
No distinction made in treatment between health-based and welfare-based pollutants; variance provision available regardless of type of pollutant.	Different provisions for health-based and welfare-based pollutants; state plans must be as stringent as EPA's emission guideline for health-based pollutants unless variance provision is invoked.

A. Changes to the Definition of ''Emission Guideline''

The existing implementation regulations under 40 CFR 60.21(e) contain a definition of ''emission guideline'', defining it as a guideline which reflects the degree of emission reduction achievable through the application of the best system of emission reduction which (taking into account the cost of such reduction) the Administrator has determined has been adequately demonstrated for designated facilities. This definition additionally references that an emission guideline may be set forth in 40 CFR part 60, subpart C or a ''final guideline document'' published under 40 CFR 60.22(a). While the implementing regulations do not define the term ''final guideline document,'' 40 CFR 60.22 generally contains a number of requirements pertaining to the contents of guideline documents, which are intended to provide information for the development of state plans. *See* 40 CFR 60.22(b). The preambles for both the proposed and final existing implementing regulations suggest that an ''emission guideline'' would be a guideline provided by EPA that presumptively reflects the degree of emission limitation achievable by the BSER. EPA believes it is important to at least provide information on such degree of emission limitation in order to guide states in their establishment of standards of performance as required under CAA section 111(d). However, EPA does not believe anything in CAA section 111(a)(1) or section 111(d) compels EPA to provide a presumptive emission standard that reflects the degree of emission limitation achievable by application of the BSER. Accordingly, as part of the new implementing regulations, EPA proposes to re-define ''emission guideline'' as a final guideline document published under § 60.22a(a), which includes information on the degree of emission reduction achievable through the application of the best system of emission reduction which (taking into account the cost of such reduction and any nonair quality health and environmental impact and energy requirements) EPA has determined has been adequately demonstrated for designated facilities.

B. Updates to Timing Requirements

The timing requirements in the existing implementing regulations for state plan submissions, EPA's action on state plan submissions and EPA's promulgation of federal plans generally track the timing requirements for SIPs and federal implementation plans (FIPs) under the 1970 version of the Clean Air Act. Congress revised these SIP/FIP timing requirements in section 110 as part of the 1990 Clean Air Act amendments. EPA proposes to accordingly update the timing requirements regarding state and federal plans under section 111(d) to be consistent with the current timing requirements for SIPs and FIPs under section 110. The existing implementing regulations at 40 CFR 60.23(a)(1) requires state plans to be submitted to EPA within nine months after publication of a final emission guideline, unless otherwise specified in an emission guideline. EPA is proposing, as part of new implementing regulations, to provide states with three years after the notice of the availability of the final emission guideline to adopt and submit a state plan to EPA. Because of the amount of work, effort, and time required for developing state plans that include unit-specific standards, and implementation and enforcement measures for such standards, EPA believes that extending the submission date of state plans from nine months to three years is appropriate. Because states have considerable flexibility in implementing section 111(d), this timing also allows states to interact and work with the Agency in the development of state plan and minimize the chances of unexpected issues arising that could slow down eventual approval of state plans. EPA solicits comment on generally providing states with three years after the publication of the final emission guidelines, and solicits comment on any other timeframes that may be appropriate for submission of state plans given the flexibilities EPA intends to provide through its emission guidelines (Comment C–52). EPA also proposes to give itself discretion to determine in a specific emission guideline that a shorter time period for the submission of state plans particular to that emission guideline is appropriate. Such authority is consistent with CAA section 110(a)(1)'s grant of authority to the Administrator to determine that a period shorter than three years is appropriate for the submission of particular SIPs implementing the NAAQS.

Following submission of state plans, EPA will review plan submittals to determine whether they are ''satisfactory'' as per CAA section 111(d)(2)(A). Given the flexibilities section 111(d) and emission guidelines generally accord to states, and EPA's prior experience on reviewing and acting on SIPs under section 110, EPA is proposing to extend the period for EPA review and approval or disapproval of plans from the four-month period provided in EPA implementing regulations to a twelve-month period after a determination of completeness (either affirmatively by EPA or by operation of law, see below for EPA's proposal on completeness) as part of the new implanting regulations. This timeline will provide adequate time for EPA to review plans and follow notice-and-comment rulemaking procedures to ensure an opportunity for public comment on EPA's proposed action on a state plan. EPA solicits comment on extending the timing of EPA's action on a state plan from 4 months of when a plan is due to 12 months from determination that a state plan submission is complete (Comment C–53).

EPA additionally proposes to extend the timing from six months in the existing implementing regulations to two years, as part of new implementing regulations, for EPA to promulgate a federal plan for states that fail to submit an approvable state plan in response to a final emission guideline. This two-year timeline is consistent with the FIP deadline under section 110(c) of the CAA. EPA solicits comment on change in timing for EPA to promulgate a federal plan from six months to two years (Comment C–54). EPA solicits comment on extending deadline for promulgating a final (*i.e.,* after appropriate notice and comment) federal plan for a state to two years after either (1) EPA finds that a state has failed to submit a complete plan, or (2) EPA disapproves a state plan submission (Comment C–55).

C. Compliance Deadlines

The existing implementing regulations require that any compliance schedule for state plans extending more than 12 months from the date required for submittal of the plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities. 40 CFR 60.24(e)(1). However, as described in section VII.B, the EPA is proposing certain updates to the timing requirements for the submission of, and action on, state plans. Consequently, it follows that the requirement for increments of progress should also be updated in order to align with the proposed new timelines. Given that the EPA is proposing a period of up to 18 months for its action on state plans (*i.e.* 12 months from the determination that a state plan submission is complete, which could occur up to six months after receipt of the state plan), EPA

believes it is appropriate that the requirement for increments of progress should attach to plans that contain compliance periods that are longer than the period provided for EPA's review of such plans. This way, sources subject to a plan have more certainty that their regulatory compliance obligations would not change between the period between when a state plan is due and when EPA acts on a plan. Accordingly, EPA proposes that increments of progress will be included for state plans that contain compliance schedules longer than 24 months from the date when state plans are due for a particular emission guideline. EPA solicits comments on whether this 24-month component, or some other period of time, is appropriate as a trigger for requiring increments of progress as part of a plan's compliance schedule.

D. Completeness Criteria

Similar to requirements regarding determinations of completeness under section 110(k)(1), EPA is proposing completeness criteria that provide the Agency with a means to determine whether a state plan submission includes the minimum elements necessary for EPA to act on the submission. EPA would determine completeness simply by comparing the state's submission against these completeness criteria. In the case of SIPs under CAA section 110(k)(1), EPA promulgated completeness criteria in 1990 at Appendix V to 40 CFR part 51 (55 FR 5830; February 16, 1990). EPA proposes to adopt criteria similar to the criteria set out at section 2.0 of Appendix V for determining the completeness of submissions under CAA section 111(d).

EPA notes that the addition of completeness criteria in the framework regulations does not alter any of the submission requirements states already have under any applicable emission guideline. The completeness criteria proposed by this action are those that would generally apply to all plan submissions under section 111(d), but specific emission guidelines may supplement these general criteria with additional requirements.

The completeness criteria that EPA is proposing in this action can be grouped into administrative materials and technical support. For administrative materials, the completeness criteria mirror criteria for SIP submissions because the two programs have similar administrative processes. Under these criteria, the submittal must include the following:

(1) A formal letter of submittal from the Governor or the Governor's designee requesting EPA approval of the plan or revision thereof.

(2) Evidence that the state has adopted the plan in the state code or body of regulations. That evidence must include the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date.

(3) Evidence that the state has the necessary legal authority under state law to adopt and implement the plan.

(4) A copy of the official state regulation(s) or document(s) submitted for approval and incorporated by reference into the plan, signed, stamped and dated by the appropriate state official indicating that they are fully adopted and enforceable by the state. The effective date of the regulation or document must, whenever possible, be indicated in the document itself. The state's electronic copy must be an exact duplicate of the hard copy. For revisions to the approved plan, the submission must indicate the changes made to the approved plan by redline/strikethrough.

(5) Evidence that the state followed all of the procedural requirements of the state's laws and constitution in conducting and completing the adoption/issuance of the plan.

(6) Evidence that public notice was given of the plan or plan revisions with procedures consistent with the requirements of 40 CFR 60.23, including the date of publication of such notice.

(7) Certification that public hearing(s) were held in accordance with the information provided in the public notice and the state's laws and constitution, if applicable and consistent with the public hearing requirements in 40 CFR 60.23.

(8) Compilation of public comments and the state's response thereto.

The technical support required for all plans must include each of the following:

(1) Description of the plan approach and geographic scope.

(2) Identification of each designated facility; identification of emission standards for each designated facility; and monitoring, recordkeeping, and reporting requirements that will determine compliance by each designated facility.

(3) Identification of compliance schedules and/or increments of progress.

(4) Demonstration that the state plan submission is projected to achieve emissions performance under the applicable emission guidelines.

(5) Documentation of state recordkeeping and reporting requirements to determine the performance of the plan as a whole.

(6) Demonstration that each emission standard is quantifiable, non-duplicative, permanent, verifiable, and enforceable.

EPA intends that these criteria be generally applicable to all CAA section 111(d) plans submitted on or after final new implementing regulations are promulgated, with the proviso that specific emission guidelines may provide otherwise.

Consistent with the requirements of CAA section 110(k)(1)(B) for SIPs, EPA is proposing to determine whether a state plan is complete (*i.e.,* meets the completeness criteria) no later than 6 months after the date, if any, by which a state is required to submit the plan. EPA further proposes that any plan or plan revision that a State submits to EPA, and that has not been determined by EPA by the date 6 months after receipt of the submission to have failed to meet the minimum completeness criteria, shall on that date be deemed by operation of law to be a complete state plan. Then, as previously discussed, EPA is relatedly proposing to act on a state plan submission within 12 months after determining a plan is complete, either through an affirmative determination or by operation of law.

When plan submissions do not contain the minimum elements, EPA is proposing to find that a state has failed to submit a complete plan through the same process as finding a state has made no submission at all. Specifically, EPA would notify the state that its submission is incomplete and therefore, that it has not submitted a required plan, and EPA would also publish a finding of failure to submit in the **Federal Register**, which triggers EPA's obligation to promulgate a federal plan for the state. This determination that a submission is incomplete and the state has failed to submit a plan is ministerial in nature and requires no exercise of discretion or judgment on the Agency's part, nor does it reflect a judgment on the eventual approvability of the submitted portions of the plan.

E. Standard of Performance

As previously described, the implementing regulations were promulgated in 1975 and effectuated the 1970 version of the Clean Air Act as at it existed at that time. The 1970 version of section 111(d) required state plans to include ''emission standards'' for existing sources, and consequently the implementing regulations refer to this term. However, as part of the 1977 amendments to the CAA, Congress replaced the term ''emission standard'' in section 111(d) with ''standard of performance.'' EPA has not since

revised the implementing regulations to reflect this change in terminology. For clarity's sake and to better track with statutory requirements, EPA is proposing to include a definition of ''standards of performance'' as part of the new implementing regulations, and to consistently refer to this term as appropriate within those regulations in lieu of referring to an ''emission standard.'' Additionally, the current definition of ''emission standard'' in the implementing regulations is incomplete and requires clean-up regardless. For example, the definition encompasses equipment standards, which is an alternative form of standard provided for in CAA section 111(h) under certain circumstances. However, section 111(h) provides for other forms of alternative standards, such as work practice standards, which are not covered by the existing regulatory definition of ''emission standard.'' Furthermore, the definition of ''emission standard'' encompasses allowance systems, a reference that was added as part of EPA's Clean Air Mercury Rule. 70 FR 28605. This rule was vacated by the D.C. Circuit, and therefore this added component to the definition of ''emission standard'' had no legal effect because of the court's vacatur. Consistent with the court's opinion, EPA signaled its intent to remove this reference as part of its Mercury Air Toxics rule. 77 FR 9304. However, in the final regulatory text of that rulemaking, EPA did not take action removing this reference, and it remains as a vestigial artifact.

For these reasons, EPA is proposing to replace the existing definition of ''emission standard'' with a definition of ''standard of performance'' that tracks with the definition provided for under CAA section 111(a)(1). This means a standard of performance for existing sources would be defined as a standard for emissions or air pollutants which reflects the degree of emission limitation achievable through the application by the state of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. EPA is further proposing to incorporate into a definition of standard of performance CAA section 111(h)'s allowance for design, equipment, work practice, or operational standards as alternative standards of performance under the statutorily prescribed circumstances. Currently, the existing implanting regulations allow for state plans to prescribe equipment specifications when emission rates are ''clearly impracticable'' as determined by EPA. CAA section 111(h)(1) by contrast allows for alternative standards such as equipment standards to be promulgated when standards of performance are ''not feasible to prescribe or enforce,'' as those terms are defined under CAA section 111(h)(2). Given the potential discrepancy between the conditions under which alternative standards may be established based on the different terminology used by the statute and existing implementing regulations, EPA proposes to use the ''not feasible to prescribe or enforce'' language as the condition for the new implementing regulations under which alternative standards may be established.

EPA solicits comment on all of these means of tracking and incorporating the section 111(a)(1) and 111(h) for purposes of a regulatory definition of ''standard of performance,'' and requests comment on any other considerations for such definition (Comment C–56).

F. Variance

EPA believes that the existing implementing regulations' distinction between public health-based and welfare-based pollutants is not a distinction unambiguously required under section 111(d) or any other applicable provision of the statute. EPA does not believe the nature of the pollutant in terms of its impacts on health and/or welfare impact the manner in which it is regulated under this provision. Particularly, 60.24(c) requires that for health-based pollutants, a state's standards of performance must be of equivalent stringency to EPA's emission guidelines. However, section 111(d)(1)(B) requires that EPA's regulations must permit states to take into account, among other factors, an affected source's remaining useful life when establishing an appropriate standard of performance. In other words, Congress explicitly envisioned under section 111(d)(1)(B) that states could implement standards of performance that vary from EPA's emission guidelines under appropriate circumstances. Notably, the implementing regulations at 40 CFR 60.24(f) contain a variance provision that allow for states to also apply less stringent standards on sources under certain circumstances. However, the variance provision attaches to the distinction between health-based and welfare-based pollutants, and is available to the states only under EPA's discretion. The variance provision was also promulgated prior to Congress's addition of the requirement in section 111(d)(1)(B) that EPA permit states to take into account remaining useful life and other factors, and the terms of the regulatory provision and statutory provision do not match one another, meaning that the variance provision may not account for all of the factors envisioned under section 111(d)(1)(B). Given all of these factors, EPA is proposing to not make a distinction between health-based and welfare-based pollutants and attach requirements contingent upon this distinction as part of the new implementing regulations. EPA is also proposing a new variance provision to permit states to take into account remaining useful life, among other factors, in establishing a standard of performance for a particular affected source, consistent with section 111(d)(1)(B).

Given that there are unique attributes and aspects of each affected source, these other factors may be ones that influence decisions to invest in technologies to meet a potential performance standard. Such other factors may include timing considerations like expected life of the source, payback period for investments, the timing of regulatory requirements, and other unit-specific criteria. EPA solicits comments on how a new variance provision can permit states to take into account remaining useful life and other factors, and what other factors might appropriately be (Comment C–57). EPA is also soliciting comment on whether the factors outlined in the existing variance provision at 40 CFR 60.24(f) are appropriate to carry over to a new variance provision if they adequately give meaning to the requirements of section 111(d)(1)(B) (Comment C–58). Those factors are:

- Unreasonable cost of control resulting from plant age, location, or basic process design;
- Physical impossibility of installing necessary control equipment; or
- Other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable.

VIII. New Source Review Permitting of HRIs

A. What is New Source Review?

The NSR program is a preconstruction permitting program that requires stationary sources of air pollution to obtain permits prior to beginning construction. The NSR program applies both to new construction and to modifications of existing sources. New construction and modifications of

stationary sources that emit or increase emissions of ''regulated NSR pollutants'' [39] at or above certain thresholds defined in either the CAA or the NSR regulations are subject to major NSR requirements, while smaller emitting sources and modifications may be subject to minor NSR requirements.[40] A pollutant is a ''regulated NSR pollutant'' if it meets at least one of four requirements, which are, in general, any pollutant for which EPA has promulgated a NAAQS or a NSPS, certain ozone depleting substances, and ''[a]ny pollutant that otherwise is subject to regulation under the Act.'' *See, e.g.,* 40 CFR 52.21(b)(50). For purposes of NSR, hazardous air pollutants are excluded. *Id.*

NSR permits for major sources emitting pollutants for which the area is classified as attainment or unclassifiable, and for other pollutants regulated under the CAA, are referred to as prevention of significant deterioration (PSD) permits. NSR permits for major sources emitting pollutants for which the area is in nonattainment are referred to as nonattainment NSR (NNSR) permits. The pollutant(s) at issue and the air quality designation of the area where the facility is located or proposed to be built determine the specific permitting requirements.[41] Among other requirements, the CAA requires sources subject to PSD to meet emission limits based on Best Available Control Technology (BACT) as specified by section 165(a)(4), and the CAA requires sources subject to NNSR to meet the Lowest Achievable Emissions Rate (LAER) pursuant to section 173(a)(2). These technology requirements for major NSR permits are not predetermined by a rule or state plan, but are case-by-case determinations made by the permitting authority.[42] Other requirements to obtain a major NSR permit vary depending on whether the source needs a PSD or an NNSR permit.

The test to determine whether a source is subject to major NSR differs for new stationary sources and for modifications to existing stationary sources. A new source is subject to major NSR permitting requirements if its potential to emit (PTE) any regulated NSR pollutant equals or exceeds the statutory emission threshold. For sources in attainment areas, the major source threshold is either 100 or 250 tons per year, depending on the type of source.[43] The major source threshold for sources in nonattainment areas is generally 100 tons per year, although lower thresholds apply to sources located in areas classified at higher levels of nonattainment.

A modification at an existing major source is subject to major NSR permitting requirements when it is a ''major modification,'' which occurs when a source undertakes a physical change or change in method of operation (*i.e.,* a ''project'') [44] that would result in both (1) a significant emissions increase from all emission units that are part of the project, and (2) a significant net emissions increase from the source, which is determined by a source-wide analysis that considers creditable emission increases and decreases occurring at the source as a result of other projects over a 5-year contemporaneous period. *See, e.g.,* 40 CFR 52.21(b)(2)(i). For this analysis, the NSR regulations define emissions rates that are ''significant'' for each NSR pollutant. *See, e.g.,* 40 CFR 52.21(b)(23). In calculating the emissions increase that will result from a proposed project, existing NSR regulations require a comparison of the ''projected actual emissions'' (PAE) to the ''baseline actual emissions'' (BAE). The PAE is currently defined as the maximum *annual* rate that the modified unit is projected to emit a pollutant in any one of the 5 years (or 10 years if the design capacity increases) after the project, excluding any increase in emissions that (1) is unrelated to the project, and (2) could have been accommodated during the baseline period (commonly referred to as the ''demand growth exclusion''). *See, e.g.,* 40 CFR 52.21(b)(41). For electric utility steam generating units (EUSGU), the BAE is defined as the average *annual* rate of actual emissions during any 24-month period within the last 5 years. *See, e.g.,* 40 CFR 52.21(b)(48)(i). For non-EUSGUs, the BAE is defined the same as for EUSGUs, except that the 24-month period can be within the last 10 years. *See, e.g.,* 40 CFR 52.21(b)(48)(ii).[45]

As noted above, new stationary sources and modifications of stationary sources that do not require a major NSR permit may instead require a minor NSR permit prior to construction. Minor NSR permits are primarily issued by state and local air agencies. Minor NSR requirements are approved into an implementation plan in order to achieve and maintain national ambient air quality standards (NAAQS). *See* CAA section 110(a)(2)(C).[46] The Act, EPA regulations and EPA guidance each specify minor NSR requirements, although the requirements are not as prescriptive as those covering the major NSR program. This reduced specificity affords agencies flexibility in designing their minor NSR programs. Since the minor NSR program deals with smaller sources and smaller increases in air pollution, the control requirements that are identified for a minor NSR permit tend to be less stringent than a BACT or LAER requirement for a major NSR permit. In addition, the time to process a permit for a minor NSR source or a minor modification is generally faster than for a major NSR permit, due to having fewer requirements.

B. Interaction of NSR and the ACE Rule

Since emission guidelines that are established pursuant to CAA section 111(d) apply to units at existing sources, the way in which the NSR programs treat modifications of existing sources is implicated by implementation of a CAA section 111(d) program. Specifically, in complying with the emission guidelines, a state agency may develop

[39] 40 CFR 51.165(a)(1)(xxxvii), 40 CFR 52.21(b)(50).

[40] The one exception to this approach is for GHG. Regardless of the GHG emissions resulting from construction of a new source or modification, the source will not be required to obtain a major NSR permit unless the emissions of another regulated NSR pollutant equal or exceed the major NSR threshold. 80 FR 50199 (August 19, 2015); *Utility Air Regulatory Group* v. *EPA,* 134 S. Ct. 2427 (2015).

[41] PSD applies on a regulated NSR pollutant-by-regulated NSR pollutant basis. The PSD requirements do not apply to regulated NSR pollutants for which the area is designated as nonattainment. NNSR could only be applicable with regard to a source's emissions of criteria pollutants, as those are the only pollutants with respect to which areas are designated as attainment or nonattainment.

[42] The term 'best available control technology' means an emission limitation . . . which the permitting authority, on a case by case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility . . .'' 42 U.S.C. 7479(3); *see e.g., supra* Section III.C; PSD and Title V Permitting Guidance for Greenhouse Gases (Mar. 2011), available at *https://www.epa.gov/sites/production/files/2015-07/documents/ghgguid.pdf.*

[43] The NSR major source and major modification emission thresholds are expressed in short tons (*i.e.,* 2000 lbs.).

[44] The NSR regulations expressly exempt certain activities from being considered a physical change or change in method of operation, including routine maintenance, repair and replacement, increases in hours of operation or production rate, and change in ownership. *See, e.g.,* 40 CFR 52.21(b)(2)(iii).

[45] While we are discussing federal regulations, a state or local permitting authority may have different regulations to define NSR applicability if approved by EPA into its implementation plan.

[46] EPA's regulations at 40 CFR 51.160–51.169 apply to state permitting programs; however, these provisions cover both major and minor sources. The requirements that apply to strictly minor sources are limited to sections 51.160–51.164. In addition, in 2011 EPA created the Indian country minor NSR permitting program, which authorizes EPA regional offices to issue minor source permits on tribal lands. These regulations are located at 40 CFR 49.101–49.104 and 49.151–49.164.

a CAA section 111(d) plan that results in an affected source undertaking a physical or operational change. As explained above, under the NSR program undertaking a physical or operational change may require that the source obtain a preconstruction permit for the proposed change, with the type of NSR permit depending on the amount of the emissions increase resulting from the change and the air quality at the location of the source. Thus, a source that is adding equipment or otherwise making changes to its facility, on either its own volition or to comply with a national or state level requirement, will typically need some type of NSR permit prior to making such changes to its facility. EPA sought to exempt environmentally beneficially pollution control projects from NSR requirements in a 2002 rule that codified longstanding EPA policy, but this rule was struck down in court. *New York* v. *EPA,* 413 F.3d 3, 40–42 (DC Cir. 2005) (*New York I*).

With respect to the proposed action, should it be promulgated, states will be called upon to develop a section 111(d) plan that evaluates BSER technologies for each of their EGU sources and assigns emission reduction compliance obligations to their affected EGUs. Assuming the promulgated action adopts the same form as this proposal, the state may require a source with an affected EGU to achieve a HRI of a specified percentage. As described in Section VI.B of this preamble, a HRI project is designed to lower the heat rate of the EGU, which correlates to the unit consuming less fuel per kWh and emitting lower amounts of CO_2 (and other air pollutants) per kWh generated as compared to a less efficient unit. Along with this increase in energy efficiency, the EGU which undergoes the HRI project will typically experience greater unit availability and reliability, all of which contribute to lower operating costs. EGUs that operate at lower costs are generally preferred in the dispatch order by the system operator over units that have higher operational costs,[47] and EPA's regulatory impact analysis (RIA) for this action (located in the docket) shows that improving an EGU's heat rate will lead to increased generation due to its improved efficiency and relative economics. As the EGU increases its generation, to the extent the EGU operates beyond its historical levels by a meaningful amount, it could result in an increase in emissions on an annual basis, as calculated pursuant to the current NSR regulations. Specifically, if a source is undertaking a HRI project and its future emissions (*i.e.,* PAE) are projected to increase above its historical emissions (*i.e.,* BAE) in an amount greater than the relevant ''significant'' level, the source could be required to obtain a major NSR permit for the modification.

Thus, it is possible that a source undertaking a HRI project at its EGU would project, or actually experience, an increase in operation of its EGU and a corresponding increase in annual emissions. This would require the source, at a minimum, to conduct an analysis to determine whether the project by itself is projected to lead to a significant emissions increase (at step one of the two-step analysis that determines whether a project constitutes a ''major modification''). If so, the source would have to conduct a netting analysis to determine whether there is also a significant net increase when contemporaneous increases and decreases from other projects are considered (step two of that analysis). If both of these types of increases would be projected to occur, this could result in the source being subject to additional pollutant control requirements (*e.g.,* BACT or LAER), in addition to the substantial extra time and cost of applying for a major NSR permit prior to undertaking the HRI project. Such could be the consequence despite the fact that the project would lower the EGU's output-based emissions rate for its air pollutants, and despite the fact that the resulting effect on the dispatch order could yield an emission reduction from a system-wide standpoint.

Similarly, over the years, some stakeholders have asserted that the NSR rules discourage companies from exercising the discretion to undertake energy efficiency improvement projects, which they assert results in less environmentally protective outcomes from a system-wide standpoint. Stakeholders have claimed that triggering major NSR permitting requirements can increase the costs of beneficial plant improvement projects, like HRIs, and often contribute to a company's decision to forego the projects. For instance, a commenter on the CPP proposal stated that ''many coal-fired plants may refrain from making improvements based on the financial risk associated with potentially triggering a New Source Review, which may result in the requirement to invest in additional emissions controls . . . . [T]he [permitting] requirements could increase costs of potential heat rate improvements and therefore are a potential impediment which should be recognized in the rule's calculations.''[48]

In promulgating the CPP, EPA noted that these stakeholders expressed concerns of the potential NSR permitting effects from a state implementing the rule, stating ''[w]hile there may be instances in which an NSR permit would be required, we expect those situations to be few . . . states have considerable flexibility in selecting varied measures as they develop their plans to meet the goals of the emission guidelines. One of these flexibilities is the ability of the state to establish emission standards in their CAA section 111(d) plans in such a way so that their affected sources, in complying with those standards, in fact would not have emissions increases that trigger NSR. To achieve this, the state would need to conduct an analysis consistent with the NSR regulatory requirements that supports its determination that as long as affected sources comply with the emission standards in their CAA section 111(d) plan, the source's emissions would not increase in a way that trigger NSR requirements.'' 80 FR 64920 (October 23, 2015). The CPP also explained that sources can voluntarily take enforceable limits on hours of operation, in the form of a synthetic minor source limitation, in order to avoid triggering major NSR requirements that would otherwise apply to the source. 80 FR 64781, 64920.

However, these concerns regarding the applicability of NSR take on even greater significance and may not be as easily avoided in the context of this proposed rule, which constrains the compliance options available in the CPP to within-the-fenceline measures and may therefore more directly result in individual sources making HRIs.

Individuals within the academic community have examined the NSR interplay with making efficiency gains at existing coal plants. A 2014 report projected that 80 percent of non-retiring coal-fired units have emissions rates for NO_X and SO_2 at levels that exceed those typically required under NSR and concluded that the units would have to install additional controls for NO_X or sulfur dioxide (SO_2) if these HRI projects triggered the applicability of

[47] *See, e.g.,* Comments of Florida Municipal Elec Association on the U.S. Environmental Protection Agency's ANPRM entitled, ''State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units,'' 82 FR 61507 (December 28, 2017) at 11 (EPA–HQ–OAR–2017–0545–0155); *see also https://www.eia.gov/todayinenergy/detail.php?id=7590.*

[48] Electric Power Research Institute comments U.S. Environmental Protection Agency's Proposed Rule ''Carbon Pollution Emissions Guidelines for Existing Stationary Sources: Electric Utility Generating Units,'' 79 FR 34830 (June 18, 2014) at 12–13 (EPA–HQ–OAR–2013–0602–21697).

NSR.[49] For these units then, the potential requirement to undertake a HRI to satisfy 111(d) may result in substantial time, effort, and money to comply with the requirements of major NSR. In addition, the potential need to permit so many of the projects being required under a 111(d) plan could substantially increase the burden for permit agencies in processing permit applications. To help reduce the effect this may have on the effective and prompt implementation of a revised CAA section 111(d) standard for EGUs, EPA is proposing revisions to the NSR regulations in this action.

C. ANPRM Solicitation and Comments Received

Through the ANPRM, EPA took comment on the topic of how the NSR program overlays with emission guidelines established under CAA section 111(d). EPA specifically acknowledged the concerns raised previously by stakeholders regarding the potential for a source to make energy efficient improvements that could trigger major NSR requirements. Furthermore, as EPA did in the CPP, EPA described current approaches available within the NSR program to avoid triggering NSR requirements. These include the ability for a source to obtain a synthetic minor source limitation, which restricts its hours of operation and its emissions below major NSR levels, and the Plantwide Applicability Limit (PAL), which allows a source to operate within a source-wide emissions cap to avoid triggering NSR for changes.

The ANPRM solicited input on possible actions that EPA can take to harmonize and streamline the NSR applicability or the NSR permitting processes for an amended rule. EPA requested comment on ways to minimize the impact of the NSR program on the implementation of a performance standard for EGU sources under CAA section 111(d), specifically asking ''[w]hat rule or policy changes or flexibilities can EPA provide as part of the NSR program that would enable EGUs to implement projects required under a CAA section 111(d) plan and not trigger major NSR permitting while maintaining environmental protections?'' 82 FR 61519 (Dec. 28, 2017).

Several ANPRM commenters reiterated concerns that were raised on the CPP proposal regarding the NSR program—specifically that, if an air agency, as part of its plan to comply with emission guidelines established pursuant to CAA section 111(d), requires an affected source to make modifications (*e.g.,* HRI projects), it could potentially trigger major NSR requirements. Some commenters alleged that the NSR program unfairly treats sources that are undertaking changes to become more energy efficient by requiring a costly and time consuming permitting burden. As expressed by one industry representative, ''EGUs engaging in HRI projects can face NSR pre-construction permitting requirements consisting of, at a minimum, costly, detailed analyses and permitting delays. In some cases, this has resulted in costly and protracted litigation, and expensive new emission control requirements, both of which result in substantial time delays for these projects. These concerns remain should unit operators pursue HRI upgrades . . . that could trigger NSR in an effort to comply with . . . revised CAA section 111(d) GHG emissions guidelines.'' [50] Another commenter noted that the major NSR permitting process ''is time and resource intensive'' and, including pre-permit application work, ''can take as long as 3 years or longer.'' [51] The same commenter noted that ''[the] uncertainty of permit timing can hinder investment decisions as much as the actual permit schedule delays.'' [52] Some commenters indicated that the current flexibilities offered within the NSR program are not sufficient to avoid placing a significant permitting burden on EGUs *and* permitting agencies, which could result in substantial delays during the planned implementation stage.[53] To avoid such outcomes, a number of commenters suggested that EPA undertake actions to clarify or change the NSR regulations, including, for example, revising the NSR modification applicability to be based on pounds per kilowatt-hour (lb/kW-h) [54] or rejecting as BSER any project that would result in triggering NSR.[55]

However, other commenters disagreed. For instance, the Natural Resources Defense Council (NRDC) suggested that changes to the NSR program ''are unwarranted.'' [56] They added that EPA needs to remain in the boundary of the controlling judicial decisions in considering what approaches could be used to reduce the number of existing sources that will be subject to NSR permitting while crafting CAA section 111(d) plans. NRDC focused the basis of many of its concerns on the court's opinion in *New York* v. *EPA,* 443 F.3d 880 (D.C. Cir. 2006) (*New York II*), which vacated EPA's attempt to more clearly define ''routine maintenance, repair, and replacement'' (RMRR) projects that are exempt from major NSR by EPA's rules. NRDC also referenced the following observation from an earlier decision by the same court that vacated the ''pollution control project exclusion'' that EPA finalized in 2002: ''Absent clear congressional delegation, however, EPA lacks authority to create an exemption from NSR by administrative rule.'' [57]

D. Proposing NSR Changes for Improved ACE Implementation

1. Overview

EPA acknowledges the NSR program may have unintended consequences for implementation of this emission guidelines for GHG emissions from existing EGUs. Based on the comments received on the ANPRM and EPA's experience with the NSR program generally, EPA recognizes the potential for triggering major NSR permitting when sources undertake HRI projects. EPA further recognizes that the prospect of a protracted permitting process and a possible requirement to install pollution control equipment at the emissions unit can create a disincentive for sources to voluntarily make energy efficiency

[49] Sarah K. Adair, David C. Hoppock, Jonas J. Monast (from Duke University's Nicholas Institute for Environmental Policy Solutions and School of Law, ''*New Source Review and coal plant efficiency gains: How new and forthcoming air regulations affect outcomes*''; Elsevier, Energy Policy 70 (2014), 183–192.

[50] Edison Electric Institute comments on the U.S. Environmental Protection Agency's ANPRM entitled, ''State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units,'' 82 FR 61507 (December 28, 2017) at 22 (EPA–HQ–OAR–2017–0545–0221).

[51] General Electric Company (GE) comments on the U.S. Environmental Protection Agency's ANPRM entitled, ''State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units,'' 82 FR 61507 (December 28, 2017) at 29–30 (EPA–HQ–OAR–2017–0545–0271).

[52] *Id.* at 30.

[53] *See, e.g.,* Ohio Environmental Protection Agency comments on the U.S. Environmental Protection Agency's ANPRM entitled, ''State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units,'' 82 FR 61507 (December 28, 2017) at 9, 32 (EPA–HQ–OAR–2017–0545–0246).

[54] GE comments, *supra* note at 33.

[55] Indiana Municipal Power Agency comments on the U.S. Environmental Protection Agency's ANPRM entitled, ''State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units,'' 82 FR 61507 (December 28, 2017) at 3 (EPA–HQ–OAR–2017–0545–0204).

[56] Natural Resources Defense Council comments on the U.S. Environmental Protection Agency's ANPRM entitled, ''State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units,'' 82 FR 61507 (December 28, 2017) at 14–17 (EPA–HQ–OAR–2017–0545–0358).

[57] *New York* v. *EPA,* 413 F.3d 3, 41 (D.C. Cir. 2005) (*New York I*) (*citing Sierra Club* v. *EPA,* 129 F.3d 137, 140 (D.C. Cir. 1997)).

improvements. Many of these concerns with the NSR program were raised nearly two decades ago, and formed the cornerstone of EPA's initiative in the early 2000's to reform the NSR program.[58]

But this dynamic takes on a new character in the context of a regulation that may result in a source undertaking a HRI or another project to meet a standard of performance as determined by the state. When a state's 111(d) plan requires an EGU to comply with a standard of performance, sources cannot choose to forego a project in an effort to avoid NSR permitting as they could with improvement projects they were otherwise considering. Despite recent actions by EPA to streamline the NSR program, the reality remains that a source that undertakes a HRI project may trigger major NSR under the current NSR applicability test when required to undertake a HRI project as part of a state's 111(d) plan. As has been noted by commenters on the ANPRM, this can require the source to undertake significant planning and analysis with the process to receive a preconstruction permit, sometimes taking 3 or more years. This added time and cost to sources and the associated burden on permitting agencies could hinder the effective and prompt implementation of state 111(d) plans.

In this context, our approach in the CPP of encouraging agencies to minimize the triggering of major NSR for their affected EGUs by conducting emissions analyses as part of their CAA section 111(d) plan development does not appear to be a sufficient solution. While EPA supports states having the primary authority to implement the air programs, state agencies should not be burdened with having to determine a ''work around'' for the NSR program requirements in developing their plans to implement the emission guidelines for affected EGUs. The responsibility of ensuring that emission guidelines under 111(d) are clearly articulated and easily implementable rests squarely with EPA. Thus, EPA addressing the time delays and costs that can result from NSR requirements could be one tool for helping ensure the successful implementation of a national program for controlling GHG emissions from existing EGUs.

It is important for a state that is developing a CAA section 111(d) plan to completely understand the full costs being imposed on their affected sources in order for the state to make informed decisions in applying a standard of performance to each of their existing sources (much like a state would consider, among other factors, the remaining useful life of each source). However, EPA has historically not considered the costs of complying with other CAA programs, like NSR, when determining BSER for a source category under section 111. This was in part because, for many years, EPA applied a policy of excluding pollution control projects from NSR. But, as noted earlier in this section, EPA's attempt to codify such a policy in the NSR regulations was struck down by the D.C. Circuit in 2005. Since that decision, EPA has not written a significant number of rules under section 111, and the rules that EPA has written have not presented a need to consider this question. However, due to the nature of the electric utility industry and the types of candidate control measures being considered in this proposal, it may be appropriate to consider NSR compliance costs in this instance. Specifically, the BSER measures chosen in this rule may result in a source undertaking a physical change that significantly increases its annual emissions and triggers major NSR permitting requirements such that permitting costs are unavoidable. However, due to the case-specific analysis required to determine NSR applicability, it would likely be difficult for a state to adequately predict and quantify the effect of a HRI on an EGU's operational costs, change in dispatch order, and other variables that would factor into whether the source needs a major NSR permit or, perhaps, a minor NSR permit. In addition, even if a state can reasonably predict an EGU's emissions increase resulting from a HRI project such that it can expect the source will need a major NSR permit, it would likely be difficult to predict the expected permitting costs since the emission control and other permitting requirements are case-by-case determinations and can therefore vary significantly due to a number of factors, including how well the source is already controlled, the emissions from nearby sources and their contribution to air quality concerns, whether the source is located in an attainment or nonattainment area, and the potential for the air permit to trigger other requirements (*e.g.,* Endangered Species Act, National Historic Preservation Act). In some cases, a source triggering major NSR may be required to conduct extensive modeling and install additional pollution controls for non-GHG pollutants. Thus, the case-by-case nature of the NSR program can lead to uncertainty for a state that is creating its 111(d) plan and wanting to ensure that the plan fully appreciates the projected compliance costs for its affected EGUs.

EPA is, therefore, inviting comment on whether it is appropriate to consider the costs of NSR compliance in the BSER analysis under section 111(d), assuming that triggering NSR cannot otherwise be avoided through actions by the source or through revisions to the NSR regulations that are proposed by EPA in this rule or if EPA does not finalize revisions to the NSR regulations (Comment C–59). In addition, EPA solicits comment on how a state or local permitting agency may estimate or project the cost for the source to comply with any NSR requirements that may flow from a selected BSER, and on how the potential for delays because of an influx of NSR permit applications may be accounted for in setting an implementation schedule for 111(d) plans (Comment C–60).

Recognizing that EPA issuing this 111(d) rule would mean that a source may no longer be in a position to forego a HRI project due to unwanted permitting costs, EPA has continued to look for ways to reduce the costs of NSR requirements, while being mindful of the requirements of the CAA and the court decisions on prior NSR reform rules that were referenced by some commenters. In this light, EPA believes that a past option for revising the NSR regulation that EPA has considered may warrant further consideration to address this concern. In 2005 and 2007, EPA previously proposed adopting an hourly emissions rate test for NSR applicability for EGUs. While this rulemaking was never completed, EPA believes that it warrants a fresh look in a new context here where NSR program flexibility takes on added significance as a means to facilitate the HRI projects that are expected to be undertaken should the proposed ACE rule be finalized. This same idea was also raised by a few

[58] In May 2001, President Bush's National Energy Policy Development Group issued findings and key recommendations for a National Energy Policy. This document included numerous recommendations for action, including a recommendation that the EPA Administrator, in consultation with the Secretary of Energy and other relevant agencies, review NSR regulations, including administrative interpretation and implementation. The recommendation requested that EPA issue a report to the President on the impact of the regulations on investment in new utility and refinery generation capacity, energy efficiency, and environmental protection. The report to the President was issued on June 13, 2002, and is available at *https://www.epa.gov/nsr/new-source-review-report-president*. In the report to the President, EPA concluded ''[as] applied to existing power plants and refineries . . . the NSR program has impeded or resulted in the cancellation of projects which would maintain and improve reliability, efficiency and safety of existing energy capacity. Such discouragement results in lost capacity, as well as lost opportunities to improve energy efficiency and reduce air pollution.'' New Source Review Report to the President at 3.

commenters on the ANPRM.[59] Thus, EPA is soliciting comment on whether a narrower range of options for implementing an hourly emissions test for NSR for EGUs would both help promote energy efficiency and the effectiveness of implementing the ACE rule, while at the same time being consistent with the NSR provisions in CAA and past judicial decisions interpreting those provisions (Comment C–61).

2. The 2007 Supplemental Rule Proposal

In 2007, EPA proposed to revise the NSR provisions to include an NSR applicability test for EGUs that is based on maximum hourly emissions. 72 FR 26202 (May 8, 2007). The 2007 proposed action was a ''supplemental'' notice of proposed rulemaking (SNPRM), because the 2007 proposal followed an earlier action by EPA that proposed a more limited form of the hourly emissions test for NSR applicability. 70 FR 61081 (October 20, 2005) (NPRM). These proposals followed EPA's NSR regulatory reform efforts of 2002 and 2003, when EPA promulgated final regulations that implemented several of the recommendations in the New Source Review Report to the President.[60] Those earlier regulatory actions, however, left the NSR provisions for electric utilities largely unchanged.

The 2007 SNPRM requested comment on two basic options, and various alternatives within each of the two options, for changing the test for determining an emissions increase from an EGU undergoing a physical or operational change. The proposal included emissions test alternatives based on an EGU's maximum *achieved* hourly emissions rate—applying either a ''statistical approach'' or a ''one-in-5-year baseline approach''—and an EGU's maximum *achievable* hourly emissions rate, which mirrored the NSPS modification applicability test. While EPA did not propose rule amendments in the 2005 NPRM, in 2007 EPA proposed to amend 40 CFR part 51 to include a new provision at § 51.167, which largely mirrored the NSPS modification provisions in § 60.2 and § 60.14. The 2007 SNPRM provided EPA's legal and policy basis for incorporating an hourly emissions increase test within the NSR program for EGUs.

For the proposed maximum achieved hourly test alternatives, an EGU owner/operator would determine whether an emissions increase would occur by comparing the pre-change maximum actual hourly emissions rate to a projection of the post-change maximum actual hourly emissions rate. In establishing the baseline, both alternatives considered the unit's actual performance during the 5-year period immediately preceding the physical or operational change. For the one-in-5-year baseline approach, the emissions rate would be computed based on what the unit actually achieved for any single hour within the 5-year period immediately before the physical or operational change. For the statistical approach, the owner/operative would analyze continuous emission monitoring system (CEMS) or predictive emission monitoring system (PEMS) data from the 5 years preceding the physical or operational change to determine the maximum actual pollutant emissions rate. The statistical approach would utilize actual recorded data from periods of representative operation to calculate the maximum actual emissions rate associated with the pre-change maximum actual operating capacity in the past 5 years.

The purpose behind developing the statistical approach was to address concerns from comments received on the 2005 NPRM ''that maximum achievable emissions could differ from maximum achieved emissions for a given EGU for any given period as a result of factors independent of the physical or operational change, including variability of the sulfur content in the coal being burned.'' 72 FR 26219 (May 8, 2007). In the 2007 SNPRM, EPA acknowledged that the highest hourly emissions do not always occur at the point of highest capacity utilization, due to fluctuations in process and control equipment operation, as well as in fuel content and firing method. The proposed statistical procedure would consequently ensure that the maximum achieved hourly emissions test identified the maximum hourly pollutant emissions value. Specifically, the statistical procedure would estimate the highest value (99.9 percentage level) in the period represented by the data set compiled from hourly average CEMS or PEMS measured emission rates and corresponding heat input data. EPA asserted that this approach would mitigate some of the uncertainty associated with trying to identify the highest hourly emissions rate at the highest capacity utilization. EPA asserted then that ''over a period that is representative of normal operations, in general the maximum achievable and maximum achieved hourly emissions test would lead to substantially equivalent results.'' 72 FR 26220.

For the proposed maximum achievable hourly test alternatives, the major NSR regulations would apply at an EGU if a physical or operational change results in any increase above the maximum hourly emissions achievable at that unit during the 5 years prior to the change. Pre-change and post-change hourly emissions rates would be determined according to the NSPS provisions in § 60.14(b). Hourly emission increases would be determined using emission factors, material balances, continuous monitor data, or manual emission tests.

In the 2007 SNPRM, EPA argued that a maximum hourly emissions test would simplify major NSR applicability determinations and implementation. EPA contended that ''the achieved and achievable [hourly emissions] tests eliminate the burden of projecting future emissions and distinguishing between emissions increases caused by the change from those due solely to demand growth, because any increase in the emissions under the hourly emissions tests would logically be attributed to the change. Both the achieved and achievable tests reduce recordkeeping and reporting burdens on sources because compliance will no longer rely on synthesizing emissions data into rolling average emissions.'' 72 FR 26206 (May 8, 2007).

While the 2005 action had proposed to replace the current NSR annual emissions increase test with an hourly test, the 2007 action proposed the same option as well as an option to retain the annual emissions test along with an hourly test. For the combined hourly and annual emissions option, if a change would not increase the hourly emissions of the EGU, major NSR would not apply; however, if hourly emissions would increase after the change, then projected annual emissions would be reviewed using the existing NSR applicability test. The 2007 SNPRM expressed a preference for this combined applicability option.

In the 2007 SNPRM, the proposed changes to the NSR emissions test were in part justified by the substantial EGU emission reductions from other air programs enacted since 1980 and the capped emissions approaches used for

[59] *See, e.g.,* Arizona Public Service Company comments on the U.S. Environmental Protection Agency's ANPRM entitled, ''State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units,'' 82 FR 61507 (Dec. 28, 2017) at 6 (EPA–HQ–OAR–2017–0545–0286);Unions for Jobs & Environmental Progress comments on the U.S. Environmental Protection Agency's ANPRM entitled, ''State Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units,'' 82 FR 61507 (Dec. 28, 2017) at 14–17 (EPA–HQ–OAR–2017–0545–0162).

[60] *See supra* note.

SO_2 and nitrogen oxides (NO_X) since the CAA Amendment of 1990. The analyses conducted for that 2007 SNPRM concluded that, by 2020, more EGUs would install controls than they would in complying with a number of emission cap-based EPA rules that were in play at the time (*i.e.,* Clean Air Interstate Rule, Clean Air Mercury Rule, and Clean Air Visibility Rule). The analysis maintained that the hourly emissions test would allow units to operate more hours each year, and the more hours a unit operates, the more it will control emissions to remain under the emission caps. It concluded that there would be essentially no changes in national emissions of SO_2 and NO_X by coal-fired power plants, and essentially no impact on county-level emissions or local air quality.

These 2005 and 2007 proposed rules were neither finalized nor withdrawn by EPA. The rulemaking docket for these actions is EPA–HQ–OAR–2005–0163.

3. Legal Basis for Using Hourly Emission Rates To Identify Increases in Emissions

The 2007 SNPRM followed EPA's NPRM from 2005 that would have *replaced* the NSR program's annual emissions test with an hourly test. The proposed regulatory approach taken in 2005 was based on the decision in *United States* v. *Duke Energy Corp.,* 411 F.3d 539 (4th Cir. 2005), in which the court held that the NSPS and NSR programs must have a uniform emissions test. There, in the context of an NSR enforcement case, the meaning of the CAA's definition of ''modification,'' and the proper interpretation of the provisions of the NSR regulations (as promulgated in 1980) that spoke to how an ''emissions increase'' was to be determined were at issue. The Fourth Circuit held that the CAA requires that those NSR regulations ''conform'' to their NSPS counterpart. 411 F.3d at 548. According to the Fourth Circuit, because Congress had relied on a cross-reference to CAA section 111(a)(4)'s definition of ''modification'' (*i.e.,* the original NSPS definition) to define ''modification'' for purposes of the NSR program, this created an ''effectively irrebuttable presumption'' that the two definitions must be the same.'' *Id.* at 550.

The case then went to the Supreme Court, and the Supreme Court disagreed. In *Environmental Defense* v. *Duke Energy Corporation,* 549 U.S. 561 (2007), the Supreme Court held that there was ''no effectively irrebuttable presumption that the same defined term in different provisions of the same statute must be interpreted identically. Context counts.'' 549 U.S. at 575–76 (internal citation and quotation marks omitted). Moving beyond the procedural question of whether the Fourth Circuit had applied the proper tools of statutory construction, the Court also engaged the underlying substantive question, finding that ''[n]othing in the text or the legislative history'' suggests that Congress intended to *require* that the programs be tied together and thereby ''eliminat[e] the customary agency discretion to resolve questions about a statutory definition by looking to the surroundings of the defined term.'' *Id.* at 576.

Of particular significance here, the Supreme Court also addressed the possibility that the two regulatory programs could be read together as set and subset, such than an NSPS-type modification was a prerequisite to an NSR-type modification—*i.e.,* that ''before a project can become a 'major modification' under the PSD regulations, it must meet the definition of 'modification' under the NSPS regulations.'' 549 U.S. at 581 n.8. This reading ''sounds right,'' the Court opined,'' but then observed that, in its view, the NSPS and NSR regulations as they were then written did not support such a reading. *Id.* Although the Court had no occasion to address whether the Clean Air Act *allows,* rather than directs, EPA to define ''modification'' the same way in both the NSPS and NSR programs, EPA believes that the answer is clearly yes. The Court does generally ''presume that the same term has the same meaning when it occurs here and there in a single statute,'' 549 U.S. at 575, and, as Justice Thomas pointed out in his concurrence, in the case of the CAA's definition of ''modification,'' Congress's use of a cross-reference ''carries more meaning than mere repetition of the same word in a different statutory context.'' *Id.* at 583 (Thomas, J., concurring).[61]

In the 2007 SNPRM, EPA argued that the Supreme Court decision left room for EPA to revise the regulations when it has a rational basis for doing so. 72 FR 26202, 26204 (May 8, 2007); *see also Environmental Defense* v. *Duke Energy Corp.,* 549 U.S. 561, 576 (2007) (''EPA's construction [of the definition of modification] need do no more than fall within the limits of what is reasonable, as set by the Act's common definition.'') EPA also argued that a maximum hourly emissions test for NSR is an appropriate exercise of EPA's discretion citing *Chevron U.S.A., Inc.* v. *NRDC, Inc.* 467 U.S. 37,865 (1984). *Chevron* provides that when a statute is silent or ambiguous with respect to a specific issue, the relevant inquiry for a reviewing court is whether the Agency's interpretation of the statutory provision is permissible. In this case, the Clean Air Act is silent on how to determine whether a physical change or change in method of operation ''increases the amount of any air pollutant emitted.'' 42 U.S.C. 7411(a)(4); *New York I,* 413 F.3d at 22 (''[T]he CAA . . . is silent on how to calculate such 'increases' in emissions.''). Accordingly, EPA has broad discretion to propose a reasonable method by which to calculate the ''amount'' of an emissions ''increase'' for purposes of NSR applicability.

In the 2007 action, EPA also explained how an applicability test based on maximum achievable hourly emissions is, in fact, a test based on actual emissions. The reason is that, as a practical matter, ''for most, if not all EGUs, the hourly rate at which the unit is actually able to emit is substantively equivalent to that unit's historical maximum hourly emissions. That is, most, if not all EGUs will operate at their maximum actual physical and operational capacity at some point in a 5-year period. In general, the highest emissions occur during the period of highest utilization. As a result, both the maximum achievable and maximum achieved hourly emissions increase tests allow an EGU to utilize all of its existing capacity, and in this aspect the hourly rate at which the unit is actually able to emit is substantively equivalent under both tests.'' 72 FR 26219 (May 8, 2007).

Thus, EPA considered the approaches proposed in the 2007 SNPRM to be consistent with the D.C. Circuit precedent which held that the 2002 NSR Reform Rule's ''Clean Unit'' provision was beyond EPA's authority because Congress intended to apply NSR to increases in actual emissions, even though the decision deferred to EPA on the method for calculating baseline emissions. *Compare New York I,* 413 F.3d at 40 *with id.* at 20. In *New York I,* the D.C. Circuit found that the ''Clean Unit'' provision was unlawful because it ''measures 'increases' in terms of Clean Unit status instead of actual emissions.'' 413 F.3d at 39. In defense of the provision, EPA had asserted that the CAA is ''silent'' as to whether an emissions increase ''must be measured in terms of actual emissions, potential

[61] To this point, as Justice Thomas explains, the majority's analysis of the relationship between the NSR and NSPS programs is dicta, because the NSR regulations, as then written, could not be permissibly read to mean the same as the NSPS regulations, and CAA section 307(b) prohibits review of the NSR regulations in the context of an enforcement action. *Duke Energy,* 549 U.S. at 582 (Thomas, J. concurring) (explaining that Justice Thomas joins only Part III.B of the majority opinion).

emissions, or some other currency,'' and that EPA was therefore owed deference to interpret what type of ''increases'' are relevant for the modification analysis. *Id.* The D.C. Circuit, however, disagreed. The court found that section 111(a)(4)'s reference to ''the *amount* of any air pollutant *emitted* by [the] source plainly refers to actual emissions'' and cannot encompass potential emissions. *Id.* at 40 (emphases in original). According to the court, ''the plain language of the CAA indicates that Congress intended to apply NSR to changes that increase actual emissions instead of potential or allowable emissions.'' *Id.*

At the same time, the D.C. Circuit affirmed that EPA has wide discretion to interpret the definition of ''modification'' within these bounds. The court rejected challenges brought to the 2002 NSR Reform Rule's then-new baseline period provision, finding that ''[i]n enacting the NSR program, Congress did not specify how to calculate 'increases' in emissions,'' with the result that it was left to EPA ''to fill that gap while balancing the economic and environmental goals of the statute.'' 413 F.3d at 27. Because the CAA is ''silent on how to calculate . . . 'increases' in emissions'' for purposes of determining ''modification,'' the court said, *id.* at 22, EPA has discretion to give meaning to that term by adopting a baseline period that '' 'represents a reasonable accommodation of' '' the Agency's environmental, economic, and administrative concerns. *Id.* at 23 (*quoting Chevron,* 467 U.S. at 845). The D.C. Circuit went on to say that ''[d]ifferent interpretations of the term 'increases' may have different environmental and economic consequences,'' and in ''administering the NSR program and filling in the gaps left by Congress, EPA has the authority to choose an interpretation that balances those consequences.'' *Id.* at 23–24. The court added that this choice may be informed by both EPA's ''extensive experience and expertise'' in this technical and complex regulatory program and by the ''incumbent administration's view of wise policy.'' *Id* at 24.

As for NRDC's argument in comments on the ANPRM that narrowing the scope of projects subject to NSR requirements would be contrary to the D.C. Circuit's *New York II* decision, EPA notes that what was before the court in that case was an effort by EPA to further define what type of projects are considered RMRR and thus excluded from the types of ''physical change[s] in, or change[s] in the method of operation of'' a source that may trigger NSR. *New York II,* 443 F.3d at 883. While the case focused on the ''physical change'' criterion of ''modification,'' the court's decision does provide some guidance on EPA's discretion to interpret ''emissions increase.'' The court in *New York II* found that the Equipment Replacement Rule, as promulgated in 2003, violated the CAA because its bright-line RMRR test, which took into account the value of the particular components being replaced, was inconsistent with CAA section 111(a)'s broad applicability to ''any physical change'' that results in increased emissions, subject to only *de minimis* exclusions. *Id.* at 890. But in so finding, the D.C. Circuit contrasted what it found to be the clear meaning of ''any physical change'' with ''Congress's use of the word 'increase,' '' which ''necessitated further definition regarding rate and measurement for the term to have any contextual meaning.'' *Id.* at 888–889. Accordingly, contrary to NRDC's assertions, *New York II* confirms the finding in *New York I* that, other than requiring that they be measured in terms of actual emissions, the CAA leaves to EPA the discretion to determine how emission increases will be defined for the purposes of NSR modification.

4. This Proposal

Consistent with our policy goal of encouraging efficient use of existing energy capacity and managing the burden on states of developing and implementing their CAA section 111(d) plans, EPA is proposing to amend the NSR regulations to include an hourly emissions increase test for EGUs. These proposed changes could be one tool that states may use to help ensure the efficient and effective implementation of their 111(d) plans.[62]

EPA is proposing some of the same alternatives for an hourly emissions test that EPA proposed in 2007. The 2007 SNPRM solicited comment on 12 alternatives, but EPA is narrowing the number of alternatives for this revised proposal and solicitation of comment. In this case, EPA is proposing only alternatives in which the hourly test is paired with the current NSR annual emissions test (*i.e.,* Option 1 in the 2007 SNPRM) and only the alternatives that have an input-based format (*i.e.,* Alternatives 1, 3, and 5 in the 2007 SNPRM). Table 1 reflects the three alternatives being proposed in this action, and how they fit within the structure of the proposed combined annual and hourly emissions test for NSR applicability.

TABLE 5—PROPOSED MAJOR NSR APPLICABILITY FOR AN EXISTING EGU[63]

Step 1: Physical Change or Change in the Method of Operation.
Step 2: Hourly Emissions Increase Test.
- Alternative 1—Maximum achieved hourly emissions; statistical approach; input basis.
- Alternative 2—Maximum achieved hourly emissions; one-in-5-year baseline; input basis.
- Alternative 3—Maximum achievable hourly emissions; input basis.

Step 3: Significant Emissions Increase Determined Using the Actual-to-Projected-Actual Emissions Test as in the Current NSR Rules.
Step 4: Significant Net Emissions Increase as in the Current NSR Rules.

Thus, under this proposed approach, the major NSR program would include a four-step applicability process (with the second step inserted as proposed, while retaining the other steps): (1) A physical change or change in the method of operation as in the current major NSR regulations; (2) an hourly emissions increase test (either maximum achieved hourly emissions rate or maximum achievable hourly emissions rate, each on an input-basis (lb/hr)); (3) a significant emissions increase as in the current major NSR regulations; and (4) a significant net emissions increase as in the current major NSR regulations. For a major modification to occur, under Step 1, a physical change or change in the method of operation must occur. If there is a physical change or change in

[62] As noted above, EPA is inviting comment regarding whether, if we do not address NSR permitting burden with this proposal, we should provide a mechanism for state and local permitting agencies to consider the costs and delays associated with NSR permitting. *See* Section VIII.C.1 of this preamble.

[63] For clarity, this table lists all of the steps in the NSR major modification applicability determination under the three alternatives being proposed in this action. This current action does not propose to change any of the current NSR applicability steps besides inserting Step 2.

method of operation, under Step 2, that change must result in an hourly emissions increase at the existing EGU. If a post-change hourly emissions increase is projected, a source must then proceed to determine whether there is also a significant emissions increase and a significant net emissions increase. In such cases, under Step 3, the owner/operator would determine whether an emissions increase would occur using the actual-to-projected-actual annual emissions test as provided in the current regulations. There would be no conversion from annual to hourly emissions. Finally, in Step 4, as in the current regulations, if a significant emissions increase is projected to occur, the source would still not be subject to major NSR unless there was a determination that a significant net emissions increase would occur.

This proposed approach would not alter the provisions in the current major NSR regulations pertaining to a significant emissions increase and a significant net emissions increase. Therefore, the NSR regulations would retain the definitions of net emissions increase, significant, projected actual emissions, and baseline actual emissions. *See* 40 CFR 51.166(b)(3), 51.166(b)(23), 51.166(b)(40), 51.166(b)(47).[64] The regulations would also retain all provisions in the current regulations that refer to major modifications, including, but not limited to, those in 40 CFR 51.166(a)(7)(i) through (iii), (b)(9), (b)(12), (b)(14)(ii), (b)(15), (b)(18), (i)(1) through (9), (j)(1) through (4), (m)(1) through (3), (p)(1) through (7), (r)(1) through (7), and (s)(1) through (4).[65]

To incorporate the four-step modification provisions, EPA is proposing to add two new sections to the major NSR program rules. The first, 40 CFR 51.167, would specify that State Implementation Plans may include a new Step 2 for major NSR applicability at existing EGUs, including those for both attainment and nonattainment areas. The second, 40 CFR 52.25, would contain the requirements for major NSR applicability for existing EGUs where EPA is the reviewing authority or EPA has delegated our authority to a state or local air permitting agency. EPA is also proposing to make the same changes where necessary to conform the general provisions in parts 51 and 52 to the requirements of the major NSR program, such as in the definition of modification in 40 CFR 52.01. The new sections at § 51.167 and § 52.25 will be separate and distinct from the other NSR provisions and this will allow our rules to apply this new proposed Step 2 to EGUs while keeping the current distinction in our NSR rules that applies different applicability requirements for EUSGUs and non-EUSGUs that are not EGUs.

While EPA is proposing that this NSR hourly emissions test would apply to all EGUs, as defined in 40 CFR 51.124(q), EPA is soliciting comment on whether to confine the applicability of the hourly test to a smaller subset of the power sector, such as only the affected EGUs that are making modifications to comply with their state's standards of performance pursuant to these section 111(d) emissions guidelines (*i.e.,* pursuant to this document's proposed provisions at § 60.5775a and § 60.5780a) (Comment C–62). In addition, while the 2007 SNPRM solicited comment on whether such a test should be limited to the geographic areas covered by several of EPA's rules at the time, because the ACE rule would potentially affect EGUs in all of the contiguous U.S., EPA is proposing in this action to not limit its applicability to specific geographic areas. We are specifically proposing that it would apply to EGUs in all areas of the United States. Finally, although the 2007 SNPRM requested comment on whether the proposed NSR hourly emissions test should be limited to increases of SO_2 and NO_X emissions (due to the analysis that supported the 2007 SNPRM), EPA is proposing in this action that the NSR hourly emissions test would apply to all regulated NSR pollutants because the candidate technologies being considered under this proposal may affect annual emissions of not only GHGs but of all pollutants from the power sector (and because EPA is not relying on the previous proposal's analysis that focused on SO_2 and NO_X emissions). EPA solicits comment on these approaches to applicability for the proposed NSR hourly emission increase test.

Recognizing that existing case law dictates that the phrase ''increases the amount of any air pollutant'' in CAA section 111(a)(4) refers to increases in actual emissions for NSR purposes, in 2007 EPA argued that an hourly achievable test is equivalent to a measure of actual emissions because ''for most, if not all EGUs, the hourly rate at which the unit is actually able to emit is substantively equivalent to that unit's historical maximum hourly emissions.'' 72 FR 26219 (May 8, 2007). EPA is taking comment on this prior assertion and whether recent changes to the energy sector may have rendered it invalid (Comment C–63). EPA is also asking for comment on whether if, practically speaking, maximum achieved and maximum achievable hourly rates are equivalent for most if not all EGUs, EPA has the flexibility under the CAA to implement an hourly achievable emissions test for NSR (Comment C–64).

As noted in the preceding section, EPA's proposal in 2007 to adopt an hourly emissions increase test for NSR included an analysis demonstrating that (1) the proposed regulations would not have an undue adverse impact on local air quality, and (2) increases in the hours of operation at EGUs, to the extent they may increase under a maximum hourly rate test for NSR, would not notably increase national SO_2, NOx, $PM_{2.5}$, VOC, or CO emissions from the power sector. The analysis in 2007 concluded that the more efficiently and the more cost-effectively an EGU operates, the more likely it is to install controls due to other EPA air regulations. While time has passed since the analyses in the 2007 SNPRM were conducted, the analysis conducted for the ACE rule similarly reflects that, for scenarios that include varying levels and costs of efficiency improvements (reflecting, in part, the proposed changes to NSR in this action), total national emissions of CO_2 and other pollutants will essentially stay the same or be slightly reduced when compared with a CPP repeal. While it is possible that some individual units may experience an increase in annual emissions due to increases in operation, it is very difficult to project with confidence at which of the units this would actually occur. This is partly due to the framework of the current NSR annual emissions test, which considers a number of source-specific variables—including operational history of the unit, projected emissions that may be exempted due to demand growth, other units competing for dispatch, and availability of creditable emission decreases at the facility—that could result in the source ultimately not being subject to major NSR. Consequently, the analysis conducted for the ACE rule estimates the cost and benefits of the different scenarios in a categorical sense and does not attempt to identify the particular sources at which major NSR permitting may be required absent the type of revisions to the NSR regulations proposed here or incorporate a specific cost for NSR permitting within any of the scenarios. This is due in part to limitations in the feasibility of such analysis and in part to the structure of

[64] Analogous provisions are found in 40 CFR 51.165, 52.21, and appendix S to 40 CFR part 51.

[65] Analogous provisions are found in 40 CFR 51.165, 52.21, and appendix S to 40 CFR part 51.

section 111(d) and the state-plan development phase which would follow a finalization of this proposed rule. EPA requests comment on the concern about the potential emission increases as part of the proposed NSR changes that some stakeholders have raised (Comment C–65).

While recognizing that fewer sources will trigger major NSR under an hourly emissions increase, we note that even if a source undertaking a heat rate improvement is not subject to major NSR requirements, it will often require a minor NSR permit from its permitting agency. As noted in Section VIII.A of this preamble, the minor NSR program applies to new and modified sources that are not subject to major NSR permitting. The purpose of a minor NSR program is, along with major NSR, to ensure that sources of air emissions are properly regulated so that the NAAQS are attained and protected. For example, under EPA's tribal minor NSR program, the reviewing authority (*i.e.,* EPA or a delegated Tribe) must ensure that the NAAQS are protected through the permitting process. The reviewing authority has the option to require an air quality impact analysis for individual permits if they deem it necessary based on air quality concerns.[66] All minor NSR permits require a public notice process and the permit may potentially require the installation of air pollution controls based on an assessment by the permitting authority.

Furthermore, states use measures contained in their State Implementation Plan (SIP) to ensure that local air quality impacts are addressed or minimized to the extent possible. A SIP may include (1) state-adopted control measures which consist of either regulations or source-specific requirements (*e.g.,* orders and consent decrees); (2) state-submitted ''non-regulatory'' components (*e.g.,* maintenance plans and attainment demonstrations); and (3) additional requirements promulgated by EPA to satisfy a mandatory requirement in Section 110 or Part D of the CAA.

Supplementing the Agency's legal and policy rationale provided in the 2007 SNPRM, EPA is taking comment on an important factor that EPA believes supports for moving forward with the addition of an NSR hourly emissions test for EGUs: EPA is now proposing a rule that could result in sources being required to perform HRIs (as determined by their state 111(d) plans) rather than sources independently deciding to do them (Comment C–66). EPA believes this added factor of the 111(d) GHG emission guidelines for EGUs directing sources to consider HRIs when complying with their state plans may make the case for adopting an NSR hourly emissions test for EGUs more compelling. EPA requests comment on the extent to which EPA should allow the adoption of an NSR hourly emissions test for EGUs in light of EPA's decision to issue these proposed emission guidelines for the power sector (Comment C–67).

EPA is also taking comment on other ways to minimize or eliminate any adverse impact that NSR may have on implementing section 111(d) plans for EGUs (Comment C–68). Specifically, have there been court decisions since *New York I* and *New York II* that can be read to afford EPA more flexibility with respect to its reading of the definition of ''modification'' in the context of the NSR program?

For example, when EPA undertook the challenge of applying the PSD program to GHGs, the Supreme Court pointed to several instances where EPA had permissibly narrowed the scope of the general CAA definition of ''air pollutant'' based on the surrounding context of provisions within which the term is used, including the NSR program. *UARG* v. *EPA,* 134 S.Ct. 2427, 2439–41 (2014). Based in part on this observation, the Court rejected EPA's strict interpretation that the term ''air pollutant'' must apply to greenhouse gases in the context of the definition of ''major emitting facility'' in section 169(1) of the Act in spite of the Agency's recognition that such a reading would dramatically expand the reach of the PSD program to smaller scale construction that Congress had never intended to cover. *Id.* at 2442. In a like manner, does EPA have more flexibility with regard to its interpretation of the definition of ''modification'' in the context of the PSD program than the D.C. Circuit has previously recognized? Where the D.C. Circuit's reading of the definition of ''modification'' in the PSD context would produce results that frustrates Congressional objectives in the CAA section 111 programs, does the reasoning of the Supreme Court in *UARG* supply a basis for EPA to develop a narrower form of a pollution control project exclusion from NSR?

The requirements of the CAA section 111 program were intended to work in harmony with NSR and other provisions of the Act. The complementary relationship of the programs is evident from the statutory requirements. Both programs are intended to protect air quality from stationary sources of pollution, and they rely on many of the same CAA provisions and definitions—namely, the programs' framework for existing sources are both rooted in the same definition for ''modification.'' In addition, there are instances in which the CAA cross links the programs such that a requirement from one program bears an influence on the other program. For example, in accordance with CAA section 169(3), an applicable standard of performance under NSPS establishes the minimum level of stringency for BACT for a source getting a PSD permit. Similarly, LAER must reflect an emission rate that is does not exceed the allowable emission rate under any applicable NSPS. CAA section 171(3). Thus, the NSPS program sets the minimum performance standards for new stationary sources as part of program to ensure air quality is protected, and NSR authorizes the construction or modification of sources of air pollution, taking into account the NSPS as it examines what the source needs to do to control its emissions in order to adequately protect or improve air quality.

Thus, EPA believes the two programs are intended to complement—not conflict with—each other. However, because changes considered under 111(d) plans could result in a source triggering NSR under the current NSR rules and increasing the costs to the point that undertaking HRI are less financially feasible for some sources, can EPA apply the reasoning of *UARG* to read the definition of ''modification'' in this context to afford more flexibility to exempt sources from NSR requirements when they are compelled to make changes by an NSPS (Comment C–69)?

5. State Adoption

As the hourly emissions test for NSR would be one tool for implementing the ACE rule, EPA expects that some states may determine that they do not need or desire to change the NSR applicability requirements for EGUs. Consequently, EPA does not intend the NSR hourly emissions test to be a mandatory element of state programs (as EPA had proposed in 2007). EPA is proposing for this action that states would have the discretion to decide whether to incorporate the NSR hourly emissions test for EGUs into their rules. However, state and local permitting authorities that are issuing permits on behalf of EPA under a delegation agreement will be required to apply the NSR hourly emissions test for EGUs, since they would follow the Federal NSR program provided in 40 CFR part 52 (which would be amended to include section

[66] 40 CFR 49.154(d). We note that many state (and local) minor NSR permitting programs have similar methods for ensuring that the NAAQS are protected.

52.25). EPA solicits comment on allowing states this flexibility to adopt the proposed NSR rule changes and on any other considerations with respect to state (or local/district agency) adoption and implementation of the proposed NSR changes (Comment C–70).

6. Severability

Although EPA proposes to finalize these NSR revisions as part of an integrated action with the rest of this proposal, EPA views the revisions to the definition of BSER, revisions to the implementing regulations, and emission guideline proposed in this proposal as appropriate policies in their own right and on their own terms. EPA intends that the NSR revisions, if finalized, would be severable from the other provisions on judicial review. EPA solicits comment on whether it would be appropriate to finalize the NSR revisions as a separate action from the remainder of the proposal (Comment C–71).

7. Submitting Comments

Please submit all comments on this NSR section docket established for this rulemaking (Docket ID number EPA–HQ–OAR–2017–0355). To the extent that you previously commented on the October 20, 2005 NPRM and/or May 8, 2007 SNPRM and desire for your comments to be considered for this proposed action, please resubmit them.

IX. Impacts

A. What are the air impacts?

In the Regulatory Impact Analysis (RIA) for this proposed rulemaking, the Agency provides a full benefit cost analysis of four illustrative scenarios. The four illustrative scenarios include a scenario modeling the full repeal of the CPP (which can also be conceptualized as the legal state of affairs as of the date of this proposal, given the Supreme Court stay of the CPP) and three policy scenarios modeling heat rate improvements (HRI) at coal-fired EGUs. Throughout the RIA, these three illustrative policy scenarios are compared against a base case, which includes the CPP. By analyzing against the CPP, the reader can understand the combined impact of the CPP repeal and proposed ACE rule. Inclusion of a no CPP case allows for an understanding of the repeal alone and also allows the reader to evaluate the impact of the policy cases against a no CPP scenario. The RIA assumes a mass-based implementation of the CPP for existing affected sources, and does not assume interstate trading. The three illustrative policy scenarios represent potential outcomes of state determinations of standards of performance, and compliance with those standards by affected coal-fired EGUs. These policy scenarios illustrate the analysis of the world without the CPP, the world with this proposal, and the difference in the effects of this proposal and those of the CPP.

The illustrative policy scenarios model different levels and costs of HRIs applied uniformly at all affected coal-fired EGUs in the contiguous U.S. beginning in 2025. EPA has identified the BSER to be HRI. Each of these illustrative scenarios assumes that the affected sources are no longer subject to the state plan requirements of the CPP (*i.e.,* the mass-based requirements assumed for CPP implementation in the base case for the RIA). The cost, suitability, and potential improvement for any of these HRI technologies is dependent on a range of unit-specific factors such as the size, age, fuel use, and the operating and maintenance history of the unit. As such, the HRI potential can vary significantly from unit to unit. EPA does not have sufficient information to assess HRI potential on a unit-by-unit basis. To avoid the impression that EPA can sufficiently distinguish likely standards of performance across individual affected units and their compliance strategies, this analysis assumes different HRI levels and costs are applied uniformly to affected coal-fired EGUs under each of three illustrative policy scenarios:

The first illustrative scenario, 2 Percent HRI at $50/kW, represents a policy case that reflects modest improvements in HRI absent any revisions to NSR requirements. For many years, industry has indicated to the Agency that many sources have not implemented certain HRI projects because the burdensome costs of NSR cause such projects to not be viable. Thus, absent NSR reform, HRI at affected units might be expected to be modest. Based on numerous studies and statistical analysis, the Agency believes that the HRI potential for coal-fired EGUs will, on average, range from one to three percent at a cost of $30 to $60 per kilowatt (kW) of EGU generating capacity. The Agency believes that this scenario (2 percent HRI at $50/kW) reasonably represents that range of HRI and cost.

The second illustrative scenario, 4.5 Percent HRI at $50/kW, represents a policy case that includes benefits from the proposed revisions to NSR, with the HRI modeled at a low cost. As mentioned earlier, the Agency is proposing revisions to the NSR program that will provide owners and operators of existing EGUs greater ability to make efficiency improvements without triggering the provisions of NSR. This scenario is informative in that it represents the ability of all coal-fired EGUs to obtain greater improvements in heat rate because of NSR reform at the $50/kW cost identified earlier. EPA believes this higher heat rate improvement potential is possible because without NSR a greater number of units may have the opportunity to make cost effective heat rate improvements such as steam turbine upgrades that have the potential to offer greater heat rate improvement opportunities.

The third illustrative scenario, 4.5 Percent HRI at $100/kW, represents a policy case that includes the benefits from the proposed revisions to NSR, with the HRI modeled at a higher cost. This scenario is informative in that it represents the ability of a typical coal-fired EGU to obtain greater improvements in heat rate because of NSR reform but at a much higher cost ($100/kW) than the $50/kW cost identified earlier. Particularly for lower capacity units or those with limited remaining useful life, this could ultimately translate into HRI projects with costs beyond what most states might determine to be reasonable.

Combined, the 4.5 percent HRI at $50/kW scenario and the 4.5 percent HRI at $100/kW scenario represent a range of potential costs for the proposed policy option that couples HRI with NSR reform. Modeling this at $50/kW and $100/kW provides a sensitivity analysis on the cost of the proposed policy including NSR reform. The $50/kW cost represents an optimistic bounding where NSR reform unleashes significant new opportunity for low-cost heat rate improvements. The $100/kW cost scenario, while informative, represents a high-end bound that could overstate potential because, particularly for lower capacity factor units and those with limited remaining useful life, these would represent project costs that states would likely find to be unreasonable.

The Agency understands that there may be interest in comparing the three illustrative policy scenarios against an alternative baseline that does not include the CPP. For those interested in comparing the potential impacts of the policy scenarios in a world without the CPP, results from the three illustrative policy scenarios may be compared against an alternative baseline results from the illustrative No CPP scenario. The presentation of an alternative baseline is consistent with Circular A–4, which states, ''When more than one

baseline is reasonable and the choice of baseline will significantly affect estimated benefits and costs, you should consider measuring benefits and costs against alternative baselines'' [67] In addition, the full suite of model outputs and additional comparisons tables are available in the rulemaking docket.

EPA evaluates the potential regulatory impacts of the illustrative No CPP scenario and the three illustrative policy scenarios using the present value (PV) of costs, benefits, and net benefits, calculated for the years 2023–2037 from the perspective of 2016, using both a three percent and seven percent beginning-of-period discount rate. In addition, the Agency presents the assessment of costs, benefits, and net benefits for specific snapshot years, consistent with historic practice. In the RIA, the regulatory impacts are evaluated for the specific years of 2025, 2030, and 2035.

Emissions are projected to be higher under the three illustrative policy scenarios and the illustrative No CPP scenario than under the base case, as the base case includes the CPP. Table 6 shows projected emission increases relative to the base case for CO_2, SO_2 and NO_X from the electricity sector. Table 7 shows the same emissions change information, except relative to the No CPP alternative baseline.

TABLE 6—PROJECTED CO_2, SO_2, AND NO_X ELECTRICITY SECTOR EMISSION INCREASES, RELATIVE TO THE BASE CASE (CPP) (2025–2035)

	CO_2 (million short tons)	SO_2 (thousand short tons)	NO_X (thousand short tons)
No CPP			
2025	50	36	32
2030	74	60	47
2035	66	44	43
2% HRI at $50/kW			
2025	37	35	24
2030	61	53	39
2035	55	34	39
4.5% HRI at $50/kW			
2025	32	40	21
2030	60	53	39
2035	59	43	43
4.5% HRI at $100/kW			
2025	20	32	14
2030	47	45	32
2035	44	29	33

TABLE 7—PROJECTED CO_2, SO_2, AND NO_X ELECTRICITY SECTOR EMISSION CHANGES, RELATIVE TO THE NO CPP ALTERNATIVE BASELINE

[2025–2035]

	CO_2 (million short tons)	SO_2 (thousand short tons)	NO_X (thousand short tons)
Base Case (CPP)			
2025	−50	−36	−32
2030	−74	−60	−47
2035	−66	−44	−43
2% HRI at $50/kW			
2025	−13	0	−8
2030	−13	−7	−8
2035	−11	−11	−5
4.5% HRI at $50/kW			
2025	−18	4	−11
2030	−14	−7	−8
2035	−7	−1	−1

[67] Office of Management and Budget (OMB), 2003, Circular A–4, *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

TABLE 7—PROJECTED CO_2, SO_2, AND NO_X ELECTRICITY SECTOR EMISSION CHANGES, RELATIVE TO THE NO CPP ALTERNATIVE BASELINE—Continued

[2025–2035]

	CO_2 (million short tons)	SO_2 (thousand short tons)	NO_X (thousand short tons)
4.5% HRI at $100/kW			
2025	−30	−3	−18
2030	−27	−15	−15
2035	−22	−16	−11

The emissions changes in these tables do not account for changes in hazardous air pollutants (HAPs) that may occur as a result of this rule. For projected impacts on mercury emissions, please see Chapter 3 of the RIA for this proposed rulemaking.

B. What are the energy impacts?

The proposed actions have energy market implications. Overall, the analysis to support this proposed rule indicates that there are important power sector impacts that are worth noting, although they are relatively small compared to other EPA air regulatory actions for EGUs. The estimated impacts reflect EPA's illustrative analysis of the proposed rule, which applies various levels of heat rate improvements to affected sources in order to ascertain how they might respond, in order to capture the potential systemwide economic and energy impacts of the requirements. States are afforded considerable flexibility in this proposed rule, and thus the impacts could be different, to the extent states make different choices.

Table 8 presents a variety of energy market impacts for 2025, 2030, and 2035 for the four illustrative scenarios, relative to the base case, which includes the CPP.

TABLE 8—SUMMARY OF CERTAIN ENERGY MARKET IMPACTS, RELATIVE TO BASE CASE (CPP)

[Percent change]

	2025 (%)	2030 (%)	2035 (%)
No CPP			
Retail electricity prices	−0.5	−0.4	−0.1
Average price of coal delivered to the power sector	−0.1	−0.2	−0.4
Coal production for power sector use	6.1	9.2	9.5
Price of natural gas delivered to power sector	−1.1	−0.3	0.1
Price of average Henry Hub (spot)	−1.4	−0.8	−0.2
Natural gas use for electricity generation	−1.5	−1.5	−0.9
2% HRI at $50/kW			
Retail electricity prices	−0.3	−0.2	−0.1
Average price of coal delivered to the power sector	0.2	−0.1	−0.4
Coal production for power sector use	5.5	8.0	8.4
Price of natural gas delivered to power sector	−1.1	−0.9	−0.4
Price of average Henry Hub (spot)	−1.4	−1.3	−0.6
Natural gas use for electricity generation	−2.5	−1.7	−1.1
4.5% HRI at $50/kW			
Retail electricity prices	−0.5	−0.4	−0.2
Average price of coal delivered to the power sector	0.7	0.6	0.3
Coal production for power sector use	5.8	8.6	9.5
Price of natural gas delivered to power sector	−1.4	−1.1	−0.7
Price of average Henry Hub (spot)	−1.7	−1.6	−1.0
Natural gas use for electricity generation	−3.4	−2.5	−1.9
4.5% HRI at $100/kW			
Retail electricity prices	−0.2	0.0	0.0
Average price of coal delivered to the power sector	0.5	0.3	−0.1
Coal production for power sector use	4.5	7.1	7.4
Price of natural gas delivered to power sector	−1.3	−1.1	−0.7
Price of average Henry Hub (spot)	−1.6	−1.6	−1.0
Natural gas use for electricity generation	−3.4	−2.3	−1.6

Energy market impacts are discussed more extensively in the RIA found in the rulemaking docket.

C. What are the compliance costs?

The power industry's ''compliance costs'' are represented in this analysis as the change in electric power generation costs between the base case and illustrative scenarios, including the cost of monitoring, reporting, and recordkeeping (MR&R). In simple terms, these costs are an estimate of the increased power industry expenditures required to implement the HRI required by the proposed rule, minus the sectoral cost of complying with the CPP assumed in the base case.

The compliance assumptions—and, therefore, the projected compliance costs—set forth in this analysis are illustrative in nature and do not represent the plans that states may ultimately pursue. The illustrative compliance scenarios are designed to reflect, to the extent possible, the scope and nature of the proposed guidelines. However, there is considerable uncertainty with regards to the precise measure that states will adopt to meet the proposed requirements, because there are considerable flexibilities afforded to the states in developing their state plans.

Table 9 presents the annualized compliance costs of the three illustrative policy scenarios and the illustrative No CPP scenario. In this table, and throughout the RIA for this proposed rulemaking, negative costs indicate avoided costs relative to the base case (which includes the CPP), and positive costs indicate an increase in projected compliance costs, relative to the base case. As shown in Table 9, the Agency estimates that there are avoided costs under three out of the four illustrative scenarios. Table 7 shows the same compliance cost information, except relative to the No CPP alternative baseline.

TABLE 9—COMPLIANCE COSTS, RELATIVE TO BASE CASE (CPP)

[Billions of 2016$]

	CPP repeal	2% HRI at $50/kW	4.5% HRI at $50/kW	4.5% HRI at $100/kW
2025	(0.7)	0.0	(0.6)	0.5
2030	(0.7)	(0.2)	(1.0)	0.2
2035	(0.4)	0.1	(0.6)	0.5

Notes: Negative costs indicate that, on net, the illustrative scenario avoids costs relative to the base case with the CPP. Compliance costs equal the projected change in total power sector generating costs, plus the costs of monitoring, reporting, and recordkeeping.

TABLE 10—COMPLIANCE COSTS, RELATIVE TO THE NO CPP ALTERNATIVE BASELINE

[Billions of 2016$]

	2% HRI at $50/kW	4.5% HRI at $50/kW	4.5% HRI at $100/kW
2025	0.7	0.1	1.3
2030	0.5	(0.2)	0.9
2035	0.5	(0.2)	0.8

Notes: Negative costs indicate that, on net, the illustrative scenario reduces costs relative to the No CPP alternative baseline. Compliance costs equal the projected change in total power sector generating costs, plus the costs of monitoring, reporting, and recordkeeping.

Due to a number of changes in the electricity sector since the CPP was finalized, as documented in the October 2017 RIA conducted for the proposed CPP repeal and Chapter 3 of the RIA for this action, the sector has become less carbon intensive over the past several years, and the trend is projected to continue. These changes and trends are reflected in the modeling used for this analysis. As such, achieving the emissions levels required under CPP requires less effort and expense, relative to a scenario without the CPP, and the estimated compliance costs are significantly lower than what was estimated in the final CPP RIA. More detailed cost estimates are available in the RIA included in the rulemaking docket.

D. What are the economic and employment impacts?

Environmental regulation may affect groups of workers differently, as changes in abatement and other compliance activities cause labor and other resources to shift. An employment impact analysis describes the characteristics of groups of workers potentially affected by a regulation, as well as labor market conditions in affected occupations, industries, and geographic areas. Market and employment impacts of this proposed action are discussed more extensively in Chapter 5 of the RIA for this proposed rulemaking.

E. What are the benefits of the proposed action?

EPA reports the impact on climate benefits from changes in CO_2 and the impact on health benefits attributable to changes in SO_2, NO_X and $PM_{2.5}$ emissions. EPA refers to the climate benefits as ''targeted pollutant benefits'' as they reflect the direct benefits of reducing CO_2, and to the ancillary health benefits as ''co-benefits'' as they are not benefits from reducing the targeted pollutant. To estimate the climate benefits associated with changes in CO_2 emissions, EPA applies a measure of the domestic social cost of carbon (SC–CO_2). The SC–CO_2 is a metric that estimates the monetary value of impacts associated with marginal changes in CO_2 emissions in a given year. The SC–CO_2 estimates used in the RIA for this proposed rulemaking focus on the direct impacts of climate change that are anticipated to occur within U.S. borders.

The estimated health co-benefits are the monetized value of the forgone human health benefits among populations exposed to changes in $PM_{2.5}$ and ozone. This rule is expected to alter the emissions of SO_2 and NO_X emissions, which will in turn affect the level of $PM_{2.5}$ and ozone in the atmosphere. Using photochemical modeling, EPA predicted the change in the annual average $PM_{2.5}$ and summer

season ozone across the U.S. for the years 2025, 2030 and 2035. EPA next quantified the human health impacts and economic value of these changes in air quality using the environmental Benefits Mapping and Analysis Program—Community Edition. EPA quantified effects using concentration-response parameters detailed in the RIA and that are consistent with those employed by the Agency in the PM NAAQS and Ozone NAAQS RIAs (U.S. EPA, 2012; 2015). In these tables, negative values represent forgone benefits and positive benefits represent realized benefits.

Table 11. Forgone Benefits: Estimated Economic Value of Incremental $PM_{2.5}$ and Ozone-Attributable Deaths and Illnesses for Illustrative Scenarios & Three Alternative Approaches to Representing PM Effects in 2025, Relative to Base Case (CPP) (95% Confidence Interval; Billions of 2016$)[A]

		No CPP			2% HRI at $50/kW			4.5% HRI at $50/kW			4.5% HRI at $100/kW		
Ozone benefits summed with PM benefits:													
3% Discount Rate	No-threshold model[B]	-$2.8 (-$0.3 to -$7.7)	*to*	-$6.6 (-$0.6 to -$19)	-$2.6 (-$0.3 to $7)	*to*	-$5.9 (-$0.5 to -$17)	-$2.7 (-$0.3 to -$7.4)	*to*	-$6.2 (-$0.6 to -$18)	-$2.1 (-$0.2 to -$5.9)	*to*	-$4.9 (-$0.2 to -$14)
	Effects above LML[C]	-$1.8 (-$0.1 to -$5.2)	*to*	-$2.4 (-$0.1 to -$7)	-$1.5 (-$0.1 to -$4)	*to*	-$2.2 (-$0.2 to -$6)	-$1.6 ($0.2 to -$4.6)	*to*	-$2.3 (-$0.2 to -$6)	-$1.1 ($.1 to -$3.3)	*to*	-$1.8 (-$0.1 to -$5)
	Effects above NAAQS[D]	-$0.12 (-$0 to -$0.4)	*to*	-$0.4 (-$0 to -$1.3)	-$0.06 (-$0 to -$0.2)	*to*	-$0.21 (-$0 to -$0.6)	-$0.04 ($0 to -$0.1)	*to*	-$0.12 (-$0 to -$0.4)	$0.07 ($0.2 to $0)	*to*	-$0.02 (-$0.1 to $0)
Ozone benefits summed with PM benefits:													
7% Discount Rate	No-threshold model[B]	-$2.6 (-$0.3 to -$7)	*to*	-$6.1 (-$0.6 to -$17)	-$2.4 (-$0.2 to -$6.4)	*to*	-$5.4 (-$0.5 to -$15)	-$2.5 (-$0.2 to -$6.7)	*to*	-$5.7 (-$0.5 to -$16)	-$2 (-$0.1 to -$5.4)	*to*	-$4.4 (-$0.2 to -$13)
	Effects above LML[C]	-$1.7 (-$0 to -$5)	*to*	-$2.2 (-$0.1 to -$6)	-$1.4 (-$0.1 to -$4)	*to*	-$2 (-$0.2 to -$5)	-$1.5 (-$0.1 to -$4.2)	*to*	-$2.1 (-$0.2 to -$6)	-$0.99 ($0.1 to -$3)	*to*	-$1.7 ($0 to -$4.6)
	Effects above NAAQS[D]	-$0.12 (-$0 to -$0.4)	*to*	-$0.43 (-$0 to -$1.3)	-$0.06 (-$0 to -$0.2)	*to*	-$0.21 ($0 to -$0.6)	-$0.04 ($0 to -$0.1)	*to*	-$0.12 (-$0 to -$0.4)	$0.07 ($0.2 to $0)	*to*	$0.02 ($0.1 to $0)

[A] Values rounded to two significant figures

[B] PM effects quantified using a no-threshold model. Low end of range reflects dollar value of effects quantified using concentration-response parameter from Krewski et al. (2009) and Smith et al. (2008) studies; upper end quantified using parameters from Lepeule et al. (2012) and Jerrett et al. (2009).

[C] PM effects quantified at or above the Lowest Measured Level of each long-term epidemiological study. Low end of range reflects dollar value of effects quantified down to LML of Lepeule et al. (2012) study (8 $\mu g/m^3$); high end of range reflects dollar value of effects quantified down to LML of Krewski et al. (2009) study (5.8 $\mu g/m^3$).

[D] PM effects only quantified at or above the annual mean of 12 to provide insight regarding the fraction of benefits occurring above the NAAQS. Range reflects effects quantified using concentration-response parameters from Smith et al. (2008) study at the low end and Jerrett et al. (2009) at the high end.

Table 12. Forgone Benefits: Estimated Economic Value of Incremental $PM_{2.5}$ and Ozone-Attributable Deaths and Illnesses for Illustrative Scenarios & Three Alternative Approaches to Representing PM Effects in 2030, Relative to Base Case (CPP) (95% Confidence Interval; Billions of 2016$)[A]

		No CPP			2% HRI at $50/kW			4.5% HRI at $50/kW			4.5% HRI at $100/kW		
Ozone benefits summed with PM benefits:													
3% Discount Rate	No-threshold model[B]	-$4.9 (-$0.47 to -$13)	*to*	-$11 (-$1 to -$33)	-$4.5 (-$0.4 to -$12)	*to*	-$11 (-$1 to -$30)	-$4.2 (-$0.4 to -$11)	*to*	-$9.8 (-$0.9 to -$28)	-$3.6 (-$0.34 to -$9.7)	*to*	-$8.2 (-$0.8 to -$24)
	Effects above LML[C]	-$3.5 (-$0.33 to -$10)	*to*	-$4.2 (-$0.4 to -$11)	-$3.7 (-$0.3 to -$11)	*to*	-$3.8 (-$0.4 to -$10)	-$2.9 (-$0.3 to -$8.3)	*to*	-$3.6 (-$0.4 to -$10)	-$2.3 (-$0.22 to -$6.7)	*to*	-$3 (-$0.3 to -$8)
	Effects above NAAQS[D]	-$0.26 ($0 to -$0.75)	*to*	-$0.92 (-$0 to -$2.7)	-$0.43 ($0 to -$1.2)	*to*	-$1.5 (-$0.1 to -$4)	-$0.18 ($0 to -$0.5)	*to*	-$0.63 (-$0.1 to -$1.9)	-$0.13 (-$0 to -$0.4)	*to*	-$0.46 ($0 to -$1.4)
Ozone benefits summed with PM benefits:													
7% Discount Rate	No-threshold model[B]	-$4.5 (-$0.43 to -$12)	*to*	-$10 (-$1 to -$30)	-$4.1 (-$0.4 to -$11)	*to*	-$9.8 (-$0.9 to -$28)	-$3.9 (-$0.4 to -$11)	*to*	-$9 (-$0.8 to -$26)	-$3.3 (-$0.3 to -$8.9)	*to*	-$7.6 (-$0.7 to -$22)
	Effects above LML[C]	-$3.3 (-$0.3 to -$9.4)	*to*	-$3.8 (-$0.4 to -$10)	-$3.5 (-$0.3 to -$9.7)	*to*	-$3.5 (-$0.3 to -$10)	-$3.3 (-$0.32 to -$9)	*to*	-$2.7 (-$0.3 to -$7.7)	-$2.2 (-$0.2 to -$6.2)	*to*	-$2.8 (-$0.3 to -$8)
	Effects above NAAQS[D]	-$0.26 ($0 to -$0.8)	*to*	-$0.92 (-$0.1 to -$3)	-$0.43 (-$.04 to -$1.2)	*to*	-$1.5 (-$0.1 to -$4)	-$0.18 ($0 to -$0.5)	*to*	-$0.63 (-$0.1 to -$2)	-$0.13 (-$0 to -$0.4)	*to*	-$0.46 (-$0 to -$1.4)

[A] Values rounded to two significant figures

[B] PM effects quantified using a no-threshold model. Low end of range reflects dollar value of effects quantified using concentration-response parameter from Krewski et al. (2009) and Smith et al. (2008) studies; upper end quantified using parameters from Lepeule et al. (2012) and Jerrett et al. (2009).

[C] PM effects quantified at or above the Lowest Measured Level of each long-term epidemiological study. Low end of range reflects dollar value of effects quantified down to LML of Lepeule et al. (2012) study (8 $\mu g/m^3$); high end of range reflects dollar value of effects quantified down to LML of Krewski et al. (2009) study (5.8 $\mu g/m^3$).

[D] PM effects only quantified at or above the annual mean of 12 to provide insight regarding the fraction of benefits occurring above the NAAQS. Range reflects effects quantified using concentration-response parameters from Smith et al. (2008) study at the low end and Jerrett et al. (2009) at the high end.

Table 13. Forgone Benefits: Estimated Economic Value of Incremental $PM_{2.5}$ and Ozone-Attributable Deaths and Illnesses for Illustrative Scenarios & Three Alternative Approaches to Representing PM Effects in 2035, Relative to Base Case (CPP) (95% Confidence Interval; Billions of 2016$)[A]

		No CPP			2% HRI at $50/kW			4.5% HRI at $50/kW			4.5% HRI at $100/kW		
Ozone benefits summed with PM benefits:													
3% Discount Rate	No-threshold model[B]	-$3.8 (-$0.4 to -$10)	*to*	-$8.8 (-$1 to -$25)	-$3 (-$0.29 to -$8.1)	*to*	-$7 (-$0.6 to -$20)	-$4 (-$0.4 to -$11)	*to*	-$9.3 (-$1 to -$27)	-$2.6 (-$0.25 to -$7)	*to*	-$6 (-$1 to -$17)
	Effects above LML[C]	-$2.9 (-$0.3 to -$8.4)	*to*	-$3.3 (-$0.3 to -$9)	-$2.4 (-$0.2 to -$7)	*to*	-$2.6 (-$0.3 to -$7)	-$3 (-$0.3 to -$8.6)	*to*	-$3.5 (-$0.3 to -$9)	-$2 (-$0.2 to -$6)	*to*	-$2.3 (-$0.2 to -$6)
	Effects above NAAQS[D]	-$0.21 ($0 to -$0.6)	*to*	-$0.73 (-$0.1 to -$2)	-$0.2 ($0 to -$0.6)	*to*	-$0.69 (-$0.1 to -$2)	-$0.24 ($0 to -$0.7)	*to*	-$0.86 (-$0.1 to -$3)	-$0.14 ($0 to -$0.4)	*to*	-$0.48 ($0 to -$1)
Ozone benefits summed with PM benefits:													
7% Discount Rate	No-threshold model[B]	-$3.5 (-$0.3 to -$9)	*to*	-$8.1 (-$1 to -$23)	-$2.7 (-$0.3 to -$8)	*to*	-$6.5 (-$1 to -$19)	-$3.7 (-$0.4 to -$10)	*to*	-$8.6 (-$1 to -$25)	-$2.4 (-$0.2 to -$6)	*to*	-$5.5 (-$1 to -$16)
	Effects above LML[C]	-$2.7 (-$0.3 to -$8)	*to*	-$3 (-$0.3 to -$8)	-$2.2 (-$0.2 to -$6.4)	*to*	-$2.4 (-$0.2 to -$7)	-$2.8 (-$0.26 to -$8)	*to*	-$3.2 (-$0.3 to -$9)	-$1.8 (-$0.17 to -$5.3)	*to*	-$2.1 (-$0.2 to -$6)
	Effects above NAAQS[D]	-$0.21 ($0 to -$0.6)	*to*	-$0.73 (-$0.1 to -$2)	-$0.2 (-$0 to -$0.6)	*to*	-$0.69 (-$0.1 to -$2)	-$0.24 (-$0 to -$0.7)	*to*	-$0.86 (-$0.1 to -$3)	-$0.14 ($0 to -$0.4)	*to*	-$0.48 ($0 to -$1)

[A] Values rounded to two significant figures

[B] PM effects quantified using a no-threshold model. Low end of range reflects dollar value of effects quantified using concentration-response parameter from Krewski et al. (2009) and Smith et al. (2008) studies; upper end quantified using parameters from Lepeule et al. (2012) and Jerrett et al. (2009).

[C] PM effects quantified at or above the Lowest Measured Level of each long-term epidemiological study. Low end of range reflects dollar value of effects quantified down to LML of Lepeule et al. (2012) study (8 $\mu g/m^3$); high end of range reflects dollar value of effects quantified down to LML of Krewski et al. (2009) study (5.8 $\mu g/m^3$).

[D] PM effects only quantified at or above the annual mean of 12 to provide insight regarding the fraction of benefits occurring above the NAAQS. Range reflects effects quantified using concentration-response parameters from Smith et al. (2008) study at the low end and Jerrett et al. (2009) at the high end.

Table 14 reports the combined domestic climate benefits and ancillary health co-benefits attributable to changes in SO_2 and NO_X emissions estimated for 3 percent and 7 percent discount rates in the years 2025, 2030 and 2035, in 2016 dollars. This table reports the air pollution effects calculated using $PM_{2.5}$ log-linear no threshold concentration-response functions that quantify risk associated with the full range of $PM_{2.5}$ exposures experienced by the population (U.S. EPA, 2009; U.S. EPA, 2011; NRC, 2002).

In this table, negative benefits indicate forgone benefits, relative to the base case, which includes the CPP. As all benefit estimates in this table are negative values, this indicates that the Agency estimates there to be forgone climate benefits and forgone ancillary health co-benefits under all four illustrative scenarios in the years and discount rates analyzed relative to the base case.

TABLE 14—MONETIZED BENEFITS, RELATIVE TO BASE CASE (CPP)

[billions of 2016$]

	Values calculated using 3% discount rate			Values calculated using 7% discount rate		
	Domestic climate benefits	Ancillary health co-benefits	Total benefits	Domestic climate benefits	Ancillary health co-benefits	Total benefits
No CPP						
2025	(0.3)	(2.8) to (6.6)	(3.2) to (7.0)	(0.1)	(2.6) to (6.1)	(2.7) to (6.1)
2030	(0.5)	(4.9) to (11.4)	(5.4) to (11.9)	(0.1)	(4.5) to (10.5)	(4.6) to (10.6)
2035	(0.5)	(3.8) to (8.8)	(4.3) to (9.3)	(0.1)	(3.5) to (8.1)	(3.6) to (8.2)
2% HRI at $50/kW						
2025	(0.2)	(2.6) to (5.9)	(2.8) to (6.2)	(0.0)	(2.4) to (5.4)	(2.4) to (5.5)
2030	(0.4)	(4.5) to (10.6)	(4.9) to (11.0)	(0.1)	(4.1) to (9.8)	(4.2) to (9.9)
2035	(0.4)	(3.0) to (7.0)	(3.4) to (7.4)	(0.1)	(2.7) to (6.5)	(2.8) to (6.6)
4.5% HRI at $50/kW						
2025	(0.2)	(2.7) to (6.2)	(2.9) to (6.4)	(0.0)	(2.5) to (5.7)	(2.5) to (5.7)
2030	(0.4)	(4.2) to (9.8)	(4.6) to (10.2)	(0.1)	(3.9) to (9.0)	(3.9) to (9.1)
2035	(0.5)	(4.0) to (9.3)	(4.4) to (9.8)	(0.1)	(3.7) to (8.6)	(3.7) to (8.7)
4.5% HRI at $100/kW						
2025	(0.1)	(2.1) to (4.9)	(2.3) to (5.0)	(0.0)	(2.0) to (4.4)	(2.0) to (4.4)
2030	(0.3)	(3.6) to (8.2)	(3.9) to (8.6)	(0.1)	(3.3) to (7.6)	(3.3) to (7.6)
2035	(0.3)	(2.6) to (6.0)	(2.9) to (6.3)	(0.1)	(2.4) to (5.5)	(2.4) to (5.6)

Notes: Negative benefit values indicate forgone benefits relative to the base case, which includes the CPP. All estimates are rounded to one decimal point, so figures may not sum due to independent rounding. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. The ancillary health co-benefits reflect the sum of the $PM_{2.5}$ and ozone benefits from changes in electricity sector SO_2, NO_X, and $PM_{2.5}$ emissions and reflect the range based on adult mortality functions (*e.g.,* from Krewski *et al.* (2009) with Smith *et al.* (2009) to Lepeule *et al.* (2012) with Jerrett *et al.* (2009)) using a log-linear no threshold model.

In general, EPA is more confident in the size of the risks estimated from simulated $PM_{2.5}$ concentrations that coincide with the bulk of the observed PM concentrations in the epidemiological studies that are used to estimate the benefits. Likewise, EPA is less confident in the risk EPA estimates from simulated $PM_{2.5}$ concentrations that fall below the bulk of the observed data in these studies.[68] Furthermore, when setting the 2012 PM NAAQS, the Administrator also acknowledged greater uncertainty in specifying the ''magnitude and significance'' of PM-related health risks at PM concentrations below the NAAQS. As noted in the preamble to the 2012 PM NAAQS final rule, ''EPA concludes that it is not appropriate to place as much confidence in the magnitude and significance of the associations over the lower percentiles of the distribution in each study as at and around the long-term mean concentration.'' (78 FR 3154, January 15, 2013). In general, we are more confident in the size of the risks we estimate from simulated $PM_{2.5}$ concentrations that coincide with the bulk of the observed PM concentrations in the epidemiological studies that are used to estimate the benefits. Likewise, we are less confident in the risk we estimate from simulated $PM_{2.5}$ concentrations that fall below the bulk of the observed data in these studies.

To give readers insight to the distribution of estimated forgone benefits displayed in Table 14, EPA also reports the PM benefits according to alternative concentration cut-points and concentration-response parameters. The percentage of estimated $PM_{2.5}$-related deaths occurring below the lowest measured levels (LML) of the two long-term epidemiological studies EPA uses to estimate risk varies between 16 percent (Krewski et al. 2009) and 79 percent (Lepeule et al. 2012). The percentage of estimated premature deaths occurring above the LML and below the NAAQS ranges between 84 percent (Krewski et al. 2009) and 21 percent (Lepeule et al. 2012). Less than 1% of the estimated premature deaths occur above the annual mean $PM_{2.5}$ NAAQS of 12 μg/m³.

Monetized co-benefits estimates shown here do not include several important benefit categories, such as direct exposure to SO_2, NO_X and hazardous air pollutants including mercury and hydrogen chloride. Although EPA does not have sufficient information or modeling available to provide monetized estimates of changes in exposure to these pollutants for this rule, EPA includes a qualitative assessment of these unquantified benefits in the RIA. For more information on the benefits analysis, please refer to the RIA for this rule, which is available in the rulemaking docket.

X. Statutory and Executive Order Reviews

Additional information about these Statutory and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This proposed action is an economically significant action that was

[68] The **Federal Register** notice for the 2012 PM NAAQS indicates that ''[i]n considering this additional population level information, the Administrator recognizes that, in general, the confidence in the magnitude and significance of an association identified in a study is strongest at and around the long-term mean concentration for the air quality distribution, as this represents the part of the distribution in which the data in any given study are generally most concentrated. She also recognizes that the degree of confidence decreases as one moves towards the lower part of the distribution.''

submitted to the OMB for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an analysis of the compliance cost, benefit, and net benefit impacts associated with this action in the analysis years of 2025, 2030, and 2035. This analysis, which is contained in the Regulatory Impact Analysis (RIA) for this proposed rulemaking, is consistent with Executive Order 12866 and is available in the rulemaking docket.

In the RIA for this proposed rulemaking, the Agency presents full benefit cost analysis of four illustrative scenarios. The four illustrative scenarios include a scenario modeling the full repeal of the CPP and three policy scenarios modeling heat rate improvements (HRI) at coal-fired EGUs. Throughout the RIA, these three illustrative policy scenarios are compared against a base case, which includes the CPP. By analyzing against the CPP, the reader can understand the combined impact of a CPP repeal and proposed ACE rule. Inclusion of a No CPP case allows for an understanding of the repeal alone and also allows the reader to evaluate the impact of the policy cases against a No CPP scenario. The RIA assumes a mass-based implementation of the CPP for existing affected sources, and does not assume interstate trading. The three illustrative policy scenarios represent potential outcomes of state determinations of standards of performance, and compliance with those standards by affected coal-fired EGUs.

The Agency understands that there may be interest in comparing the three illustrative policy scenarios against a scenario that does not include the CPP. For those interested in comparing the potential impacts of policy scenarios in a world without the CPP, results from the three illustrative policy scenarios may be compared against results from the illustrative No CPP scenario. We provide information here on compliance costs, emissions impacts and present value net benefits compared to the No CPP alternative baseline. In addition, the Executive Summary and Chapter 3 of the RIA compares the three illustrative policy scenarios to the scenario of a full CPP repeal. Also, the full suite of model outputs is available in the rulemaking docket.

The three illustrative policy scenarios model different levels and costs of HRIs applied uniformly at all affected coal-fired EGUs in the contiguous U.S. beginning in 2025. EPA has identified the BSER to be HRI. Each of these illustrative scenarios assumes that the affected sources are no longer subject to the state plan requirements of the CPP (*i.e.,* the mass-based requirements assumed for CPP implementation in the base case for the RIA). The cost, suitability, and potential improvement for any of these HRI technologies is dependent on a range of unit-specific factors such as the size, age, fuel use, and the operating and maintenance history of the unit. As such, the HRI potential can vary significantly from unit to unit. EPA does not have sufficient information to assess HRI potential on a unit-by-unit basis.

To avoid the impression that EPA can sufficiently distinguish likely standards of performance across individual affected units and their compliance strategies, this analysis assumes different HRI levels and costs are applied uniformly to affected coal-fired EGUs under each of three illustrative policy scenarios.

The first illustrative scenario, 2 Percent HRI at $50/kW, represents a policy case that reflects modest improvements in HRI absent any revisions to NSR requirements. For many years, industry has indicated to the Agency that many sources have not implemented certain HRI projects because the burdensome costs of NSR cause such projects to not be viable. Thus, absent NSR reform, HRI at affected units might be expected to be modest. Based on numerous studies and statistical analysis, the Agency believes that the HRI potential for coal-fired EGUs will, on average, range from one to three percent at a cost of $30 to $60 per kilowatt (kW) of EGU generating capacity. The Agency believes that this scenario (2 percent HRI at $50/kW) reasonably represents that range of HRI and cost.

The second illustrative scenario, 4.5 Percent HRI at $50/kW, represents a policy case that includes benefits from the proposed revisions to NSR, with the HRI modeled at a low cost. As mentioned earlier, the Agency is proposing revisions to the NSR program that will provide owners and operators of existing EGUs greater ability to make efficiency improvements without triggering provisions of NSR. This scenario is informative in that it represents the ability of all coal-fired EGUs to obtain greater improvements in heat rate because of NSR reform at the $50/kW cost identified earlier. EPA believes this higher heat rate improvement potential is possible because without NSR a greater number of units may have the opportunity to make cost effective heat rate improvements such as turbine upgrades that have the potential to offer greater heat rate improvement opportunities.

The third illustrative scenario, 4.5 Percent HRI at $100/kW, represents a policy case that includes the benefits from the proposed revisions to NSR, with the HRI modeled at a higher cost. This scenario is informative in that it represents the ability of a typical coal-fired EGUs to obtain greater improvements in heat rate because of NSR reform but at a much higher cost ($100/kW) than the $50/kW cost identified earlier. Particularly for lower capacity units or those with limited remaining useful life, this could ultimately translate into HRI projects with costs beyond what most states might determine to be reasonable.

Combined, the 4.5 percent HRI at $50/kW scenario and the 4.5 percent HRI at $100/kW scenario represent a range of potential costs for the proposed policy option that couples HRI with NSR reform. Modeling this at $50/kW and $100/kW provides a sensitivity analysis on the cost of the proposed policy including NSR reform. The $50/kW cost represents an optimistic bounding where NSR reform unleashes significant new opportunity for low-cost heat rate improvements. The $100/kW cost scenario, while informative, represents a high-end bound that could overstate potential because, particularly for lower capacity factor units and those with limited remaining useful life, these would represent project costs that states would likely find to be unreasonable.

We evaluate the potential regulatory impacts of the illustrative No CPP scenario and the three illustrative policy scenarios using the present value (PV) of costs, benefits, and net benefits, calculated for the years 2023–2037 from the perspective of 2016, using both a three percent and seven percent beginning-of-period discount rate. In addition, the Agency presents the assessment of costs, benefits, and net benefits for specific snapshot years, consistent with historic practice. In the RIA, the regulatory impacts are evaluated for the specific years of 2025, 2030, and 2035.

The power industry's ''compliance costs'' are represented in this analysis as the change in electric power generation costs between the base case and illustrative scenarios, including the cost of monitoring, reporting, and recordkeeping (MR&R). In simple terms, these costs are an estimate of the increased power industry expenditures required to implement the HRI required by the proposed rule, minus the sectoral cost of complying with the CPP assumed in the base case.

The compliance assumptions—and, therefore, the projected compliance costs—set forth in this analysis are

illustrative in nature and do not represent the plans that states may ultimately pursue. The illustrative compliance scenarios are designed to reflect, to the extent possible, the scope and nature of the proposed guidelines. However, there is considerable uncertainty with regards to the precise measure that states will adopt to meet the proposed requirements, because there are considerable flexibilities afforded to the states in developing their state plans.

EPA reports the impact on climate benefits from changes in CO_2 and the impact on health benefits attributable to changes in SO_2, NO_X and $PM_{2.5}$ emissions. We refer to the climate benefits as ''targeted pollutant benefits'' as they reflect the direct benefits of reducing CO_2, and to the ancillary health benefits as ''co-benefits'' as they are not benefits from reducing the targeted pollutant. To estimate the climate benefits associated with changes in CO_2 emissions, we apply a measure of the domestic social cost of carbon (SC-CO_2). The SC-CO_2 is a metric that estimates the monetary value of impacts associated with marginal changes in CO_2 emissions in a given year. The SC-CO_2 estimates used in the RIA for this proposed rulemaking focus on the direct impacts of climate change that are anticipated to occur within U.S. borders.

The health co-benefits estimates represent the monetized value of the forgone human health benefits among populations exposed to changes in $PM_{2.5}$ and ozone. This rule is expected to alter the emissions of SO_2, NO_X, and $PM_{2.5}$ emissions, which will in turn affect the level of $PM_{2.5}$ and ozone in the atmosphere. Using photochemical modeling, we predicted the change in the annual average $PM_{2.5}$ and summer season ozone across the U.S. for the years 2025, 2030 and 2035. We next quantified the human health impacts and economic value of these changes in air quality using the environmental Benefits Mapping and Analysis Program—Community Edition. We quantified effects using concentration-response parameters detailed in the RIA and that are consistent with those employed by the Agency in the PM NAAQS and Ozone NAAQS RIAs (U.S. EPA, 2012; 2015).

In general, we are more confident in the size of the risks we estimate from simulated $PM_{2.5}$ concentrations that coincide with the bulk of the observed PM concentrations in the epidemiological studies that are used to estimate the benefits. Likewise, we are less confident in the risk we estimate from simulated $PM_{2.5}$ concentrations that fall below the bulk of the observed data in these studies.[69]

Furthermore, when setting the 2012 PM NAAQS, the Administrator also acknowledged greater uncertainty in specifying the ''magnitude and significance'' of PM-related health risks at PM concentrations below the NAAQS. As noted in the preamble to the 2012 PM NAAQS final rule, ''EPA concludes that it is not appropriate to place as much confidence in the magnitude and significance of the associations over the lower percentiles of the distribution in each study as at and around the long-term mean concentration.'' (78 FR 3154, 15 January 2013). In general, we are more confident in the size of the risks we estimate from simulated $PM_{2.5}$ concentrations that coincide with the bulk of the observed PM concentrations in the epidemiological studies that are used to estimate the benefits. Likewise, we are less confident in the risk we estimate from simulated $PM_{2.5}$ concentrations that fall below the bulk of the observed data in these studies.

To give readers insight to the distribution of estimated forgone benefits displayed in Table 14, EPA also reports the PM benefits according to alternative concentration cut-points and concentration-response parameters. To give readers insight to the uncertainty in the estimated forgone $PM_{2.5}$ mortality benefits occurring at lower ambient levels, we also report the PM benefits according to alternative concentration cut-points and concentration-response parameters. The percentage of estimated $PM_{2.5}$-related deaths occurring below the lowest measured levels (LML) of the two long-term epidemiological studies we use to estimate risk varies between 16 percent (Krewski et al. 2009) and 79 percent (Lepeule et al. 2012). The percentage of estimated premature deaths occurring above the LML and below the NAAQS ranges between 84 percent (Krewski et al. 2009) and 21 percent (Lepeule et al. 2012). Less than 1% of the estimated premature deaths occur above the annual mean $PM_{2.5}$ NAAQS of 12 $\mu g/m^3$.

Monetized co-benefits estimates shown here do not include several important benefit categories, such as direct exposure to SO_2, NO_X and hazardous air pollutants including mercury and hydrogen chloride. Although we do not have sufficient information or modeling available to provide monetized estimates of changes in exposure to these pollutants for this rule, we include a qualitative assessment of these unquantified benefits in the RIA. For more information on the benefits analysis, please refer to the RIA for this rule, which is available in the rulemaking docket.

In the decision-making process it is useful to consider the change in benefits due to the targeted pollutant relative to the costs. Therefore, in Chapter 6 of the RIA for this proposed rulemaking we present a comparison of the benefits from the targeted pollutant—CO_2—with the compliance costs. Excluded from this comparison are the benefits from changes in $PM_{2.5}$ and ozone concentrations from changes in SO_2, NO_X and $PM_{2.5}$ emissions that are projected to accompany changes in CO_2 emissions.

Table 15 presents the present value (PV) and equivalent annualized value (EAV) of the estimated costs, benefits, and net benefits associated with the targeted pollutant, CO_2, for the timeframe of 2023–2037, relative to the base case, which includes the CPP. The EAV represents an even-flow of figures over the timeframe of 2023–2037 that would yield an equivalent present value. The EAV is identical for each year of the analysis, in contrast to the year-specific estimates presented earlier for the snapshot years of 2025, 2030, and 2035.

In Table 15, and all net benefit tables, negative costs indicate avoided costs, negative benefits indicate forgone benefits, and negative net benefits indicate forgone net benefits.

[69] The **Federal Register** notice for the 2012 PM NAAQS indicates that ''[i]n considering this additional population level information, the Administrator recognizes that, in general, the confidence in the magnitude and significance of an association identified in a study is strongest at and around the long-term mean concentration for the air quality distribution, as this represents the part of the distribution in which the data in any given study are generally most concentrated. She also recognizes that the degree of confidence decreases as one moves towards the lower part of the distribution.''

TABLE 15—PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF COMPLIANCE COSTS, CLIMATE BENEFITS, AND NET BENEFITS ASSOCIATED WITH TARGETED POLLUTANT (CO_2), RELATIVE TO BASE CASE (CPP), 3 AND 7 PERCENT DISCOUNT RATES, 2023–2037

[Billions of 2016$]

	Costs		Domestic climate benefits		Net benefits associated with the targeted pollutant (CO_2)	
	3%	7%	3%	7%	3%	7%
Present Value						
No CPP	(5.2)	(3.1)	(3.9)	(0.4)	1.2	2.7
2% HRI at $50/kW	(0.4)	(0.3)	(3.2)	(0.3)	(2.8)	(0.1)
4.5% HRI at $50/kW	(6.4)	(3.7)	(3.2)	(0.3)	3.2	3.4
4.5% HRI at $100/kW	3.0	1.7	(2.4)	(0.2)	(5.4)	(2.0)
Equivalent Annualized Value						
No CPP	(0.4)	(0.3)	(0.3)	(0.0)	0.1	0.3
2% HRI at $50/kW	(0.0)	(0.0)	(0.3)	(0.0)	(0.2)	(0.0)
4.5% HRI at $50/kW	(0.5)	(0.4)	(0.3)	(0.0)	0.3	0.4
4.5% HRI at $100/kW	0.3	0.2	(0.2)	(0.0)	(0.5)	(0.2)

Notes: Negative costs indicate avoided costs, negative benefits indicate forgone benefits, and negative net benefits indicate forgone net benefits. All estimates are rounded to one decimal point, so figures may not sum due to independent rounding. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. This table does not include estimates of ancillary health co-benefits from changes in electricity sector SO_2 and NO_X emissions.

Table 16 presents the costs, benefits, and net benefits associated with the targeted pollutant for specific years, rather than as a PV or EAV as found in Table 18.

TABLE 16—COMPLIANCE COSTS, CLIMATE BENEFITS, AND NET BENEFITS ASSOCIATED WITH TARGETED POLLUTANT (CO_2), RELATIVE TO BASE CASE (CPP), 3 AND 7 PERCENT DISCOUNT RATES, 2025, 2030, AND 2035

[Billions of 2016$]

	Costs		Domestic climate benefits		Net benefits associated with the targeted pollutant (CO_2)	
	3%	7%	3%	7%	3%	7%
No CPP						
2025	(0.7)	(0.7)	(0.3)	(0.1)	0.4	0.7
2030	(0.7)	(0.7)	(0.5)	(0.1)	0.2	0.6
2035	(0.4)	(0.4)	(0.5)	(0.1)	(0.1)	0.3
2% HRI at $50/kW						
2025	0.0	0.0	(0.2)	(0.0)	(0.3)	(0.1)
2030	(0.2)	(0.2)	(0.4)	(0.1)	(0.2)	0.2
2035	0.1	0.1	(0.4)	(0.1)	(0.6)	(0.2)
4.5% HRI at $50/kW						
2025	(0.6)	(0.6)	(0.2)	(0.0)	0.4	0.6
2030	(1.0)	(1.0)	(0.4)	(0.1)	0.5	0.9
2035	(0.6)	(0.6)	(0.5)	(0.1)	0.2	0.5
4.5% HRI at $100/kW						
2025	0.5	0.5	(0.1)	(0.0)	(0.7)	(0.5)
2030	0.2	0.2	(0.3)	(0.1)	(0.5)	(0.2)
2035	0.5	0.5	(0.3)	(0.1)	(0.8)	(0.5)

Notes: Negative costs indicate avoided costs, negative benefits indicate forgone benefits, and negative net benefits indicate forgone net benefits. All estimates are rounded to one decimal point, so figures may not sum due to independent rounding. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. This table does not include estimates of ancillary health co-benefits from changes in electricity sector SO_2 and NO_X emissions.

Table 17 presents the present value (PV) and equivalent annualized value (EAV) of the estimated costs, benefits, and net benefits associated with the targeted pollutant, CO_2, for the timeframe of 2023–2037, relative to the No CPP alternative baseline.

TABLE 17—PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF COMPLIANCE COSTS, CLIMATE BENEFITS, AND NET BENEFITS ASSOCIATED WITH TARGETED POLLUTANT (CO_2), RELATIVE TO THE NO CPP ALTERNATIVE BASELINE, 3 AND 7 PERCENT DISCOUNT RATES, 2023–2037

[Billions of 2016$]

	Costs		Domestic climate benefits		Net benefits associated with the targeted pollutant (CO_2)	
	3%	7%	3%	7%	3%	7%
Present Value						
2% HRI at $50/kW	4.8	2.8	0.8	0.1	(4.1)	(2.8)
4.5% HRI at $50/kW	(1.2)	(0.6)	0.7	0.1	2.0	0.7
4.5% HRI at $100/kW	8.2	4.8	1.6	0.2	(6.6)	(4.7)
Equivalent Annualized Value						
2% HRI at $50/kW	0.4	0.3	0.1	0.0	(0.3)	(0.3)
4.5% HRI at $50/kW	(0.1)	(0.1)	0.1	0.0	0.2	0.1
4.5% HRI at $100/kW	0.7	0.5	0.1	0.0	(0.6)	(0.5)

Notes: Negative costs indicate avoided costs, negative benefits indicate forgone benefits, and negative net benefits indicate forgone net benefits. All estimates are rounded to one decimal point, so figures may not sum due to independent rounding. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. This table does not include estimates of ancillary health co-benefits from changes in electricity sector SO_2 and NO_X emissions.

Table 18 and Table 19 provide the estimated costs, benefits, and net benefits, inclusive of the ancillary health-co benefits and relative to the base case (CPP). Table 18 presents the PV and EAV estimates, and Table 19 presents the estimates for the specific years of 2025, 2030, and 2035.

TABLE 18—PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF COMPLIANCE COSTS, TOTAL BENEFITS, AND NET BENEFITS, RELATIVE TO BASE CASE (CPP), 3 AND 7 PERCENT DISCOUNT RATES, 2023–2037

[Billions of 2016$]

	Costs		Benefits		Net benefits	
	3%	7%	3%	7%	3%	7%
Present Value						
No CPP	(5.2)	(3.1)	(37.2) to (81.5)	(17.9) to (41.3)	(32.0) to (76.3)	(14.8) to (38.2)
2% HRI at $50/kW	(0.4)	(0.3)	(32.7) to (72.4)	(15.9) to (36.9)	(32.3) to (72.0)	(15.7) to (36.7)
4.5% HRI at $50/kW	(6.4)	(3.7)	(34.3) to (75.2)	(16.6) to (39.4)	(27.9) to (68.8)	(12.8) to (35.6)
4.5% HRI at $100/kW	3.0	1.7	(27.2) to (60.2)	(13.9) to (31.9)	(30.2) to (63.2)	(15.6) to (33.7)
Equivalent Annualized Value						
No CPP	(0.4)	(0.3)	(3.1) to (6.8)	(2.0) to (4.5)	(2.7) to (6.4)	(1.6) to (4.2)
2% HRI at $50/kW	(0.0)	(0.0)	(2.7) to (6.1)	(1.7) to (4.1)	(2.7) to (6.0)	(1.7) to (4.0)
4.5% HRI at $50/kW	(0.5)	(0.4)	(2.9) to (6.3)	(1.8) to (4.3)	(2.3) to (5.8)	(1.4) to (3.9)
4.5% HRI at $100/kW	0.3	0.2	(2.3) to (5.0)	(1.5) to (3.5)	(2.5) to (5.3)	(1.7) to (3.7)

Notes: Negative costs indicate avoided costs, negative benefits indicate forgone benefits, and negative net benefits indicate forgone net benefits. All estimates are rounded to one decimal point, so figures may not sum due to independent rounding. Total benefits include both climate benefits and ancillary health co-benefits. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. The ancillary health co-benefits reflect the sum of the $PM_{2.5}$ and ozone benefits from changes in electricity sector SO_2, NO_X and $PM_{2.5}$ emissions and reflect the range based on adult mortality functions (*e.g.,* from Krewski *et al.* (2009) with Smith *et al.* (2009) to Lepeule *et al.* (2012) with Jerrett *et al.* (2009)). PM premature mortality benefits estimated using a log-linear no-threshold model.

TABLE 19—COMPLIANCE COSTS, TOTAL BENEFITS, AND NET BENEFITS, RELATIVE TO BASE CASE (CPP), 3 AND 7 PERCENT DISCOUNT RATES, 2025, 2030, AND 2035

[Billions of 2016$]

	Costs		Benefits		Net benefits	
	3%	7%	3%	7%	3%	7%
No CPP						
2025	(0.7)	(0.7)	(3.2) to (7.0)	(2.7) to (6.1)	(2.4) to (6.2)	(1.9) to (5.4)
2030	(0.7)	(0.7)	(5.4) to (11.9)	(4.6) to (10.6)	(4.7) to (11.2)	(3.8) to (9.8)
2035	(0.4)	(0.4)	(4.3) to (9.3)	(3.6) to (8.2)	(3.9) to (8.9)	(3.2) to (7.8)
2% HRI at $50/kW						
2025	0.0	0.0	(2.8) to (6.2)	(2.4) to (5.5)	(2.8) to (6.2)	(2.4) to (5.5)
2030	(0.2)	(0.2)	(4.9) to (11.0)	(4.2) to (9.9)	(4.7) to (10.8)	(3.9) to (9.7)
2035	0.1	0.1	(3.4) to (7.4)	(2.8) to (6.6)	(3.5) to (7.6)	(3.0) to (6.7)
4.5% HRI at $50/kW						
2025	(0.6)	(0.6)	(2.9) to (6.4)	(2.5) to (5.7)	(2.3) to (5.8)	(1.9) to (5.1)
2030	(1.0)	(1.0)	(4.6) to (10.2)	(3.9) to (9.1)	(3.7) to (9.2)	(3.0) to (8.1)
2035	(0.6)	(0.6)	(4.4) to (9.8)	(3.7) to (8.7)	(3.8) to (9.2)	(3.1) to (8.1)
4.5% HRI at $100/kW						
2025	0.5	0.5	(2.3) to (5.0)	(2.0) to (4.4)	(2.8) to (5.5)	(2.5) to (5.0)
2030	0.2	0.2	(3.9) to (8.6)	(3.3) to (7.6)	(4.1) to (8.7)	(3.5) to (7.8)
2035	0.5	0.5	(2.9) to (6.3)	(2.4) to (5.6)	(3.4) to (6.8)	(2.9) to (6.0)

Notes: Negative costs indicate avoided costs, negative benefits indicate forgone benefits, and negative net benefits indicate forgone net benefits. All estimates are rounded to one decimal point, so figures may not sum due to independent rounding. Total benefits include both climate benefits and ancillary health co-benefits. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. The ancillary health co-benefits reflect the sum of the $PM_{2.5}$ and ozone benefits from changes in electricity sector SO_2, NO_X and $PM_{2.5}$ emissions and reflect the range based on adult mortality functions (*e.g.,* from Krewski *et al.* (2009) with Smith *et al.* (2009) to Lepeule *et al.* (2012) with Zanobetti & Schwartz. (2008)). PM premature mortality benefits estimated using a log-linear no-threshold model.

Table 20 provides the estimated costs, benefits, and net benefits, inclusive of the ancillary health-co benefits and relative to the No CPP alternative baseline.

TABLE 20—PRESENT VALUE AND EQUIVALENT ANNUALIZED VALUE OF COMPLIANCE COSTS, TOTAL BENEFITS, AND NET BENEFITS, RELATIVE TO THE NO CPP ALTERNATIVE BASELINE, 3 AND 7 PERCENT DISCOUNT RATES, 2023–2037

[Billions of 2016$]

	Costs		Benefits		Net benefits	
	3%	7%	3%	7%	3%	7%
Present Value						
2% HRI at $50/kW	4.8	2.8	4.5 to 9.2	2.0 to 4.3	(0.3) to 4.3	(0.9) to 1.5
4.5% HRI at $50/kW	(1.2)	(0.6)	2.9 to 6.3	1.4 to 1.9	4.1 to 7.5	2.0 to 2.6
4.5% HRI at $100/kW	8.2	4.8	10.0 to 21.3	4.1 to 9.4	1.8 to 13.2	(0.8) to 4.5
Equivalent Annualized Value						
2% HRI at $50/kW	0.4	0.3	0.4 to 0.8	0.2 to 0.5	(0.0) to 0.4	(0.1) to 0.2
4.5% HRI at $50/kW	(0.1)	(0.1)	0.2 to 0.5	0.1 to 0.2	0.3 to 0.6	0.2 to 0.3
4.5% HRI at $100/kW	0.7	0.5	0.8 to 1.8	0.4 to 1.0	0.1 to 1.1	(0.1) to 0.5

Notes: Negative costs indicate avoided costs, negative benefits indicate forgone benefits, and negative net benefits indicate forgone net benefits. All estimates are rounded to one decimal point, so figures may not sum due to independent rounding. Total benefits include both climate benefits and ancillary health co-benefits. Climate benefits reflect the value of domestic impacts from CO_2 emissions changes. The ancillary health co-benefits reflect the sum of the $PM_{2.5}$ and ozone benefits from changes in electricity sector SO_2, NO_X and $PM_{2.5}$ emissions and reflect the range based on adult mortality functions (*e.g.,* from Krewski *et al.* (2009) with Smith *et al.* (2009) to Lepeule *et al.* (2012) with Jerrett *et al.* (2009)). PM premature mortality benefits estimated using a log-linear no-threshold model.

Throughout the RIA for this proposed rulemaking, EPA examines a number of sources of uncertainty, both quantitatively and qualitatively, on benefits and costs. Some of these elements are evaluated using probabilistic techniques. For other elements, where the underlying likelihoods of certain outcomes are unknown, we use scenario analysis to evaluate their potential effect on the benefits and costs of this proposed

rulemaking. We summarize key elements of our analysis of uncertainty here:

- The extent to which all coal-fired EGUs will improve heat rates under this proposal, on average;
- The cost to improve heat rates at all affected coal-fired EGUs nationally;
- Uncertainty in monetizing climate-related benefits; and,
- Uncertainty in the estimated health impacts attributable to changes in particulate matter.

In the RIA for this proposed rulemaking, EPA also summarize other potential sources of benefits and costs that may result from this proposed rule that have not been quantified or monetized.

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

This action is expected to be an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's RIA.

C. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2503.03. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The information collection requirements are based on the recordkeeping and reporting burden associated with developing, implementing, and enforcing a state plan to limit CO_2 emissions from existing sources in the power sector. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart Ba.

Respondents/affected entities: 48.

Respondent's obligation to respond: EPA expects state plan submissions from the 43 contiguous states and negative declarations from Vermont, California, Maine, Idaho, and Rhode Island.

Frequency of response: Yearly.

Total estimated burden: 192,640 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $21,500 annualized capital or operation & 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 EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this rule (Comment C–72). You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA_submission@omb.eop.gov,* Attention: Desk Officer for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than October 1, 2018. EPA will respond to any ICR-related comments in the final rule.

D. Regulatory Flexibility Act (RFA)

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose any requirements on small entities. Specifically, emission guidelines established under CAA section 111(d) do not impose any requirements on regulated entities and, thus, will not have a significant economic impact upon a substantial number of small entities. After emission guidelines are promulgated, states establish emission standards on existing sources, and it is those state requirements that could potentially impact small entities. Our analysis in the accompanying RIA is consistent with the analysis of the analogous situation arising when EPA establishes NAAQS, which do not impose any requirements on regulated entities. As with the description in the RIA, any impact of a NAAQS on small entities would only arise when states take subsequent action to maintain and/or achieve the NAAQS through their state implementation plans. *See American Trucking Assoc.* v. *EPA,* 175 F.3d 1029, 1043–45 (D.C. Cir. 1999) (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities).

Nevertheless, EPA is aware that there is substantial interest in the proposed rule among small entities (municipal and rural electric cooperatives) and we invite comments on all aspects of the proposal and its impacts, including potential impacts on small entities (Comment C–73).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate or the private sector in any one year. Specifically, the emission guidelines proposed under CAA section 111(d) do not impose any direct compliance requirements on regulated entities, apart from the requirement for states to develop state plans. The burden for states to develop state plans in the three-year period following promulgation of the rule was estimated and is listed in Section IX.C above, but this burden is estimated to be below $100 million in any one year. Thus, this proposed rule is not subject to the requirements of section 203 or section 205 of the Unfunded Mandates Reform Act (UMRA).

This proposed rule is also not subject to the requirements of section 203 of UMRA because, as described in 2 U.S.C. 1531–38, it contains no regulatory requirements that might significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

Under Executive Order 13132, EPA may not issue an action that has federalism implications, that imposes substantial direct compliance costs and that is not required by statute unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed action.

EPA has concluded that this action may have federalism implications because it might impose substantial direct compliance costs on state or local governments, and the federal government will not provide the funds necessary to pay those costs. The development of state plans will entail many hours of staff time to develop and coordinate programs for compliance with the proposed rule, as well as time to work with state legislatures as appropriate, and develop a plan submittal.

In the spirit of Executive Order 13132, and consistent with EPA's policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this

proposed action from state and local officials (Comment C–74).

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

This action does not have tribal implications as specified in Executive Order 13175. It would not impose substantial direct compliance costs on tribal governments that have affected EGUs located in their area of Indian country. Tribes are not required to develop plans to implement the guidelines under CAA section 111(d) for affected EGUs. EPA notes that this proposal does not directly impose specific requirements on EGU sources, including those located in Indian country, but before developing any standards for sources on tribal land, EPA would consult with leaders from affected tribes. This proposed action also will not have substantial direct effects on the relationship between the federal government and Indian tribes or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the action.

Consistent with EPA Policy on Consultation and Coordination with Indian Tribes, EPA will engage in consultation with tribal officials during the development of this action.

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

This proposed action is subject to Executive Order 13045 because it is an economically significant regulatory action as defined by Executive Order 12866. The CPP, as discussed in the RIA,[70] was anticipated to reduce emissions of $PM_{2.5}$ and ozone, and some of the benefits of reducing these pollutants would have accrued to children. While the proposed ACE rule does not project to achieve reductions at the level of the CPP, EPA believes that this proposal will achieve CO_2 emission reductions resulting from implementation of these proposed guidelines, as well as ozone and $PM_{2.5}$ emission reductions as a co-benefit, and will further improve children's health as discussed in the RIA.

Moreover, this proposed action does not affect the level of public health and environmental protection already being provided by existing NAAQS, including ozone and $PM_{2.5}$, and other mechanisms in the CAA. This proposed action does not affect applicable local, state, or federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions.

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

This proposed action, which is a significant regulatory energy action under Executive Order 12866, is likely to have a significant effect on the supply, distribution, or use of energy. Specifically, EPA estimated in the RIA that the proposed rule could result in up to a 3 percent reduction in natural gas use in the power sector (or more than a 25 MM MCF reduction in production on an annual basis).

The energy impacts EPA estimates from the proposed rule may be under- or over-estimates of the true energy impacts associated with this action. For example, some states are likely to pursue emissions reduction strategies independent of EPA action.

J. National Technology Transfer and Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards. EPA welcomes comments on this aspect of the proposed rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this action (Comment C–75).

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

EPA believes that this proposed action is unlikely to 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 CPP, as discussed in the RIA,[71] was anticipated to reduce emissions of $PM_{2.5}$ and ozone, and some of the benefits of reducing these pollutants would have accrued to minority populations, low-income populations and/or indigenous peoples. While this proposal does not project to achieve reductions at the level of the CPP, EPA believes that this proposal will achieve CO_2 emission reductions resulting from implementation of these proposed guidelines, as well as ozone and $PM_{2.5}$ emission reductions as a co-benefit, and will further improve children's health as discussed in the RIA.

Moreover, this proposed action does not affect the level of public health and environmental protection already being provided by existing NAAQS, including ozone and $PM_{2.5}$, and other mechanisms in the CAA. This proposed action does not affect applicable local, state, or federal permitting or air quality management programs that will continue to address areas with degraded air quality and maintain the air quality in areas meeting current standards. Areas that need to reduce criteria air pollution to meet the NAAQS will still need to rely on control strategies to reduce emissions.

XI. Statutory Authority

The statutory authority for this action is provided by sections 111, 301, and 307(d)(1)(V) of the CAA, as amended (42 U.S.C. 7411, 7601, 7607(d)(1)(V)). This action is also subject to section 307(d) of the CAA (42 U.S.C. 7607(d)).

List of Subjects

40 CFR Part 51

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 52

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

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 20, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons stated in the preamble, EPA proposes to amend 40 CFR parts 51, 52, and 60 as set forth below:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

[70] See Chapter 5, ''Economic and Employment Impacts'', of the RIA.

[71] See Chapter 5, ''Economic and Employment Impacts,'' of the RIA.

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—Review of New Sources and Modifications

■ 2. Add § 51.167 to read as follows:

§ 51.167 Preliminary major NSR applicability test for electric generating units (EGUs).

(a) *What is the purpose of this section?* State Implementation Plans (SIP) may incorporate the requirements in paragraphs (b) through (h) of this section for determining whether a change to an electric generating unit (EGU), as defined in § 51.124(q), is a modification for purposes of major NSR applicability. Deviations from these provisions will be approved only if the State demonstrates that the submitted provisions are at least as stringent in all respects as the corresponding provisions in paragraphs (b) through (h) of this section.

(b) *Am I subject to this section?* You must meet the requirements of this section if your State incorporates these provisions in its SIP, and you own or operate an EGU that is located at a major stationary source, and you plan to make a change to the EGU.

(c) *What happens if a change to my EGU is determined to be a modification according to the procedures of this section?* If the change to your EGU is a modification according to the procedures of this section, you must determine whether the change is a major modification according to the procedures of the major NSR program that applies in the area in which your EGU is located. That is, you must evaluate your modification according to the requirements set out in the applicable regulations approved pursuant to § 51.165 or § 51.166 depending on the regulated NSR pollutants emitted and the attainment status of the area in which your EGU is located for those pollutants. Section 51.165 sets out the requirements for State nonattainment major NSR programs, while § 51.166 sets out the requirements for State PSD programs.

(d) *What is the process for determining if a change to an EGU is a modification?* The two-step process set out in paragraphs (d)(1) and (2) of this section is used to determine (before beginning actual construction) whether a change to an EGU located at a major stationary source is a modification. Regardless of any preconstruction projections, a modification has occurred if a change satisfies both steps in the process.

(1) *Step 1.* Is the change a physical change in, or change in the method of operation of, the EGU? (See paragraph (e) of this section for a list of actions that are not physical or operational changes.) If so, go on to Step 2 (paragraph (d)(2) of this section).

(2) *Step 2.* Will the physical or operational change to the EGU increase the amount of any regulated NSR pollutant emitted into the atmosphere by the source (as determined according to paragraph (f) of this section) or result in the emissions of any regulated NSR pollutant(s) into the atmosphere that the source did not previously emit? If so, the change is a modification.

(e) *What types of actions are not physical changes or changes in the method of operation? (Step 1)* For purposes of this section, a physical change or change in the method of operation shall not include:

(1) Routine maintenance, repair, and replacement;

(2) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) Use of an alternative fuel or raw material by a stationary source which the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to § 51.165 or § 51.166, or which:

(i) For purposes of evaluating attainment pollutants, the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to subpart I of this part; or

(ii) For purposes of evaluating nonattainment pollutants, the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to subpart I of this part;

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975 (for purposes of evaluating attainment pollutants) or after December 21, 1976 (for purposes of evaluating nonattainment pollutants) pursuant to 40 CFR 52.21 or regulations approved pursuant to subpart I of this part;

(7) Any change in ownership at a stationary source;

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) The State Implementation Plan for the State in which the project is located; and

(ii) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated;

(9) For purposes of evaluating attainment pollutants, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(10) For purposes of evaluating attainment pollutants, the reactivation of a very clean coal-fired EGU.

(f) *How do I determine if there is an emissions increase? (Step 2)* You must determine if the physical or operational change to your EGU increases the amount of any regulated NSR pollutant emitted to the atmosphere using the method in paragraph (f)(1) of this section, subject to the limitations in paragraph (f)(2) of this section. If the physical or operational change to your EGU increases the amount of any regulated NSR pollutant emitted into the atmosphere or results in the emission of any regulated NSR pollutant(s) into the atmosphere that your EGU did not previously emit, the change is a modification as defined in paragraph (h)(2) of this section.

Alternative 1 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant for which you have hourly average CEMS or PEMS emissions data with corresponding fuel heat input data, compare the pre-change maximum actual hourly emissions rate in pounds per hour (lb/hr) to a projection of the post-change maximum actual hourly emissions rate in lb/hr, subject to the provisions in paragraphs (f)(1)(i) through (iii) of this section.

(i) *Pre-change emissions.* Determine the pre-change maximum actual hourly emissions rate as follows:

(A) Select a period of 365 consecutive days within the 5-year period

immediately preceding when you begin actual construction of the physical or operational change. Compile a data set (for example, in a spreadsheet) with the hourly average CEMS or PEMS (as applicable) measured emissions rates and corresponding heat input data for all of the hours of operation for that 365-day period for the pollutant of interest.

(B) Delete any unacceptable hourly data from this 365-day period in accordance with the data limitations in paragraph (f)(2) of this section.

(C) Extract the hourly data for the 10 percent of the remaining data set corresponding to the highest heat input rates for the selected period. This step may be facilitated by sorting the data set for the remaining operating hours from the lowest to the highest heat input rates.

(D) Calculate the average emissions rate from the extracted (*i.e.,* highest 10 percent heat input rates) data set, using Equation 1:

Equation 1

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where:

$\bar{x}$ = average emissions rate, lb/hr;

n = number of emissions rate values; and

x_i = i^{th} emissions rate value, lb/hr.

(E) Calculate the standard deviation of the data set using Equation 2:

Equation 2

$$s = \sqrt{\frac{\sum_{i=1}^{n} X_i{}^2 - \frac{\left(\sum_{i=1}^{n} X_i\right)^2}{n}}{n-1}}$$

Where:

s = standard deviation of the data set.

(F) Calculate the Upper Tolerance Limit of the data set using Equation 3:

Equation 3

$$UTL = \bar{x} + s * \left[\frac{Z_{1-p} + \sqrt{\left(Z_{1-p}{}^2\right) - \left[1 - \frac{Z_{1-q}{}^2}{2*(n-1)}\right] * \left[Z_{1-p}{}^2 - \frac{Z_{1-q}{}^2}{n}\right]}}{1 - \frac{Z_{1-q}{}^2}{2*(n-1)}}\right]$$

Where:

UTL = Upper Tolerance Limit of the data set;

Z_{1-p} = 3.090, Z score for the 99.9 percentage of interval; and

Z_{1-q} = 2.326, Z score for the 99 percent confidence level.

(G) Use the UTL calculated in paragraph (f)(1)(i)(F) of this section as the pre-change maximum actual hourly emissions rate.

(ii) *Post-change emissions—preconstruction projections.* For each regulated NSR pollutant, you must project the maximum emissions rate that your EGU will actually achieve in any 1 hour in the 5 years following the date the EGU resumes regular operation after the physical or operational change. An emissions increase results from the physical or operational change if this projected maximum actual hourly emissions rate exceeds the pre-change maximum actual hourly emissions rate.

(iii) *Post-change emissions-actually achieved.* Regardless of any preconstruction projections, an emissions increase has occurred if the hourly emissions rate actually achieved in the 5 years after the change exceeds the pre-change maximum actual hourly emissions rate.

Alternative 2 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant, compare the pre-change maximum actual hourly emissions rate in pounds per hour (lb/hr) to a projection of the post-change maximum actual hourly emissions rate in lb/hr, subject to the provisions in paragraphs (f)(1)(i) through (iv) of this section.

(i) *Pre-change emissions—general procedures.* The pre-change maximum actual hourly emissions rate for the pollutant is the highest emissions rate (lb/hr) actually achieved by the EGU for 1 hour at any time during the 5-year period immediately preceding when you begin actual construction of the physical or operational change.

(ii) *Pre-change emissions—data sources.* You must determine the highest pre-change hourly emissions rate for each regulated NSR pollutant using the best data available to you. Use the highest available source of data in the following hierarchy, unless your reviewing authority has determined that a data source lower in the hierarchy will provide better data for your EGU:

(A) Continuous emissions monitoring system (CEMS).

(B) Approved predictive emissions monitoring system (PEMS).

(C) Emission tests/emission factor specific to the EGU to be changed.

(D) Material balance calculations.

(E) Published emission factor.

(iii) *Post-change emissions—preconstruction projections.* For each regulated NSR pollutant, you must project the maximum emissions rate that your EGU will actually achieve in any 1 hour in the 5 years following the date the EGU resumes regular operation after the physical or operational change. An emissions increase results from the physical or operational change if this projected maximum actual hourly emissions rate exceeds the pre-change maximum actual hourly emissions rate.

(iv) *Post-change emissions—actually achieved.* Regardless of any preconstruction projections, an emissions increase has occurred if the hourly emissions rate actually achieved in the 5 years after the change exceeds the pre-change maximum actual hourly emissions rate.

Alternative 3 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant, compare the maximum achievable hourly emissions rate before the physical or operational change to the maximum achievable hourly emissions rate after the change. Determine these maximum achievable hourly emissions rates according to § 60.14(b) of this chapter. No physical change, or change in the method of operation, at an existing EGU shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any regulated NSR pollutant above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

(2) *Data limitations for maximum emissions rates.* For purposes of determining pre-change and post-change maximum emissions rates under paragraph (f)(1) of this section, the following limitations apply to the types of data that you may use:

(i) *Data limitations for Alternatives 1–2.* (A) You must not use emissions rate data associated with startups, shutdowns, or malfunctions of your EGU, as defined by applicable regulation(s) or permit term(s), or malfunctions of an associated air pollution control device. A malfunction means any sudden, infrequent, and not reasonably preventable failure of the EGU or the air pollution control equipment to operate in a normal or usual manner.

(B) You must not use continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) data recorded during monitoring system out-of-control periods. Out-of-control periods include those during which the monitoring system fails to meet quality assurance criteria (for example, periods of system breakdown, repair, calibration checks, or zero and span adjustments) established by regulation, by permit, or in an approved quality assurance plan.

(C) You must not use emissions rate data from periods of noncompliance when your EGU was operating above an emission limitation that was legally enforceable at the time the data were collected.

(D) You must not use data from any period for which the information is inadequate for determining emissions rates, including information related to the limitations in paragraphs (f)(2)(i)(A) through (C) of this section.

(ii) *Data limitations for Alternative 3.* (A) You must not use emissions rate data associated with startups, shutdowns, or malfunctions of your EGU, as defined by applicable regulation(s) or permit term(s), or malfunctions of an associated air pollution control device. A malfunction means any sudden, infrequent, and not reasonably preventable failure of the EGU or the air pollution control equipment to operate in a normal or usual manner.

(B) You must not use continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) data recorded during monitoring system out-of-control periods. Out-of-control periods include those during which the monitoring system fails to meet quality assurance criteria (for example, periods of system breakdown, repair, calibration checks, or zero and span adjustments) established by regulation, by permit, or in an approved quality assurance plan.

(C) You must not use data from any period for which the information is inadequate for determining emissions rates, including information related to the limitations in paragraphs (f)(2)(ii)(A) and (B) of this section.

(g) *What are my requirements for recordkeeping?* You must maintain a file of all information related to determinations that you make under this section of whether a change to an EGU is a modification, subject to the following provisions:

(1) The file must include, but is not limited to, the following information recorded in permanent form suitable for inspection:

(i) Continuous monitoring system, monitoring device, and performance testing measurements;

(ii) All continuous monitoring system performance evaluations;

(iii) All continuous monitoring system or monitoring device calibration checks;

(iv) All adjustments and maintenance performed on these systems or devices; and

(v) All other information relevant to any determination made under this section of whether a change to an EGU is a modification.

(2) You must retain the file until the later of:

(i) The date 5 years following the date the EGU resumes regular operation after the physical or operational change; and

(ii) The date 5 years following the date of such measurements, maintenance, reports, and records.

(h) *What definitions apply under this section?* The definitions of terms in § 51.124(q) apply. Terms used in this section have the meaning accorded them under § 51.165(a)(1) or § 51.166(b), as appropriate. Terms not defined here or in § 51.165(a)(1) or § 51.166(b) (as appropriate) have the meaning accorded them under the applicable requirements of the Clean Air Act.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A—General Provisions

■ 4. Add § 52.25 to read as follows:

§ 52.25 Preliminary major NSR applicability test for electric generating units (EGUs).

(a) *What is the purpose of this section?* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards. Specific disapprovals are listed where applicable, in subparts B through DDD and FFF of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in subparts B through DDD and FFF of this part. Where this section is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. No disapproval with respect to a State's failure to prevent significant deterioration of air quality shall invalidate or otherwise affect the

obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part.

(b) *Am I subject to this section?* You must meet the requirements of this section if you own or operate an EGU that is located at a major stationary source, and you plan to make a change to the EGU.

(c) *What happens if a change to my EGU is determined to be a modification according to the procedures of this section?* If the change to your electric generating unit (EGU), as defined in § 51.124(q) of this chapter, is a modification according to the procedures of this section, you must determine whether the change is a major modification according to the procedures of the major NSR program that applies in the area in which your EGU is located. That is, you must evaluate your modification according to the requirements set out in the applicable regulations approved pursuant to § 52.21.

(d) *What is the process for determining if a change to an EGU is a modification?* The two-step process set out in paragraphs (d)(1) and (2) of this section is used to determine (before beginning actual construction) whether a change to an EGU located at a major stationary source is a modification. Regardless of any preconstruction projections, a modification has occurred if a change satisfies both steps in the process.

(1) *Step 1.* Is the change a physical change in, or change in the method of operation of, the EGU? (See paragraph (e) of this section for a list of actions that are not physical or operational changes.) If so, go on to Step 2 (paragraph (d)(2) of this section).

(2) *Step 2.* Will the physical or operational change to the EGU increase the amount of any regulated NSR pollutant emitted into the atmosphere by the source (as determined according to paragraph (f) of this section) or result in the emissions of any regulated NSR pollutant(s) into the atmosphere that the source did not previously emit? If so, the change is a modification.

(e) *What types of actions are not physical changes or changes in the method of operation? (Step 1)* For purposes of this section, a physical change or change in the method of operation shall not include:

(1) Routine maintenance, repair, and replacement;

(2) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) Use of an alternative fuel or raw material by a stationary source which the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to § 51.166 of this chapter, or which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR part 51, subpart I; or

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR part 51, subpart I;

(7) Any change in ownership at a stationary source;

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) The State Implementation Plan for the State in which the project is located; and

(ii) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated;

(9) For purposes of evaluating attainment pollutants, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis; or

(10) For purposes of evaluating attainment pollutants, the reactivation of a very clean coal-fired EGU.

(f) *How do I determine if there is an emissions increase? (Step 2)* You must determine if the physical or operational change to your EGU increases the amount of any regulated NSR pollutant emitted to the atmosphere using the method in paragraph (f)(1) of this section, subject to the limitations in paragraph (f)(2) of this section. If the physical or operational change to your EGU increases the amount of any regulated NSR pollutant emitted into the atmosphere or results in the emission of any regulated NSR pollutant(s) into the atmosphere that your EGU did not previously emit, the change is a modification as defined in paragraph (h)(2) of this section.

Alternative 1 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant for which you have hourly average CEMS or PEMS emissions data with corresponding fuel heat input data, compare the pre-change maximum actual hourly emissions rate in pounds per hour (lb/hr) to a projection of the post-change maximum actual hourly emissions rate in lb/hr, subject to the provisions in paragraphs (f)(1)(i) through (iii) of this section.

(i) *Pre-change emissions.* Determine the pre-change maximum actual hourly emissions rate as follows:

(A) Select a period of 365 consecutive days within the 5-year period immediately preceding when you begin actual construction of the physical or operational change. Compile a data set (for example, in a spreadsheet) with the hourly average CEMS or PEMS (as applicable) measured emissions rates and corresponding heat input data for all of the hours of operation for that 365-day period for the pollutant of interest.

(B) Delete any unacceptable hourly data from this 365-day period in accordance with the data limitations in paragraph (f)(2) of this section.

(C) Extract the hourly data for the 10 percent of the remaining data set corresponding to the highest heat input rates for the selected period. This step may be facilitated by sorting the data set for the remaining operating hours from the lowest to the highest heat input rates.

(D) Calculate the average emissions rate from the extracted (*i.e.,* highest 10 percent heat input rates) data set, using Equation 1:

Equation 1

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where:
$\bar{x}$ = average emissions rate, lb/hr;
n = number of emissions rate values; and
x_i = i^{th} emissions rate value, lb/hr.

(E) Calculate the standard deviation of the data set using Equation 2:

Equation 2

$$s = \sqrt{\frac{\sum_{i=1}^{n} X_i{}^2 - \frac{\left(\sum_{i=1}^{n} X_i\right)^2}{n}}{n-1}}$$

Where:
s = standard deviation of the data set.

(F) Calculate the Upper Tolerance Limit of the data set using Equation 3:

Equation 3

$$UTL = \bar{x} + s * \left[\frac{Z_{1-p} + \sqrt{\left(Z_{1-p}{}^2\right) - \left[1 - \frac{Z_{1-q}{}^2}{2*(n-1)}\right] * \left[Z_{1-p}{}^2 - \frac{Z_{1-q}{}^2}{n}\right]}}{1 - \frac{Z_{1-q}{}^2}{2*(n-1)}}\right]$$

Where:
UTL = Upper Tolerance Limit of the data set;
Z_{1-p} = 3.090, Z score for the 99.9 percentage of interval; and
Z_{1-q} = 2.326, Z score for the 99 percent confidence level.

(G) Use the UTL calculated in paragraph (f)(1)(i)(F) of this section as the pre-change maximum actual hourly emissions rate.

(ii) *Post-change emissions—preconstruction projections.* For each regulated NSR pollutant, you must project the maximum emissions rate that your EGU will actually achieve in any 1 hour in the 5 years following the date the EGU resumes regular operation after the physical or operational change. An emissions increase results from the physical or operational change if this projected maximum actual hourly emissions rate exceeds the pre-change maximum actual hourly emissions rate.

(iii) *Post-change emissions—actually achieved.* Regardless of any preconstruction projections, an emissions increase has occurred if the hourly emissions rate actually achieved in the 5 years after the change exceeds the pre-change maximum actual hourly emissions rate.

Alternative 2 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant, compare the pre-change maximum actual hourly emissions rate in pounds per hour (lb/hr) to a projection of the post-change maximum actual hourly emissions rate in lb/hr, subject to the provisions in paragraphs (f)(1)(i) through (iv) of this section.

(i) *Pre-change emissions—general procedures.* The pre-change maximum actual hourly emissions rate for the pollutant is the highest emissions rate (lb/hr) actually achieved by the EGU for 1 hour at any time during the 5-year period immediately preceding when you begin actual construction of the physical or operational change.

(ii) *Pre-change emissions—data sources.* You must determine the highest pre-change hourly emissions rate for each regulated NSR pollutant using the best data available to you. Use the highest available source of data in the following hierarchy, unless your reviewing authority has determined that a data source lower in the hierarchy will provide better data for your EGU:

(A) Continuous emissions monitoring system (CEMS).

(B) Approved predictive emissions monitoring system (PEMS).

(C) Emission tests/emission factor specific to the EGU to be changed.

(D) Material balance calculations.

(E) Published emission factor.

(iii) *Post-change emissions—preconstruction projections.* For each regulated NSR pollutant, you must project the maximum emissions rate that your EGU will actually achieve in any 1 hour in the 5 years following the date the EGU resumes regular operation after the physical or operational change. An emissions increase results from the physical or operational change if this projected maximum actual hourly emissions rate exceeds the pre-change maximum actual hourly emissions rate.

(iv) *Post-change emissions—actually achieved.* Regardless of any preconstruction projections, an emissions increase has occurred if the hourly emissions rate actually achieved in the 5 years after the change exceeds the pre-change maximum actual hourly emissions rate.

Alternative 3 for paragraph (f)(1):

(1) *Emissions increase test.* For each regulated NSR pollutant, compare the maximum achievable hourly emissions rate before the physical or operational change to the maximum achievable hourly emissions rate after the change. Determine these maximum achievable

hourly emissions rates according to § 60.14(b) of this chapter. No physical change, or change in the method of operation, at an existing EGU shall be treated as a modification for the purposes of this section provided that such change does not increase the maximum hourly emissions of any regulated NSR pollutant above the maximum hourly emissions achievable at that unit during the 5 years prior to the change.

(2) *Data limitations for maximum emissions rates.* For purposes of determining pre-change and post-change maximum emissions rates under paragraph (f)(1) of this section, the following limitations apply to the types of data that you may use:

(i) *Data limitations for Alternatives 1–2.* (A) You must not use emissions rate data associated with startups, shutdowns, or malfunctions of your EGU, as defined by applicable regulation(s) or permit term(s), or malfunctions of an associated air pollution control device. A malfunction means any sudden, infrequent, and not reasonably preventable failure of the EGU or the air pollution control equipment to operate in a normal or usual manner.

(B) You must not use continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) data recorded during monitoring system out-of-control periods. Out-of-control periods include those during which the monitoring system fails to meet quality assurance criteria (for example, periods of system breakdown, repair, calibration checks, or zero and span adjustments) established by regulation, by permit, or in an approved quality assurance plan.

(C) You must not use emissions rate data from periods of noncompliance when your EGU was operating above an emission limitation that was legally enforceable at the time the data were collected.

(D) You must not use data from any period for which the information is inadequate for determining emissions rates, including information related to the limitations in paragraphs (f)(2)(i)(A) through (C) of this section.

(ii) *Data limitations for Alternative 3.* (A) You must not use emissions rate data associated with startups, shutdowns, or malfunctions of your EGU, as defined by applicable regulation(s) or permit term(s), or malfunctions of an associated air pollution control device. A malfunction means any sudden, infrequent, and not reasonably preventable failure of the EGU or the air pollution control equipment to operate in a normal or usual manner.

(B) You must not use continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) data recorded during monitoring system out-of-control periods. Out-of-control periods include those during which the monitoring system fails to meet quality assurance criteria (for example, periods of system breakdown, repair, calibration checks, or zero and span adjustments) established by regulation, by permit, or in an approved quality assurance plan.

(C) You must not use data from any period for which the information is inadequate for determining emissions rates, including information related to the limitations in paragraphs (f)(2)(ii)(A) and (B) of this section.

(g) *What are my requirements for recordkeeping?* You must maintain a file of all information related to determinations that you make under this section of whether a change to an EGU is a modification, subject to the following provisions:

(1) The file must include, but is not limited to, the following information recorded in permanent form suitable for inspection:

(i) Continuous monitoring system, monitoring device, and performance testing measurements;

(ii) All continuous monitoring system performance evaluations;

(iii) All continuous monitoring system or monitoring device calibration checks;

(iv) All adjustments and maintenance performed on these systems or devices; and

(v) All other information relevant to any determination made under this section of whether a change to an EGU is a modification.

(2) You must retain the file until the later of:

(i) The date 5 years following the date the EGU resumes regular operation after the physical or operational change; and

(ii) The date 5 years following the date of such measurements, maintenance, reports, and records.

(h) *What definitions apply under this section?* The definitions of terms in § 51.124(q) of this chapter apply. Terms used in this section have the meaning accorded them under § 52.21. Terms not defined here or in § 52.21 have the meaning accorded them under the applicable requirements of the Clean Air Act.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 5. The authority citation for part 60 continues to read as follows:

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

■ 6. Add subpart Ba to read as follows:

Subpart Ba—Adoption and Submittal of State Plans for Designated Facilities

Sec.
60.20a Applicability.
60.21a Definitions.
60.22a Publication of emission guidelines.
60.23a Adoption and submittal of State plans; public hearings.
60.24a Standards of performance and compliance schedules.
60.25a Emission inventories, source surveillance, reports.
60.26a Legal authority.
60.27a Actions by the Administrator.
60.28a Plan revisions by the State.
60.29a Plan revisions by the Administrator.

Subpart Ba—Adoption and Submittal of State Plans for Designated Facilities

§ 60.20a Applicability.

(a) The provisions of this subpart apply to States upon publication of a final emission guideline under § 60.22a(a), if such final guideline is published after [date of publication of final rule in the **Federal Register**].

(1) Each emission guideline promulgated under this part is subject to the requirements of this subpart, except that each emission guideline may include specific provisions in addition to or that supersede requirements of this subpart. Each emission guideline must identify explicitly any provision of this subpart that is superseded.

(2) Terms used throughout this part are defined in § 60.21a or in the Clean Air Act (Act) as amended in 1990, except that emission guidelines promulgated as individual subparts of this part may include specific definitions in addition to or that supersede definitions in § 60.21a.

(b) No standard of performance or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (section 112, Part C or D, or any other authority of the Act), or a standard issued under State authority. The Administrator may specify in a specific standard under this part that facilities subject to other provisions under the Act need only comply with the provisions of that standard.

§ 60.21a Definitions.

Terms used but not defined in this subpart shall have the meaning given them in the Act and in subpart A:

(a) *Designated pollutant* means any air pollutant, the emissions of which are

subject to a standard of performance for new stationary sources, but for which air quality criteria have not been issued and that is not included on a list published under section 108(a) or section 112(b) of the Act.

(b) *Designated facility* means any existing facility (see § 60.2a(aa)) which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were an affected facility (see § 60.2a(e)).

(c) *Plan* means a plan under section 111(d) of the Act which establishes standards of performance for designated pollutants from designated facilities and provides for the implementation and enforcement of such standards of performance.

(d) *Applicable plan* means the plan, or most recent revision thereof, which has been approved under § 60.27a(b) or promulgated under § 60.27a(d).

(e) *Emission guideline* means a final guideline document published under § 60.22a(a), which includes information on the degree of emission reduction achievable through the application of the best system of emission reduction which (taking into account the cost of such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator has determined has been adequately demonstrated for designated facilities.

(f) *Standard of performance* means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated, including, but not limited to,a legally enforceable regulation setting forth an allowable rate or limit of emissions into the atmosphere, or prescribing a design, equipment, work practice, or operational standard, or combination thereof.

(g) *Compliance schedule* means a legally enforceable schedule specifying a date or dates by which a source or category of sources must comply with specific standards of performance contained in a plan or with any increments of progress to achieve such compliance.

(h) *Increments of progress* means steps to achieve compliance which must be taken by an owner or operator of a designated facility, including:

(1) Submittal of a final control plan for the designated facility to the appropriate air pollution control agency;

(2) Awarding of contracts for emission control systems or for process modifications, or issuance of orders for the purchase of component parts to accomplish emission control or process modification;

(3) Initiation of on-site construction or installation of emission control equipment or process change;

(4) Completion of on-site construction or installation of emission control equipment or process change; and

(5) Final compliance.

(i) *Region* means an air quality control region designated under section 107 of the Act and described in part 81 of this chapter.

(j) *Local agency* means any local governmental agency.

§ 60.22a Publication of emission guidelines.

(a) Concurrently upon or after proposal of standards of performance for the control of a designated pollutant from affected facilities, the Administrator will publish a draft emission guideline containing information pertinent to control of the designated pollutant from designated facilities. Notice of the availability of the draft emission guideline will be published in the **Federal Register** and public comments on its contents will be invited. After consideration of public comments, a final emission guideline will be published and notice of its availability will be published in the **Federal Register**.

(b) Emission guidelines published under this section will provide information for the development of State plans, such as:

(1) A description of systems of emission reduction which, in the judgment of the Administrator, have been adequately demonstrated.

(2) Information on the degree of emission reduction which is achievable with each system, together with information on the costs, nonair quality health environmental effects, and energy requirements of applying each system to designated facilities.

(3) Incremental periods of time normally expected to be necessary for the design, installation, and startup of identified control systems.

(4) An emission guideline that reflects the application of the best system of emission reduction (considering the cost of such achieving reduction and any nonair quality health and environmental impact and energy requirements) that has been adequately demonstrated for designated facilities, and the time within which compliance with standards of performance can be achieved. The Administrator may specify different emission guidelines or compliance times or both for different sizes, types, and classes of designated facilities when costs of control, physical limitations, geographical location, or similar factors make subcategorization appropriate.

(5) Such other available information as the Administrator determines may contribute to the formulation of State plans.

§ 60.23a Adoption and submittal of State plans; public hearings.

(a)(1) Unless otherwise specified in the applicable subpart, within three years after notice of the availability of a final emission guideline is published under § 60.22a(a), each State shall adopt and submit to the Administrator, in accordance with § 60.4, a plan for the control of the designated pollutant to which the emission guideline applies.

(2) At any time, each State may adopt and submit to the Administrator any plan revision necessary to meet the requirements of this subpart or an applicable subpart of this part.

(b) If no designated facility is located within a State, the State shall submit a letter of certification to that effect to the Administrator within the time specified in paragraph (a) of this section. Such certification shall exempt the State from the requirements of this subpart for that designated pollutant.

(c) The State shall, prior to the adoption of any plan or revision thereof, conduct one or more public hearings within the State on such plan or plan revision.

(d) Any hearing required by paragraph (c) of this section shall be held only after reasonable notice. Notice shall be given at least 30 days prior to the date of such hearing and shall include:

(1) Notification to the public by prominently advertising the date, time, and place of such hearing in each region affected. This requirement may be satisfied by advertisement on the internet;

(2) Availability, at the time of public announcement, of each proposed plan or revision thereof for public inspection in at least one location in each region to which it will apply. This requirement may be satisfied by posting each proposed plan or revision on the internet;

(3) Notification to the Administrator;

(4) Notification to each local air pollution control agency in each region to which the plan or revision will apply; and

(5) In the case of an interstate region, notification to any other State included in the region.

(e) The State may cancel the public hearing through a method it identifies if no request for a public hearing is received during the 30 day notification period under subsection (d) and the original notice announcing the 30 day notification period states that if no request for a public hearing is received the hearing will be cancelled; identifies the method and time for announcing that the hearing has been cancelled; and provides a contact phone number for the public to call to find out if the hearing has been cancelled.

(f) The State shall prepare and retain, for a minimum of 2 years, a record of each hearing for inspection by any interested party. The record shall contain, as a minimum, a list of witnesses together with the text of each presentation.

(g) The State shall submit with the plan or revision:

(1) Certification that each hearing required by paragraph (c) of this section was held in accordance with the notice required by paragraph (d) of this section; and

(2) A list of witnesses and their organizational affiliations, if any, appearing at the hearing and a brief written summary of each presentation or written submission.

(h) Upon written application by a State agency (through the appropriate Regional Office), the Administrator may approve State procedures designed to insure public participation in the matters for which hearings are required and public notification of the opportunity to participate if, in the judgment of the Administrator, the procedures, although different from the requirements of this subpart, in fact provide for adequate notice to and participation of the public. The Administrator may impose such conditions on his approval as he deems necessary. Procedures approved under this section shall be deemed to satisfy the requirements of this subpart regarding procedures for public hearings.

§ 60.24a Standards of performance and compliance schedules.

(a) Each plan shall include standards of performance and compliance schedules.

(b) Standards of performance shall either be based on allowable rate or limit of emissions, except when it is not feasible to prescribe or enforce a standard of performance. The EPA shall identify such cases in the emission guidelines issued under § 60.22a. Where standards of performance prescribing design, equipment, work practice, or operational standard, or combination thereof are established, the plan shall, to the degree possible, set forth the emission reductions achievable by implementation of such standards, and may permit compliance by the use of equipment determined by the State to be equivalent to that prescribed.

(1) Test methods and procedures for determining compliance with the standards of performance shall be specified in the plan. Methods other than those specified in appendix A to this part or an applicable subpart of this part may be specified in the plan if shown to be equivalent or alternative methods as defined in § 60.2(t) and (u).

(2) Standards of performance shall apply to all designated facilities within the State. A plan may contain standards of performance adopted by local jurisdictions provided that the standards are enforceable by the State.

(c) Except as provided in paragraph (e) of this section, standards of performance shall be no less stringent than the corresponding emission guideline(s) specified in subpart C of this part, and final compliance shall be required as expeditiously as practicable, but no later than the compliance times specified in an applicable subpart of this part.

(d)(1) Any compliance schedule extending more than 24 months from the date required for submittal of the plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities. Unless otherwise specified in the applicable subpart, increments of progress must include, where practicable, each increment of progress specified in § 60.21a(h) and must include such additional increments of progress as may be necessary to permit close and effective supervision of progress toward final compliance.

(2) A plan may provide that compliance schedules for individual sources or categories of sources will be formulated after plan submittal. Any such schedule shall be the subject of a public hearing held according to § 60.23a and shall be submitted to the Administrator within 60 days after the date of adoption of the schedule but in no case later than the date prescribed for submittal of the first semiannual report required by § 60.25a(e).

(e) In applying a standard of performance to a particular source, the State may take into consideration factors, such as the remaining useful life of such source, provided that the State demonstrates with respect to each such facility (or class of such facilities):

(1) Unreasonable cost of control resulting from plant age, location, or basic process design;

(2) Physical impossibility of installing necessary control equipment; or

(3) Other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable.

(f) Nothing in this subpart shall be construed to preclude any State or political subdivision thereof from adopting or enforcing:

(1) Standards of performance more stringent than emission guidelines specified in subpart C of this part or in applicable emission guidelines; or

(2) Compliance schedules requiring final compliance at earlier times than those specified in subpart C or in applicable emission guidelines.

§ 60.25a Emission inventories, source surveillance, reports.

(a) Each plan shall include an inventory of all designated facilities, including emission data for the designated pollutants and information related to emissions as specified in appendix D to this part. Such data shall be summarized in the plan, and emission rates of designated pollutants from designated facilities shall be correlated with applicable standards of performance. As used in this subpart, ''correlated'' means presented in such a manner as to show the relationship between measured or estimated amounts of emissions and the amounts of such emissions allowable under applicable standards of performance.

(b) Each plan shall provide for monitoring the status of compliance with applicable standards of performance. Each plan shall, as a minimum, provide for:

(1) Legally enforceable procedures for requiring owners or operators of designated facilities to maintain records and periodically report to the State information on the nature and amount of emissions from such facilities, and/or such other information as may be necessary to enable the State to determine whether such facilities are in compliance with applicable portions of the plan. Submission of electronic documents shall comply with the requirements of 40 CFR part 3—(Electronic reporting).

(2) Periodic inspection and, when applicable, testing of designated facilities.

(c) Each plan shall provide that information obtained by the State under paragraph (b) of this section shall be

correlated with applicable standards of performance (see § 60.25a(a)) and made available to the general public.

(d) The provisions referred to in paragraphs (b) and (c) of this section shall be specifically identified. Copies of such provisions shall be submitted with the plan unless:

(1) They have been approved as portions of a preceding plan submitted under this subpart or as portions of an implementation plan submitted under section 110 of the Act, and

(2) The State demonstrates:

(i) That the provisions are applicable to the designated pollutant(s) for which the plan is submitted, and

(ii) That the requirements of § 60.26a are met.

(e) The State shall submit reports on progress in plan enforcement to the Administrator on an annual (calendar year) basis, commencing with the first full report period after approval of a plan or after promulgation of a plan by the Administrator. Information required under this paragraph must be included in the annual report required by § 51.321 of this chapter.

(f) Each progress report shall include:

(1) Enforcement actions initiated against designated facilities during the reporting period, under any standard of performance or compliance schedule of the plan.

(2) Identification of the achievement of any increment of progress required by the applicable plan during the reporting period.

(3) Identification of designated facilities that have ceased operation during the reporting period.

(4) Submission of emission inventory data as described in paragraph (a) of this section for designated facilities that were not in operation at the time of plan development but began operation during the reporting period.

(5) Submission of additional data as necessary to update the information submitted under paragraph (a) of this section or in previous progress reports.

(6) Submission of copies of technical reports on all performance testing on designated facilities conducted under paragraph (b)(2) of this section, complete with concurrently recorded process data.

§ 60.26a Legal authority.

(a) Each plan shall show that the State has legal authority to carry out the plan, including authority to:

(1) Adopt standards of performance and compliance schedules applicable to designated facilities.

(2) Enforce applicable laws, regulations, standards, and compliance schedules, and seek injunctive relief.

(3) Obtain information necessary to determine whether designated facilities are in compliance with applicable laws, regulations, standards, and compliance schedules, including authority to require recordkeeping and to make inspections and conduct tests of designated facilities.

(4) Require owners or operators of designated facilities to install, maintain, and use emission monitoring devices and to make periodic reports to the State on the nature and amounts of emissions from such facilities; also authority for the State to make such data available to the public as reported and as correlated with applicable standards of performance.

(b) The provisions of law or regulations which the State determines provide the authorities required by this section shall be specifically identified. Copies of such laws or regulations shall be submitted with the plan unless:

(1) They have been approved as portions of a preceding plan submitted under this subpart or as portions of an implementation plan submitted under section 110 of the Act, and

(2) The State demonstrates that the laws or regulations are applicable to the designated pollutant(s) for which the plan is submitted.

(c) The plan shall show that the legal authorities specified in this section are available to the State at the time of submission of the plan. Legal authority adequate to meet the requirements of paragraphs (a)(3) and (4) of this section may be delegated to the State under section 114 of the Act.

(d) A State governmental agency other than the State air pollution control agency may be assigned responsibility for carrying out a portion of a plan if the plan demonstrates to the Administrator's satisfaction that the State governmental agency has the legal authority necessary to carry out that portion of the plan.

(e) The State may authorize a local agency to carry out a plan, or portion thereof, within the local agency's jurisdiction if the plan demonstrates to the Administrator's satisfaction that the local agency has the legal authority necessary to implement the plan or portion thereof, and that the authorization does not relieve the State of responsibility under the Act for carrying out the plan or portion thereof.

§ 60.27a Actions by the Administrator.

(a) The Administrator may, whenever he determines necessary, shorten the period for submission of any plan or plan revision or portion thereof.

(b) After determination that a plan or plan revision is complete per the requirements of paragraph (g) of this section, the Administrator will take action on the plan or revision. The Administrator will, within twelve months of finding that a plan or plan revision is complete, approve or disapprove such plan or revision or each portion thereof.

(c) The Administrator will propose to promulgate, through notice and comment rulemaking, a federal plan, or portion thereof, for a State if:

(1) The Administrator finds that a State fails to submit a required complete plan or complete plan revision within the time prescribed; or

(2) The Administrator disapproves the required State plan or plan revision or any portion thereof, as unsatisfactory because the applicable requirements of this subpart or an applicable subpart under this part have not been met.

(d) The Administrator will, at any time within two years after the finding of failure to submit a complete plan or disapproval described under paragraph (c) of this section, promulgate a final federal plan unless, prior to such promulgation, the State has adopted and submitted a plan or plan revision which the Administrator determines to be approvable.

(e)(1) Except as provided in paragraph (e)(2) of this section, a federal plan promulgated by the Administrator under this section will prescribe standards of performance of the same stringency as the corresponding emission guideline(s) specified in the final emission guideline published under § 60.22a(a) and will require compliance with such standards as expeditiously as practicable but no later than the times specified in the emission guideline.

(2) Upon application by the owner or operator of a designated facility to which regulations proposed and promulgated under this section will apply, the Administrator may provide for the application of less stringent standards of performance or longer compliance schedules than those otherwise required by this section in accordance with the criteria specified in § 60.24a(f).

(f) Prior to promulgation of a federal plan under paragraph (d) of this section, the Administrator will provide the opportunity for at least one public hearing in either:

(1) Each State that failed to hold a public hearing as required by § 60.23a(c); or

(2) Washington, DC or an alternate location specified in the **Federal Register**.

(g) Each plan or plan revision that is submitted to the Administrator shall be

reviewed for completeness as described in paragraphs (g)(1) through (g)(3) of this section.

(1) *General.* Within 60 days of the Administrator's receipt of a state submission, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria for completeness have been met. Any plan or plan revision that a State submits to the EPA, and that has not been determined by the EPA by the date 6 months after receipt of the submission to have failed to meet the minimum criteria, shall on that date be deemed by operation of law to meet such minimum criteria. Where the Administrator determines that a plan submission does not meet the minimum criteria of this paragraph, the State will be treated as not having made the submission and the requirements of this section regarding promulgation of a federal plan shall apply.

(2) *Administrative criteria.* In order to be deemed complete, a State plan must contain each of the following administrative criteria:

(i) A formal letter of submittal from the Governor or her designee requesting EPA approval of the plan or revision thereof;

(ii) Evidence that the State has adopted the plan in the state code or body of regulations. That evidence must include the date of adoption or final issuance as well as the effective date of the plan, if different from the adoption/issuance date;

(iii) Evidence that the State has the necessary legal authority under state law to adopt and implement the plan;

(iv) A copy of the actual regulation, or document submitted for approval and incorporation by reference into the plan. The submittal must be a copy of the official state regulation or document signed, stamped and dated by the appropriate state official indicating that it is fully enforceable by the State. The effective date of the regulation or document must, whenever possible, be indicated in the document itself. The State's electronic copy must be an exact duplicate of the hard copy. For revisions to the approved plan, the submittal must indicate the changes made (for example, by redline/strikethrough) to the approved plan;

(v) Evidence that the State followed all of the procedural requirements of the state's laws and constitution in conducting and completing the adoption and issuance of the plan;

(vi) Evidence that public notice was given of the proposed change with procedures consistent with the requirements of § 60.23, including the date of publication of such notice;

(vii) Certification that public hearing(s) were held in accordance with the information provided in the public notice and the State's laws and constitution, if applicable and consistent with the public hearing requirements in § 60.23;

(viii) Compilation of public comments and the State's response thereto; and

(ix) Such other criteria for completeness as may be specified by the Administrator under the applicable emission guidelines.

(3) *Technical criteria.* In order to be deemed complete, a State plan must contain each of the following technical criteria:

(i) Description of the plan approach and geographic scope;

(ii) Identification of each affected source, identification of emission standards for the affected sources, and monitoring, recordkeeping and reporting requirements that will determine compliance by each affected source;

(iii) Identification of compliance schedules and/or increments of progress;

(iv) Demonstration that the State plan submittal is projected to achieve emissions performance under the applicable emission guidelines;

(v) Documentation of state recordkeeping and reporting requirements to determine the performance of the plan as a whole; and

(vi) Demonstration that each emission standard is quantifiable, non-duplicative, permanent, verifiable, and enforceable.

§ 60.28a Plan revisions by the State.

(a) Plan revisions shall be submitted to the Administrator within 12 months, or shorter if required by the Administrator, after notice of the availability of a final revised emission guideline is published under § 60.22a, in accordance with the procedures and requirements applicable to development and submission of the original plan.

(b) A revision of a plan, or any portion thereof, shall not be considered part of an applicable plan until approved by the Administrator in accordance with this subpart.

§ 60.29a Plan revisions by the Administrator.

After notice and opportunity for public hearing in each affected State, the Administrator may revise any provision of an applicable federal plan if:

(a) The provision was promulgated by the Administrator, and

(b) The plan, as revised, will be consistent with the Act and with the requirements of this subpart.

■ 7. Add subpart UUUUa to read as follows:

Subpart—UUUUa Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units

Introduction

Sec.
60.5700a What is the purpose of this subpart?
60.5705a *Which pollutants are regulated by this subpart?*
60.5710a Am I affected by this subpart?
60.5715a What is the review and approval process for my plan?
60.5720a *What if I do not submit a plan or my plan is not approvable?*
60.5725a In lieu of a State plan submittal, are there other acceptable option(s) for a State to meet its CAA section 111(d) obligations?
60.5730a Is there an approval process for a negative declaration letter?

State Plan Requirements

60.5735a What must I include in my federally enforceable State plan?
60.5740a What must I include in my plan submittal?
60.5745a What are the timing requirements for submitting my plan?
60.5750a What schedules, performance periods, and compliance periods must I include in my plan?
60.5755a What standards of performance must I include in my plan?
60.5760a What is the procedure for revising my plan?
60.5765a What must I do to meet my plan obligations?

Applicablity of Plans to Affected EGUs

60.5770a Does this subpart directly affect EGU owners or operators in my State?
60.5775a What affected EGUs must I address in my State plan?
60.5780a What EGUs are excluded from being affected EGUs?
60.5785a *What applicable monitoring, recordkeeping, and reporting requirements do I need to include in my plan for affected EGUs?*

Recordkeeping and Reporting Requirements

60.5790a What are my recordkeeping requirements?
60.5795a What are my reporting and notification requirements?
60.5800a How do I submit information required by these Emission Guidelines to the EPA?

Definitions

60.5805a What definitions apply to this subpart?

Subpart—UUUUa Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units

Introduction

§ 60.5700a What is the purpose of this subpart?

This subpart establishes emission guidelines and approval criteria for State plans that establish standards of performance limiting greenhouse gas (GHG) emissions from an affected steam generating unit. An affected steam generating unit for the purposes of this subpart, is referred to as an affected EGU. These emission guidelines are developed in accordance with section 111(d) of the Clean Air Act and subpart Ba of this part. To the extent any requirement of this subpart is inconsistent with the requirements of subparts A or subpart Ba of this part, the requirements of this subpart will apply.

§ 60.5705a Which pollutants are regulated by this subpart?

(a) The pollutants regulated by this subpart are greenhouse gases. The emission guidelines for greenhouse gases established in this subpart are heat rate improvements which target achieving lower carbon dioxide (CO_2) emission rates at affected EGUs.

(b) PSD and Title V thresholds for greenhouse gases are set out in this paragraph (b).

(1) For the purposes of § 51.166(b)(49)(ii), with respect to GHG emissions from facilities, the ''pollutant that is subject to the standard promulgated under section 111 of the Act'' shall be considered to be the pollutant that otherwise is subject to regulation under the Act as defined in § 51.166(b)(48) and in any State Implementation Plan (SIP) approved by the EPA that is interpreted to incorporate, or specifically incorporates, § 51.166(b)(48) of this chapter.

(2) For the purposes of § 52.21(b)(50)(ii), with respect to GHG emissions from facilities regulated in the plan, the ''pollutant that is subject to the standard promulgated under section 111 of the Act'' shall be considered to be the pollutant that otherwise is subject to regulation under the Act as defined in § 52.21(b)(49) of this chapter.

(3) For the purposes of § 70.2 of this chapter, with respect to greenhouse gas emissions from facilities regulated in the plan, the ''pollutant that is subject to any standard promulgated under section 111 of the Act'' shall be considered to be the pollutant that otherwise is ''subject to regulation'' as defined in § 70.2 of this chapter.

(4) For the purposes of § 71.2, with respect to greenhouse gas emissions from facilities regulated in the plan, the ''pollutant that is subject to any standard promulgated under section 111 of the Act'' shall be considered to be the pollutant that otherwise is ''subject to regulation'' as defined in § 71.2 of this chapter.

§ 60.5710a Am I affected by this subpart?

If you are the Governor of a State in the contiguous United States with one or more affected EGUs that commenced construction on or before August 31, 2018, you are subject to this action and you must submit a State plan to the U.S. Environmental Protection Agency (EPA) that implements the emission guidelines contained in this subpart. If you are the Governor of a State in the United States with no affected EGUs for which construction commenced on or before August 31, 2018, in your State, you must submit a negative declaration letter in place of the State plan.

§ 60.5715a What is the review and approval process for my plan?

The EPA will review your plan according to § 60.27a to approve or disapprove such plan or revision or each portion thereof.

§ 60.5720a What if I do not submit a plan or my plan is not approvable?

(a) If you do not submit an approvable plan the EPA will develop a Federal plan for your State according to § 60.27a. The Federal plan will implement the emission guidelines contained in this subpart. Owners and operators of affected EGUs not covered by an approved plan must comply with a Federal plan implemented by the EPA for the State.

(b) After a Federal plan has been implemented in your State, it will be withdrawn when your State submits, and the EPA approves, a plan.

§ 60.5725a In lieu of a State plan submittal, are there other acceptable option(s) for a State to meet its CAA section 111(d) obligations?

A State may meet its CAA section 111(d) obligations only by submitting a State plan submittal or a negative declaration letter (if applicable).

§ 60.5730a Is there an approval process for a negative declaration letter?

The EPA has no formal review process for negative declaration letters. Once your negative declaration letter has been received, the EPA will place a copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, an affected EGU for which construction commenced on or before August 31, 2018 is found in your State, you will be found to have failed to submit a final plan as required, and a Federal plan implementing the emission guidelines contained in this subpart, when promulgated by the EPA, will apply to that affected EGU until you submit, and the EPA approves, a final State plan.

State Plan Requirements

§ 60.5735a What must I include in my federally enforceable State plan?

(a) You must include the components described in paragraphs (a)(1) through (4) of this section in your plan submittal. The final plan must meet the requirements of, and include the information required under, § 60.5740a.

(1) *Identification of affected EGUs.* Consistent with § 60.25a(a), you must identify the affected EGUs covered by your plan and all affected EGUs in your State that meet the applicability criteria in § 60.5775a. In addition, you must include an inventory of CO_2 emissions from the affected EGUs during the most recent calendar year for which data is available prior to the submission of the plan.

(2) *Standards of performance.* You must provide a standard of performance for each affected EGU according to § 60.5755a and compliance periods for each standard of performance according to § 60.5750a. In establishing a standard of performance, the state must evaluate all of the heat rate improvements described in § 60.5740a.

(3) *Identification of applicable monitoring, reporting, and recordkeeping requirements for each affected EGU.* You must include in your plan all applicable monitoring, reporting and recordkeeping requirements for each affected EGU and the requirements must be consistent with or no less stringent than the requirements specified in § 60.5785a.

(4) *State reporting.* Your plan must include a description of the process, contents, and schedule for State reporting to the EPA about plan implementation and progress, including information required under § 60.5795a.

(b) You must follow the requirements of subpart Ba of this part and demonstrate that they were met in your State plan.

§ 60.5740a What must I include in my plan submittal?

(a) In addition to the components of the plan listed in § 60.5735a, a state plan submittal to the EPA must include the information in paragraphs (a)(1) through (8) of this section. This information must be submitted to the EPA as part of your plan submittal but

will not be codified as part of the federally enforceable plan upon approval by EPA.

(1) You must include a summary of how you determined each standard of performance for each affected EGU according to § 60.5755a(a). You must include in the summary an evaluation of the applicability of each of the following heat rate improvements to each affected EGU:

(i) Neural network/intelligent sootblowers

(ii) Boiler feed pumps

(iii) Air heater and duct leakage control

(iv) Variable frequency drives

(v) Blade path upgrades for steam turbines

(vi) Redesign or replacement of economizer

(vii) Improved operating and maintenance practices

(2) In applying a standard of performance, if you consider remaining useful life and other factors for an affected EGU as provided in § 60.24a(e), you must include a summary of the application of the relevant factors in deriving a standard of performance.

(3) You must include a demonstration that each affected EGU's standard of performance is quantifiable, non-duplicative, permanent, verifiable, and enforceable according to § 60.5755a.

(4) Your plan demonstration, if applicable, must include the information listed in paragraphs (a)(4)(i) through (v) of this section as applicable.

(i) A summary of each affected EGU's anticipated future operation characteristics, including:

(A) Annual generation;

(B) CO_2 emissions;

(C) Fuel use, fuel prices (when applicable), fuel carbon content;

(D) Fixed and variable operations and maintenance costs (when applicable);

(E) Heat rates; and

(F) Electric generation capacity and capacity factors.

(ii) A timeline for implementation of EGU-specific actions (if applicable).

(iii) All wholesale electricity prices.

(iv) A time period of analysis, which must extend through at least 2035.

(v) A demonstration that each standard of performance included in your plan meets the requirements of § 60.5755a.

(5) Your plan submittal must include a timeline with all the programmatic milestone steps the State intends to take between the time of the State plan submittal and [date three years after the notice of availability of a final emission guideline is published in the **Federal Register**] to ensure the plan is effective as of [date plan takes effect].

(6) Your plan submittal must adequately demonstrate that your State has the legal authority (*e.g.,* through regulations or legislation) and funding to implement and enforce each component of the State plan submittal, including federally enforceable standards of performance for affected EGUs.

(7) Your plan submittal must include certification that a hearing required under § 60.23a(c)on the State plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission, pursuant to the requirements of § 60.27a(f).

(8) Your plan submittal must include supporting material for your plan including:

(i) Materials demonstrating the State's legal authority to implement and enforce each component of its plan, including standards of performance, pursuant to the requirements of § 60.27a(f) and § 60.5740a(a)(6);

(ii) Materials supporting calculations for affected EGU's standards of performance according to § 60.5755a; and

(iii) Any other materials necessary to support evaluation of the plan by the EPA.

(b) You must submit your final plan to the EPA electronically according to § 60.5800a.

§ 60.5745a What are the timing requirements for submitting my plan?

You must submit a plan with the information required under § 60.5740a by [date three years after the notice of availability of a final emission guideline is published in the **Federal Register**].

§ 60.5750a What schedules, performance periods, and compliance periods must I include in my plan?

The standards of performance for affected EGUs regulated under the plan must include compliance periods. Any compliance period extending more than 24 months from the date required for submittal of the plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities.

§ 60.5755a What standards of performance must I include in my plan?

(a) You must set a standard of performance for each affected EGU within the state.

(1) The standard of performance must be an emission performance rate relating mass of CO_2 emitted per unit of energy (*e.g.* pounds of CO_2 emitted per MWh).

(2) In establishing any standard of performance, you must consider the applicability of each of the heat rate improvements included in § 60.5740a(1) to the affected EGU.

(i) In applying a standard of performance to any affected EGU, you may consider the source-specific factors included in § 60.24(e).

(ii) If you consider source-specific factors to apply a standard of performance, you must include a demonstration in your plan submission for how you considered such factors.

(b) Standards of performance for affected EGUs included under your plan must be demonstrated to be quantifiable, verifiable, non-duplicative, permanent, and enforceable with respect to each affected EGU. The plan submittal must include the methods by which each standard of performance meets each of the requirements in paragraphs (c) through (f) of this section.

(c) An affected EGU's standard of performance is quantifiable if it can be reliably measured in a manner that can be replicated.

(d) An affected EGU's standard of performance is verifiable if adequate monitoring, recordkeeping and reporting requirements are in place to enable the State and the Administrator to independently evaluate, measure, and verify compliance with the standard of performance.

(e) An affected EGU's standard of performance is permanent if the standard of performance must be met for each compliance period, unless it is replaced by another standard of performance in an approved plan revision.

(f) An affected EGU's standard of performance is enforceable if:

(1) A technically accurate limitation or requirement and the time period for the limitation or requirement are specified;

(2) Compliance requirements are clearly defined;

(3) The affected EGU responsible for compliance and liable for violations can be identified;

(4) Each compliance activity or measure is enforceable as a practical matter; and

(5) The Administrator, the State, and third parties maintain the ability to enforce against violations (including if an affected EGU does not meet its standard of performance based on its emissions) and secure appropriate corrective actions, in the case of the Administrator pursuant to CAA sections 113(a)–(h), in the case of a State, pursuant to its plan, State law or CAA section 304, as applicable, and in the

case of third parties, pursuant to CAA section 304.

§ 60.5760a What is the procedure for revising my plan?

EPA-approved plans can be revised only with approval by the Administrator. The Administrator will approve a plan revision if it is satisfactory with respect to the applicable requirements of this subpart and any applicable requirements of subpart Ba of this part, including the requirements in § 60.5740a. If one (or more) of the elements of the plan set in § 60.5735a require revision, a request must be submitted to the Administrator indicating the proposed revisions to the plan to ensure the CO_2 emission performance are met.

§ 60.5765a What must I do to meet my plan obligations?

To meet your plan obligations, you must demonstrate that your affected EGUs are complying with their standards of performance as specified in § 60.5755a.

Applicability of Plans to Affected EGUs

§ 60.5770a Does this subpart directly affect EGU owners or operators in my State?

(a) This subpart does not directly affect EGU owners or operators in your State. However, affected EGU owners or operators must comply with the plan that a State develops to implement the emission guidelines contained in this subpart.

(b) If a State does not submit a plan to implement and enforce the emission guidelines contained in this subpart by [date three years after the notice of availability of a final emission guideline is published in the **Federal Register**], or the date that EPA disapproves a final plan, the EPA will implement and enforce a Federal plan, as provided in § 60.27a(c), applicable to each affected EGU within the State that commenced construction on or before January 8, 2014.

§ 60.5775a What affected EGUs must I address in my State plan?

(a) The EGUs that must be addressed by your plan are any affected EGU that commenced construction on or before August 31, 2018.

(b) An affected EGU is a steam generating unit that meets the relevant applicability conditions specified in paragraph (b)(1) through (2), as applicable, of this section except as provided in § 60.5780a.

(1) Serves a generator connected to a utility power distribution system with a nameplate capacity greater than 25 MW-net (*i.e.,* capable of selling greater than 25 MW of electricity);

(2) Has a base load rating (*i.e.,* design heat input capacity) greater than 260 GJ/hr (250 MMBtu/hr) heat input of fossil fuel (either alone or in combination with any other fuel).

§ 60.5780a What EGUs are excluded from being affected EGUs?

(a) An EGU that is excluded from being an affected EGU is:

(1) An EGU that is subject to subpart TTTT of this part as a result of commencing construction, reconstruction or modification after the subpart TTTT applicability date;

(2) A steam generating unit that is, and always has been, subject to a federally enforceable permit limiting annual net-electric sales to one-third or less of its potential electric output, or 219,000 MWh or less;

(3) A stationary combustion turbine that meets the definition of either a combined cycle or combined heat and power combustion turbine;

(4) An IGCC unit;

(5) A non-fossil unit (*i.e.,* a unit that is capable of combusting 50 percent or more non-fossil fuel) that has always limited the use of fossil fuels to 10 percent or less of the annual capacity factor or is subject to a federally enforceable permit limiting fossil fuel use to 10 percent or less of the annual capacity factor;

(6) An EGU that is a combined heat and power unit that has always limited, or is subject to a federally enforceable permit limiting, annual net-electric sales to a utility distribution system to no more than the greater of either 219,000 MWh or the product of the design efficiency and the potential electric output;

(7) An EGU that serves a generator along with other steam generating unit(s), IGCC(s), or stationary combustion turbine(s) where the effective generation capacity (determined based on a prorated output of the base load rating of each steam generating unit, IGCC, or stationary combustion turbine) is 25 MW or less;

(8) An EGU that is a municipal waste combustor unit that is subject to subpart Eb of this part; or

(9) An EGU that is a commercial or industrial solid waste incineration unit that is subject to subpart CCCC of this part.

(b) [Reserved]

§ 60.5785a What applicable monitoring, recordkeeping, and reporting requirements do I need to include in my plan for affected EGUs?

(a) Your plan must include monitoring, recordkeeping, and reporting requirements for affected EGUs. To satisfy this requirement, you have the option of either:

(1) Specifying that sources must report emission and electricity generation data according to part 75 of this chapter; or

(2) Describing an alternative monitoring, recordkeeping, and reporting program that includes specifications for the following program elements:

(i) Monitoring plans that specify the monitoring methods, systems, and formulas that will be used to measure CO_2 emissions;

(ii) Monitoring methods to continuously and accurately measure all CO_2 emissions, CO_2 emission rates, and other data necessary to determine compliance or assure data quality;

(iii) Quality assurance test requirements to ensure monitoring systems provide reliable and accurate data for assessing and verifying compliance;

(iv) Recordkeeping requirements;

(v) Electronic reporting procedures and systems; and

(vi) Data validation procedures for ensuring data are complete and calculated consistent with program rules, including procedures for determining substitute data in instances where required data would otherwise be incomplete.

(b) [Reserved]

Recordkeeping and Reporting Requirements

§ 60.5790a What are my recordkeeping requirements?

(a) You must keep records of all information relied upon in support of any demonstration of plan components, plan requirements, supporting documentation, and the status of meeting the plan requirements defined in the plan for each interim step and the interim period. After [date plan takes effect], States must keep records of all information relied upon in support of any continued demonstration that the final CO_2 emission performance rates or CO_2 emissions goals are being achieved.

(b) You must keep records of all data submitted by the owner or operator of each affected EGU that is used to determine compliance with each affected EGU emissions standard or requirements in an approved State plan, consistent with the affected EGU requirements listed in § 60.5785a.

(c) If your State has a requirement for all hourly CO_2 emissions and net generation information to be used to calculate compliance with an annual emissions standard for affected EGUs,

any information that is submitted by the owners or operators of affected EGUs to the EPA electronically pursuant to requirements in Part 75 meets the recordkeeping requirement of this section and you are not required to keep records of information that would be in duplicate of paragraph (b) of this section.

(d) You must keep records at a minimum for 5 years from the date the record is used to determine compliance with a standard of performance or plan requirement. Each record must be in a form suitable and readily available for expeditious review.

§ 60.5795a What are my reporting and notification requirements?

You must submit an annual report as required under § 60.25a(e) and (f).

§ 60.5800a How do I submit information required by these Emission Guidelines to the EPA?

(a) You must submit to the EPA the information required by the emission guidelines in this subpart following the procedures in paragraphs (b) through (e) of this section.

(b) All negative declarations, State plan submittals, supporting materials that are part of a State plan submittal, any plan revisions, and all State reports required to be submitted to the EPA by the State plan must be reported through EPA's State Plan Electronic Collection System (SPeCS). SPeCS is a web accessible electronic system accessed at the EPA's Central Data Exchange (CDX) (*http://www.epa.gov/cdx/*). States who claim that a State plan submittal or supporting documentation includes confidential business information (CBI) must submit that information on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: State and Local Programs Group, MD C539–01, 4930 Old Page Rd., Durham, NC 27703.

(c) Only a submittal by the Governor or the Governor's designee by an electronic submission through SPeCS shall be considered an official submittal to the EPA under this subpart. If the Governor wishes to designate another responsible official the authority to submit a State plan, the EPA must be notified via letter from the Governor prior to the [date three years after the notice of availability of a final emission guideline is published in the **Federal Register**], deadline for plan submittal so that the official will have the ability to submit a plan in the SPeCS. If the Governor has previously delegated authority to make CAA submittals on the Governor's behalf, a State may submit documentation of the delegation in lieu of a letter from the Governor. The letter or documentation must identify the designee to whom authority is being designated and must include the name and contact information for the designee and also identify the State plan preparers who will need access to SPeCS. A State may also submit the names of the State plan preparers via a separate letter prior to the designation letter from the Governor in order to expedite the State plan administrative process. Required contact information for the designee and preparers includes the person's title, organization, and email address.

(d) The submission of the information by the authorized official must be in a non-editable format. In addition to the non-editable version all plan components designated as federally enforceable must also be submitted in an editable version.

(e) You must provide the EPA with non-editable and editable copies of any submitted revision to existing approved federally enforceable plan components. The editable copy of any such submitted plan revision must indicate the changes made at the State level, if any, to the existing approved federally enforceable plan components, using a mechanism such as redline/strikethrough. These changes are not part of the State plan until formal approval by EPA.

Definitions

§ 60.5805a What definitions apply to this subpart?

As used in this subpart, all terms not defined herein will have the meaning given them in the Clean Air Act and in subparts TTTT, A (General Provisions) and subpart Ba of this part.

Affected electric generating unit or *Affected EGU* means a steam generating unit that meets the relevant applicability conditions in section § 60.5775a, except as provided in § 60.5780a.

Air heater means a device that recovers heat from the flue gas for use in pre-heating the incoming combustion air and potentially for other uses such as coal drying.

Annual capacity factor means the ratio between the actual heat input to an EGU during a calendar year and the potential heat input to the EGU had it been operated for 8,760 hours during a calendar year at the base load rating.

Base load rating means the maximum amount of heat input (fuel) that an EGU can combust on a steady-state basis, as determined by the physical design and characteristics of the EGU at ISO conditions.

*Boiler feed pump (*or *boiler feedwater pump*) means a device used to pump feedwater into a steam boiler at an EGU. The water may be either freshly supplied or returning condensate produced from condensing steam produced by the boiler.

CO_2 emission rate means for an affected EGU, the reported CO_2 emission rate of an affected EGU used by an affected EGU to demonstrate compliance with its CO_2 standard of performance.

Combined heat and power unit or *CHP unit,* (also known as ''cogeneration'') means an electric generating unit that uses a steam-generating unit or stationary combustion turbine to simultaneously produce both electric (or mechanical) and useful thermal output from the same primary energy source.

Compliance period means a discrete time period for an affected EGU to comply with a standard of performance.

Economizer means a heat exchange device used to capture waste heat from boiler flue gas which is then used to heat the boiler feedwater.

Fossil fuel means natural gas, petroleum, coal, and any form of solid fuel, liquid fuel, or gaseous fuel derived from such material to create useful heat.

Integrated gasification combined cycle facility or *IGCC* means a combined cycle facility that is designed to burn fuels containing 50 percent (by heat input) or more solid-derived fuel not meeting the definition of natural gas plus any integrated equipment that provides electricity or useful thermal output to either the affected facility or auxiliary equipment. The Administrator may waive the 50 percent solid-derived fuel requirement during periods of the gasification system construction, startup and commissioning, shutdown, or repair. No solid fuel is directly burned in the unit during operation.

Intelligent sootblower means an automated system that use process measurements to monitor the heat transfer performance and strategically allocate steam to specific areas to remove ash buildup at a steam generating unit.

ISO conditions means 288 Kelvin (15 °C), 60 percent relative humidity and 101.3 kilopascals pressure.

Nameplate capacity means, starting from the initial installation, the maximum electrical generating output that a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer is capable of producing (in MWe, rounded to the

nearest tenth) on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the equipment, or starting from the completion of any subsequent physical change resulting in an increase in the maximum electrical generating output that the equipment is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

Natural gas means a fluid mixture of hydrocarbons (*e.g.,* methane, ethane, or propane), composed of at least 70 percent methane by volume or that has a gross calorific value between 35 and 41 megajoules (MJ) per dry standard cubic meter (950 and 1,100 Btu per dry standard cubic foot), that maintains a gaseous State under ISO conditions. In addition, natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet. Finally, natural gas does not include the following gaseous fuels: landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

Net electric output means the amount of gross generation the generator(s) produce (including, but not limited to, output from steam turbine(s), combustion turbine(s), and gas expander(s)), as measured at the generator terminals, less the electricity used to operate the plant (*i.e.,* auxiliary loads); such uses include fuel handling equipment, pumps, fans, pollution control equipment, other electricity needs, and transformer losses as measured at the transmission side of the step up transformer (*e.g.,* the point of sale).

Net energy output means:

(1) The net electric or mechanical output from the affected facility, plus 100 percent of the useful thermal output measured relative to SATP conditions that is not used to generate additional electric or mechanical output or to enhance the performance of the unit (*e.g.,* steam delivered to an industrial process for a heating application).

(2) For combined heat and power facilities where at least 20.0 percent of the total gross or net energy output consists of electric or direct mechanical output and at least 20.0 percent of the total gross or net energy output consists of useful thermal output on a 12-operating month rolling average basis, the net electric or mechanical output from the affected EGU divided by 0.95, plus 100 percent of the useful thermal output; (*e.g.,* steam delivered to an industrial process for a heating application).

Neural network means a computer model that can be used to optimize combustion conditions, steam temperatures, and air pollution at steam generating unit.

Programmatic milestone means the implementation of measures necessary for plan progress, including specific dates associated with such implementation. Prior to [date plan takes effect], programmatic milestones are applicable to all state plan approaches and measures.

Standard ambient temperature and pressure (SATP) conditions means 298.15 Kelvin (25 °C, 77 °F)) and 100.0 kilopascals (14.504 psi, 0.987 atm) pressure. The enthalpy of water at SATP conditions is 50 Btu/lb.

State agent means an entity acting on behalf of the State, with the legal authority of the State.

Stationary combustion turbine means all equipment, including but not limited to the turbine engine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), heat recovery system, fuel compressor, heater, and/or pump, post-combustion emissions control technology, and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any combined cycle combustion turbine, and any combined heat and power combustion turbine based system plus any integrated equipment that provides electricity or useful thermal output to the combustion turbine engine, heat recovery system or auxiliary equipment. Stationary means that the combustion turbine is not self-propelled or intended to be propelled while performing its function. It may, however, be mounted on a vehicle for portability. If a stationary combustion turbine burns any solid fuel directly it is considered a steam generating unit.

Steam generating unit means any furnace, boiler, or other device used for combusting fuel and producing steam (nuclear steam generators are not included) plus any integrated equipment that provides electricity or useful thermal output to the affected facility or auxiliary equipment.

Useful thermal output means the thermal energy made available for use in any heating application (*e.g.,* steam delivered to an industrial process for a heating application, including thermal cooling applications) that is not used for electric generation, mechanical output at the affected EGU, to directly enhance the performance of the affected EGU (*e.g.,* economizer output is not useful thermal output, but thermal energy used to reduce fuel moisture is considered useful thermal output), or to supply energy to a pollution control device at the affected EGU. Useful thermal output for affected EGU(s) with no condensate return (or other thermal energy input to the affected EGU(s)) or where measuring the energy in the condensate (or other thermal energy input to the affected EGU(s)) would not meaningfully impact the emission rate calculation is measured against the energy in the thermal output at SATP conditions. Affected EGU(s) with meaningful energy in the condensate return (or other thermal energy input to the affected EGU) must measure the energy in the condensate and subtract that energy relative to SATP conditions from the measured thermal output.

Valid data means quality-assured data generated by continuous monitoring systems that are installed, operated, and maintained according to part 75 of this chapter. For CEMS, the initial certification requirements in § 75.20 of this chapter and appendix A to part 75 of this chapter must be met before quality-assured data are reported under this subpart; for on-going quality assurance, the daily, quarterly, and semiannual/annual test requirements in sections 2.1, 2.2, and 2.3 of appendix B to part 75 of this chapter must be met and the data validation criteria in sections 2.1.5, 2.2.3, and 2.3.2 of appendix B to part 75 of this chapter apply. For fuel flow meters, the initial certification requirements in section 2.1.5 of appendix D to part 75 of this chapter must be met before quality-assured data are reported under this subpart (except for qualifying commercial billing meters under section 2.1.4.2 of appendix D), and for on-going quality assurance, the provisions in section 2.1.6 of appendix D to part 75 of this chapter apply (except for qualifying commercial billing meters).

Variable frequency drive means an adjustable-speed drive used on induced draft fans and boiler feed pumps to control motor speed and torque by varying motor input frequency and voltage.

Waste-to-Energy means a process or unit (*e.g.,* solid waste incineration unit) that recovers energy from the conversion or combustion of waste stream materials, such as municipal solid waste, to generate electricity and /or heat.

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