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

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

RIN 3170–AA87

Technical Specifications for Submissions to the Prepaid Account Agreements Database

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notification of technical specifications.

SUMMARY: Beginning on April 1, 2019, prepaid account issuers are required to submit their currently-offered prepaid account agreements to the Bureau of Consumer Financial Protection (Bureau), to be posted on the Bureau's website. The Bureau is issuing technical specifications for those submissions, including the URL for the website at which issuers (or their designees) can register and submit their prepaid account agreements. This document relates to a final rule published in the **Federal Register** on November 22, 2016, as amended on April 25, 2017 and February 13, 2018, regarding prepaid accounts under Regulations E and Z.

DATES: The requirement to submit prepaid account agreements on a rolling basis to the Bureau becomes effective on April 1, 2019. Issuers must submit to the Bureau no later than May 1, 2019 all prepaid account agreements they offer as of April 1, 2019.

FOR FURTHER INFORMATION CONTACT: For inquiries regarding the prepaid account agreement submission requirement, contact Kristine M. Andreassen and Thomas L. Devlin, Senior Counsels, Office of Regulations, at 202–435–7700 or *https://reginquiries.consumerfinance.gov.* For technical assistance regarding the Collect submission system, contact *Collect_Support@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 2016, the Bureau issued a final rule titled ''Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth In Lending Act (Regulation Z)'' (2016 Final Rule).[1] The Bureau subsequently amended the 2016 Final Rule twice, in 2017 and 2018.[2] The 2016 Final Rule, as subsequently amended, is referred to herein as the Prepaid Accounts Rule. Among other things, the Prepaid Accounts Rule added § 1005.19 to Regulation E, which requires prepaid account issuers to submit their currently-offered prepaid account agreements to the Bureau, post those agreements on their websites, and make account agreements for open prepaid accounts available to consumers upon request. Specifically, § 1005.19(b) requires an issuer to make submissions of prepaid account agreements on a rolling basis, in the form and manner specified by the Bureau. Section 1005.19(b) also describes in detail the information that must be submitted to the Bureau; the requirements for submitting amended agreements and withdrawing agreements that are no longer offered; the terms of *de minimis* and product testing exceptions to the submission requirement; and the form and content of agreements that must be submitted to the Bureau.

In the 2016 Final Rule, the Bureau stated that it would issue technical specifications addressing the form and manner for submission of agreements, and publish a notice in the **Federal Register** when its streamlined electronic submission process is operational.[3]

The Prepaid Accounts Rule becomes effective on April 1, 2019. Section 1005.19(f) states that an issuer must submit to the Bureau no later than May 1, 2019 all prepaid account agreements it offers as of April 1, 2019. Following that, § 1005.19(b) requires an issuer to make rolling submissions to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer any prepaid account agreement.

[1] 81 FR 83934 (Nov. 22, 2016).

[2] *See* 82 FR 18975 (Apr. 25, 2017) and 83 FR 6364 (Feb. 13, 2018). These amendments, among other things, extended the effective date of the Prepaid Accounts Rule to April 1, 2019.

[3] 81 FR 83934, 84151 (Nov. 22, 2016).

II. Technical Specifications

A. Collect Website

The Bureau has established the Collect website for submitting prepaid account agreements and agreement information to the Bureau pursuant to § 1005.19.[4] The Collect website can be accessed at *https://collect.consumerfinance.gov.* To register, submitters will complete and submit a registration form to *Collect_Support@cfpb.gov*.[5] The Collect website registration form is available at *https://www.consumerfinance.gov/data-research/prepaid-accounts/issuer-instructions/.* Once submitters receive their login credentials, they will be able to add, amend, or withdraw prepaid account agreement information in the future.[6]

The Collect website will use interactive forms to guide submitters through the submission process. After issuers have submitted certain identifying information required by § 1005.19(b)(1)(i), issuers will be prompted to upload the documents that are required to be submitted through the Collect website.

B. File Format

Documents submitted through the Collect website must be in the Portable Document Format (PDF) file format, and must be text-searchable, digitally-created PDFs.[7] These PDF files should not be scanned documents, otherwise known as ''image-only'' PDFs, as these are not text-searchable. For questions

[4] Pursuant to comment 19(a)(4)–2, while the issuer has the legal obligation to comply with the requirements of § 1005.19, an issuer generally may use a third-party service provider (such as a program manager) to satisfy its obligations under § 1005.19, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.

[5] For questions concerning the registration form, please contact the Collect Support Team at *Collect_Support@cfpb.gov.*

[6] Prepaid account issuers and other submitters are encouraged to register as early as possible, to confirm that they can successfully access the system. Submitters who preregister will receive a notification when the Collect website is available to receive submissions.

[7] An issuer can make its agreement submission: As a single document (*i.e.,* one file that contains all of the prepaid agreement, the short form disclosure, and the long form information); with three separate files, each containing one of the required pieces; or with two files, one of which contains two of the required pieces and the other, one.

about file formats, please contact the Bureau at *Collect_Support@cfpb.gov.*

C. Compliance Assistance

The Bureau has made a number of compliance resources available to assist issuers in using the Collect website, including a user guide, a quick reference guide, frequently asked questions, and a recorded webinar.[8] These resources will be available on the Bureau's website at *https://www.consumerfinance.gov/data-research/prepaid-accounts/.* For technical assistance, issuers can also contact the Bureau at *Collect_Support@cfpb.gov.*

III. Legal Authority

The Bureau is issuing this procedural rule pursuant to its authority under section 1022(b)(1) of the Dodd-Frank Act, which authorizes the Bureau to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial law.[9] The Bureau is also issuing this procedural rule pursuant to section 904 of the Electronic Fund Transfer Act (EFTA), which authorizes the Bureau to prescribe regulations necessary to carry out the purposes of EFTA.[10]

IV. Regulatory Requirements

The Bureau has concluded that these technical specifications constitute a rule of agency organization, procedure, or practice exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act (APA), pursuant to 5 U.S.C. 553(b). Because the procedural rule relates solely to agency procedure and practice, it is not substantive, and therefore is not subject to the 30-day delayed effective date for substantive rules under section 553(d) of the APA. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.

[8] The Bureau has previously issued various implementation tools regarding the Prepaid Accounts Rule, including a small entity compliance guide, executive summary of the rule, summaries of key changes for payroll card accounts and government benefit accounts, a prepaid account coverage chart, a summary of the rule's effective date provisions, and a guide to preparing the short form disclosure, among others. These materials can be found on the Bureau's guidance and implementation website at *https://www.consumerfinance.gov/policy-compliance/guidance/prepaid-rule/.*

[9] 12 U.S.C. 5512(b)(1).

[10] 15 U.S.C. 1693b.

V. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[11] Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to the account agreement submission requirements in § 1005.19 were previously submitted to OMB in accordance with the PRA under OMB Control Number 3170–0014. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB. The Bureau has determined that these technical specifications do not introduce any new or revised collections of information; therefore, the Bureau does not intend to submit a separate request to OMB regarding these technical specifications.

Dated: February 22, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–03852 Filed 3–5–19; 8:45 am]

BILLING CODE 4810–AM–P

[11] 44 U.S.C. 3501 *et seq.*

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC–33384; File No. S7–02–19]

RIN 3235–AL42

Amendments to the Timing Requirements for Filing Reports on Form N–Port

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') is adopting an interim final rule that will require reports on Form N–PORT for each month in a fiscal quarter to be filed with the Commission not later than 60 days after the end of that fiscal quarter (as opposed to filing each monthly report no later than 30 days after the end of each month). The monthly report on Form N–PORT for the third month of the quarter (the ''quarter-end report'') will continue to become publicly available (i.e., all portions of the quarter-end report, with the exception of the items identified in General Instruction F of Form N–PORT, will be made public upon filing). The monthly reports on Form N–PORT for the first and second months of the fiscal quarter will remain non-public. We are also amending our regulations and Form N–PORT to require that funds, no later than 30 days after the end of each month, maintain in their records the information that is required to be included in Form N–PORT. Registrants will promptly make such records available to the Commission upon request. Finally, we are amending Form N–LIQUID to provide for a voluntary explanatory notes section. Importantly, these amendments in no way affect the amount or timing of the information that will be made available to the public.

DATES: Effective March 6, 2019. The applicable compliance dates are discussed in the **SUPPLEMENTARY INFORMATION** section of this Interim Final Rule.

FOR FURTHER INFORMATION CONTACT: Jacob D. Krawitz, Branch Chief, or Brian McLaughlin Johnson, Assistant Director, at (202) 551–6792, Rulemaking Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending rule 30b1–9 [17 CFR 270.30b1–9] under the Investment Company Act [15 U.S.C. 80a–1 *et seq.*] and Forms N–PORT [referenced in 17 CFR 274.150] and N–LIQUID [referenced in 17 CFR 274.223] under the Investment Company Act.

I. Discussion

In connection with the Commission's ongoing evaluation of its collection of sensitive and non-public data, and in light of the frequency, volume, and complexity, as well as the potentially sensitive and non-public nature, of much of the data collected on Form N–PORT,[1] the Commission is modifying the timing requirements for filing monthly reports on Form N–PORT. We are amending rule 30b1–9 and Form N–PORT to require funds to file a report on Form N–PORT for each month in the fund's fiscal quarter not later than 60 days after the end of that fiscal quarter. In addition, we are amending rule 30b1–9 and Form N–PORT to require funds, no later than 30 days after the end of each month, to maintain in their records

[1] *See* Statement on Cybersecurity (September 20, 2017), *available at https://www.sec.gov/news/public-statement/statement-clayton-2017-09-20; see also* Testimony before the Financial Services and General Government Subcommittee of the Senate Committee on Appropriations (June 5, 2018), *available at https://www.sec.gov/news/testimony/testimony-financial-services-and-general-government-subcommittee-senate-committee.*

the information that is required to be included in Form N–PORT.[2] Importantly, these amendments in no way affect the amount or timing of the information that will be made available to the public.

A. Form N–PORT

On October 13, 2016, the Commission adopted new rules and forms as well as amendments to its rules and forms to modernize the reporting and disclosure of information by registered investment companies.[3] In particular, the Commission adopted new Form N–PORT, which requires certain registered investment companies to report information about their monthly portfolio holdings to the Commission in a structured data format.[4] Form N–PORT is a portfolio holdings reporting form that will be filed by all registered management investment companies, other than money market funds and small business investment companies (''SBICs''), and by unit investment trusts that operate as exchange-traded funds (collectively, ''funds'').[5] Under the rule the Commission adopted in 2016, after the compliance date, funds must file reports on Form N–PORT each month, no later than 30 days after month-end, using the Commission's EDGAR system.[6] The compliance date for rule 30b1–9 was June 1, 2018 for larger fund groups and June 1, 2019 for smaller fund groups.[7]

In 2017, the Commission's Chairman initiated an assessment of the Commission's internal cybersecurity risk profile and its approach to cybersecurity from a regulatory and oversight perspective.[8] The Chairman also directed the staff to take a number of steps designed to strengthen the Commission's cybersecurity risk profile, with an initial focus on the Commission's EDGAR system as well as the non-public information collected and held by the Commission.[9]

On December 8, 2017, while these efforts were ongoing, the Commission determined to delay by nine months the requirement that funds file reports on Form N–PORT through the EDGAR system.[10] The Commission also adopted temporary rule 30b1–9(T), which, until April 1, 2019, requires larger fund groups to satisfy their reporting obligations by maintaining in their records the information required to be included in Form N–PORT.[11] After such time, larger fund groups must file reports on Form N–PORT through the EDGAR system.[12] Smaller fund groups must begin to file reports on Form N–PORT through the EDGAR system by April 30, 2020.[13]

B. Commission's Determination To Modify the Timing Requirements for Filing Reports on Form N–PORT

The Commission receives, stores, and transmits a substantial amount of data, including sensitive and non-public data. There are certain types of sensitive data that the Commission obtains from market participants in order to fulfill its mission.[14] The collection, storage, analysis, availability, and protection of data have become fundamental to the protection of investors, the orderly function and performance of our capital markets, market participants, and the Commission.[15]

In that regard, maintaining effective cybersecurity practices requires an ongoing evaluation of the data an organization obtains and protects. When determining when and how to collect data, the Commission evaluates its approach in light of the importance to its mission of each type of data we receive, particularly in the case of sensitive, non-public information.[16]

The Commission periodically assesses, as part of its cybersecurity efforts, whether alternatives exist that would allow the Commission to fulfill its mission while reducing the sensitivity of data we collect.[17] For example, in 2018, after concluding that the Commission would be able to achieve its regulatory objectives without taking in certain sensitive personally identifiable information, the Commission eliminated the requirement for filers of certain forms to provide us with their social security numbers, foreign identity numbers or date or place of birth.[18] We have also reduced the market sensitivity of the non-public data we collect by obtaining it on a delayed basis, when appropriate.[19]

For many years, the Commission has collected registered fund portfolio data on a quarterly basis on Forms N–Q and N–CSR, both of which are public filings.[20] We acknowledged that this data was sensitive, and addressed that sensitivity by requiring reports on Form N–Q to be filed no later than 60 days after the end of the first and third quarters of a fund's fiscal year, and Form N–CSR no later than 70 days after the end of the second and fourth quarters.[21] We also made this data public upon filing.

[2] We also are amending Form N–LIQUID to provide for a voluntary explanatory notes section. *See* amended Form N–LIQUID.

[3] Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (''Adopting Release'').

[4] Reports on Form N–PORT are required to be filed in an extensible markup language (''XML'') structured data format.

[5] *See* Form N–PORT.

[6] *See* rule 30b1-9; *see* General Instruction C (Filing of Reports) of Form N–PORT; *see also* Adopting Release, *supra* footnote 3, at section II.H.1.

[7] When we adopted Form N–PORT, we provided for a tiered set of compliance dates based on a fund group's asset size. Specifically, for larger entities—funds that together with other investment companies in the same ''group of related investment companies'' have net assets of $1 billion or more as of the end of the most recent fiscal year of the fund (''larger fund groups'')—we adopted a compliance date of June 1, 2018. For smaller fund groups, we adopted a compliance date of June 1, 2019, anticipating that smaller fund groups would benefit from this extra time to comply and potentially would benefit from the lessons learned by the larger fund groups during the adoption period for Form N–PORT. *See* Adopting Release, *supra* footnote 3, at section II.H.1.

[8] *See* Statement on Cybersecurity, *supra* footnote 1.

[9] *See* Update on Review of 2016 Cyber Intrusion Involving EDGAR System (Oct. 2, 2017), *available at https://www.sec.gov/news/press-release/2017-186; see also* Investment Company Reporting Modernization, Investment Company Act Release No. 32936 (Dec. 8, 2017) [82 FR 58731 (Dec. 14, 2017)] (''Temporary Final Rule Release''), at note 17 and accompanying text.

[10] *See id.*

[11] *See* rule 30b1–9(T); *see also* Temporary Final Rule Release, *supra* footnote 9.

[12] *See* Temporary Final Rule Release, *supra* footnote 9.

[13] *See id.*

[14] *See* Statement on Cybersecurity, *supra* footnote 1.

[15] *See id.*

[16] *See id.*

[17] *See id.*

[18] *See* Amendments to Forms and Schedules To Remove Provision of Certain Personally Identifiable Information, Investment Company Act Release No. 33077 (Apr. 24, 2018) [83 FR 22190 (May 14, 2018)].

[19] *See* Statement on Cybersecurity, *supra* footnote 1. For example, large private equity advisers and smaller private fund advisers file reports on Form PF 120 days from the end of their fiscal years, while large hedge fund advisers file reports 60 days from the end of each fiscal quarter. *See* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, at section II.B., Investment Advisers Act Release No. 3308 (Oct. 31, 2011) [76 FR 71228 (Nov. 16, 2011)] (''Form PF Adopting Release'') (noting in connection with the non-public nature of Form PF data that the Commission had extended timelines for advisers' filing fund information compared to the proposal and that, as a result, filings will contain less current, and therefore less sensitive, data).

[20] *See* Adopting Release, *supra* footnote 3, at note 27.

[21] *See* 17 CFR 270.30b1–5 (rule 30b1–5) (requiring management companies, other than SBICs, to file reports on Form N–Q no more than 60 days after the close of the first and third quarters of each fiscal year); 17 CFR 270.30b2–1 (rule 30b2–1) (requiring management companies to file reports on Form N–CSR no later than 10 days after the transmission to stockholders of any report required to be transmitted to stockholders under rule 30e–1). *See also* rules 17 CFR 270.30e–1 (rule 30e–1) and 17 CFR 270.30e–2 (rule 30e–2) (requiring management companies and certain UITs to transmit to stockholders semi-annual reports containing, among other things, the fund's portfolio

Continued

In adopting Form N–PORT in 2016, the Commission changed the frequency of reporting and filing fund portfolio holdings information to monthly, with the first two months of a fiscal quarter filed confidentially with the Commission.[22] In making this 2016 change, the Commission acknowledged tradeoffs raised by commenters between (i) data sensitivity and data security concerns with this increased frequency of reporting of confidential information, and (ii) countervailing concerns that quarterly portfolio reports can quickly become stale due to the turnover of portfolio securities and fluctuations in the values of portfolio investments.[23] We also noted that requiring funds to file confidential reports more than 30 days after month-end would provide less timely data to the Commission, reducing its utility to the Commission.[24] We stated at that time that the filing of monthly data—which our amendments preserve—would triple the amount of data reported to the Commission in a given year, and that this should enhance the ability of staff to perform analyses of funds in the course of monitoring for industry trends, or identifying issues for examination or inquiry.[25]

At the time, and with the information then available about cybersecurity risks and related tradeoffs on data security, we determined that more frequent reporting was warranted.[26] But we also observed that Commission staff would carefully evaluate the data security protocols that will apply to non-public data reported on Form N–PORT in light of the specific recommendations and concerns raised by commenters.[27] We also directed the staff, in advance of the form's compliance date, to review the controls and systems in place for the use and handling of non-public information reported on Form N–PORT.[28] As discussed above, in 2017, the Commission postponed the initial reporting of Form N–PORT on EDGAR by nine months.[29]

The evaluation of the data security protocols relating to Form N–PORT, in addition to our ongoing assessment of our internal cybersecurity risk profile, have led us to reevaluate whether, in this particular case, we can meaningfully reduce the sensitivity of the data we will maintain while continuing to achieve our regulatory objectives. This re-evaluation has led us to determine that allowing monthly data on Form N–PORT to be reported to the Commission on a more delayed basis—while in no way reducing the amount of data that we ultimately receive, and also preserving the staff's ability to require production of the data on a more timely basis upon request—will allow the Commission to fulfill its mission, while meaningfully reducing the potential cybersecurity risks arising from the collection and maintenance of sensitive non-public data on EDGAR.[30] We are therefore amending rule 30b1–9 and Form N–PORT to require funds to file reports on Form N–PORT for each month in a fiscal quarter not later than 60 days after the end of that quarter.[31] The reports on Form N–PORT for the first two months of the quarterly filing period will continue to be non-public and the quarter-end report (*i.e.,* the last month of the quarter) will become publicly available immediately upon filing, with the exception of the items identified in General Instruction F of Form N–PORT, which will continue to remain non-public.[32]

As is the case under temporary rule 30b1–9(T), in order to continue to provide for Commission access to the information required to be included in Form N–PORT on a more timely basis, we are also amending rule 30b1–9 to require funds to maintain in their records the information that is required to be included on Form N–PORT not later than 30 days after the end of each month.[33] Consistent with current record retention requirements for registered investment companies, such information must be treated as a record under 15 U.S.C. 80a–30(a)(1) (section 31(a)(1) of the Act) and 17 CFR 270.31a–1(b) (rule 31a–1(b)) thereunder, subject to the requirements of 17 CFR 270.31a–2(a)(2) (rule 31a–2(a)(2)).[34] While neither amended rule 30b1–9 nor rule 31a–2 require that the information maintained in the funds' records be stored in an XML format, we believe that doing so would facilitate the filing of Form N–PORT for each month at quarter end.

In reassessing whether, in this particular case, we can meaningfully reduce the sensitivity of the data we will maintain while continuing to achieve our regulatory objectives, we considered that these changes only relate to when funds must file reports on Form N–PORT with the Commission. The data content of what funds must report, either publicly or non-publicly, will not change. In addition, neither the content nor the timing requirements for publicly available information on Form N–PORT will change. Therefore, the amendments will have no effect on the ability of investors and other market participants to use this information to help them make more informed investment decisions. Rather, they will only modify the timing of the Commission's receipt of information for internal purposes. Additionally, requiring funds to maintain the Form N–PORT data in their records 30 days after the end of each month will ensure that the Commission can receive more timely information, when necessary.

This modification will reduce the Commission's cyber risk profile in several ways. First, extending the fiscal quarter-end filing deadline from 30 to 60 days allows the quarter-end report on Form N–PORT to be made public immediately upon filing, with the exception of the non-public fields described above.[35] Without this change, the Commission would need to keep this data non-public for at least a month after filing. This change therefore significantly reduces the volume of non-public data maintained in our systems, with no effect on the information investors and other market participants receive or the timing of such receipt.[36] Second, delaying the filing deadline for

schedules, no more than 60 days after the close of the second and fourth quarters of each fiscal year). These reports include portfolio holdings information as required by Regulation S–X. *See* 17 CFR 210.12–12, et seq. (rule 12–12 of Regulation S–X).

[22] *See infra* footnote 32.

[23] *See* Adopting Release, *supra* footnote 3, at section II.A.3.

[24] *See id.,* at section II.A.4.

[25] *See id.,* at section II.A.3.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *See* Temporary Final Rule Release, *supra* footnote 9.

[30] The Commission has not considered any other changes to Form N–PORT, rules, other forms, and amendments besides those discussed in this release. Additionally, 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.

[31] *See* amended rule 30b1–9; *see also* conforming amendments to 17 CFR 274.150(a) and amended General Instruction A of Form N–PORT. Funds may, at their discretion, file reports on Form N–PORT prior to the 60-day deadline.

[32] Certain data fields on the quarter-end report on Form N–PORT, such as Highly Liquid Investment Minimum (Item B.7), derivatives transactions (Item B.8), country of risk and economic exposure (Item C.5.b), delta (Items C.9.f.v, C.11.c.vii, or C.11.g.iv), liquidity classification for portfolio investments (Item C.7), miscellaneous securities (Part D), or explanatory notes related to any of those topics (Part E) will continue to be masked from the public. *See* General Instruction F of Form N–PORT.

[33] *See* amended rule 30b1–9.

[34] *See* rule 31a–2(a)(2) (providing that funds must preserve certain records for a period not less than six years from the end of the fiscal year, the first two years in an easily accessible place); *see generally* rule 31a–2(f) (requirements for electronic records).

[35] *See supra* footnote 32.

[36] *See id.* While certain of these items, such as ''miscellaneous securities'' (Part D of the Form), may contain sensitive, non-public data, this data's sensitivity is also reduced by the additional delay.

the fund's non-public first and second month reports for each fiscal quarter on Form N–PORT, to a time when the quarter-end report will be submitted and made public, significantly reduces the sensitivity of the non-public data.

Registrants can take steps to reduce the risk of any inadvertent disclosure of non-public Form N–PORT data filed through EDGAR by, for example, filing the quarter-end report (which is largely public data) on a separate day from the first two months of the fiscal quarter to reduce the risk of the fund incorrectly identifying a non-public filing as public.[37] In addition, we are modifying the filing schema for Form N–PORT to require registrants to affirm whether the data in the filing is non-public (for months 1 and 2) or public (month 3). For example, if a registrant affirms in the filing that the data is non-public, but attempts to file report type NPORT–P (which will be made public upon filing), such a filing will not be accepted by EDGAR.[38] We believe that such a change will help ensure that filers do not inadvertently make the wrong month's data public.

Importantly, we will still receive the monthly Form N–PORT data necessary to assist us in our role as primary regulator of investment companies and to better fulfill our mission of protecting investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation.[39] Additionally, the staff will continue to monitor and solicit feedback on the data received and the use made (or expected to be made) of such data in furtherance of the Commission's statutory mission, as well as cybersecurity considerations and other matters deemed relevant by the staff. In this regard, the staff will inform the Commission, within one year from the date hereof, what steps, if any, the staff recommends in light of this monitoring, including but not limited to whether the filing time frames should be amended.

The Commission also will continue to receive reports on Form N–LIQUID, which provides the Commission with more timely information on certain liquidity events at a fund.[40] In addition, we understand from staff outreach that certain funds would like the opportunity, when appropriate, to provide more information related to their filings on Form N–LIQUID. For example, when filing reports on Form N–LIQUID, some funds have requested the ability to include additional narrative information in their reports that relate to the circumstances surrounding the liquidity event. Therefore, in order to allow funds the opportunity to communicate this information voluntarily, we are amending Form N–LIQUID to provide for a voluntary explanatory notes section.[41]

As noted above, consistent with the Commission's examination authority, upon request, funds will promptly provide data that is required by Form N–PORT and is maintained in their records within 30 days after the end of each month.[42] The Commission's ability to collect information in a timely fashion through its examination authority, and evaluate such information for compliance with the federal securities laws, is essential to our mission of protecting investors and our securities markets.[43] Indeed, the prompt production of records to the Commission is central to our mission of protecting investors, and is imperative to an effective and efficient examination program.[44] Accordingly, nothing in this release should be construed as diluting our commitment to enforcing the regulatory requirements relating to books and records and their production to us.

We request comment on our amendments to rule 30b1–9 and Form N–PORT.

- Should we amend rule 30b1–9 and Form N–PORT to require each monthly report to be filed with the Commission quarterly, rather than monthly? If not, why not?
- Should we amend rule 30b1–9 to require funds no later than 30 days after the end of each month, to maintain in their records the information that is required to be included in Form N–PORT? Should we extend the 30-day after month end deadline for retaining monthly data? If so, why and how long of a period would be appropriate? Are there any operational difficulties with maintaining such data in a fund's records?
- Should we require funds to maintain such data in an XML format?
- Should we extend the filing deadline for Form N–PORT until sixty days after quarter end? Does the extension sufficiently reduce the sensitivity of the data contained in Form N–PORT? If not, why not and how long of a period would be appropriate? Are there any operational difficulties with filing three separate reports on Form N–PORT sixty days after the end of the fiscal quarter?
- Should we amend Form N–LIQUID to provide for a voluntary explanatory notes section?

C. Compliance Dates

As discussed above, the current compliance dates for Form N–PORT will not change. Funds in larger fund groups that were subject to the June 1, 2018 compliance date must continue to satisfy their reporting obligation by maintaining in their records the information required to be included in Form N–PORT instead of submitting the information via EDGAR.[45] Additionally, after the April 1, 2019 expiration of the temporary final rule's retention requirement, funds in larger fund groups will be required to begin submitting their first reports on EDGAR (60 days after the end of their fiscal quarter) and will continue, 30 days after month-end, to maintain in their records the information that is required to be

[37] As further detailed in the Form N–PORT filing requirements in the EDGAR Filing Manual, quarter-end filings will be made by filing two separate reports on the NPORT–NP form type (for the first two months of the fund's fiscal quarter) and one report on NPORT–P form type (for the third month of the fund's fiscal quarter). *See* EDGAR Filer Manual, v. II, *available at https://www.sec.gov/info/edgar/edgarfm-vol2-v49.pdf.*

[38] *See id.*

[39] While we acknowledge that requiring funds to file reports more than 30 days after month end will result in less timely data being submitted to the Commission, which may reduce the utility of portfolio information to the Commission, we still believe that it is necessary for the Commission to receive monthly data points from funds, albeit with a longer delay. *See* Adopting Release, *supra* footnote 3, at section II.A.3. As we noted in the Adopting Release, such data will continue to enhance the ability of staff to perform analyses of funds in the course of monitoring for industry trends, or identifying issues for examination or inquiry. *Id.* Moreover, our experience with large hedge fund adviser reporting on Form PF has shown us that quarterly reporting of monthly data, with a 60-day delay in its submission, is useful in providing regulators with data to identify emerging trends and risks. *See* Form PF Adopting Release, *supra* footnote 19, at section II.B.1.

[40] *See* Investment Company Liquidity Risk Management Program, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)].

[41] *See* Part E of Amended Form N–LIQUID.

[42] *See* amended rule 30b1–9; *see also supra* footnotes 33–34 and accompanying text.

[43] *See, e.g.,* 15 U.S.C. 80a–30(b) (section 31(b) of the Investment Company Act) (providing the Commission with examination authority); 15 U.S.C. 80b–4 (section 204 of the Investment Advisers Act) (same); *see also* rule 31a–1 (Commission books and records rules); rule 31a–2 (same); 17 CFR 275.204–2 (rule 204–2 under the Investment Advisers Act) (same).

[44] *See, e.g.,* Electronic Recordkeeping by Investment Companies and Investment Advisers, Investment Advisers Act Release No. 1945 (May 24, 2001) [66 FR 29224 (May 30, 2001)] (explaining that the ''continuing accessibility and integrity of fund and adviser records are critical to the fulfillment of our oversight responsibilities,'' and noting the Commission's expectation that a fund or adviser would be permitted to delay furnishing electronically stored records for more than 24 hours only in ''unusual circumstances.'').

[45] *See* rule 30b1–9(T)(a); *see also* Temporary Final Rule Release, *supra* footnote 9.

included in Form N–PORT.[46] Below is a chart that describes the current compliance dates for reports on Form N–PORT.

Form N–PORT	Compliance date for filing reports on EDGAR
Large Fund Groups	April 1, 2019.
Smaller Fund Groups	April 1, 2020.

Finally, the first six months of reports on Form N–PORT (i.e., reports filed with the Commission with monthly data from the quarters ending March 31, 2019 through August 31, 2019) will continue to be kept non-public in order to allow funds and the Commission to make adjustments to fine-tune the technical specifications and data validation processes.[47] As before, portfolio information attached as exhibits to Form N–PORT for the first and third quarters of a fund's fiscal year (Part F of Form N–PORT) will still be made public during this period, to ensure that information about funds' portfolio holdings continues to be publicly available to investors and market participants during the period when reports on Form N–PORT will not be made publicly available.[48]

However, given the timing considerations relating to this action, the Commission understands that some funds in larger fund groups, such as those with fiscal quarters ending in March or April, may not currently be prepared to file all three months of Form N–PORT reports at the end of their next fiscal quarter.[49] In order to give these larger fund groups adequate time to prepare their reports, the Commission is exempting funds in larger fund groups with fiscal quarters ending in March from the requirement to file their reports on Form N–PORT for the first two months of data with the Commission (January and February), and funds with fiscal quarters ending in April from the requirement to file the report for the first month of data with the Commission (February).[50] For example, a fund in a larger fund group with its fiscal quarter ending in April 2019 will only be required to file reports on Form N–PORT for the fund's second and third month (March and April 2019), which must be filed with the Commission 60 days from quarter-end.[51] At the next fiscal quarter end (July 2019), the fund will file reports on Form N–PORT for each month of the quarter (May, June, and July), 60 days from the end of the quarter. Again, all such reports, with the exception of the month 3 portfolio holdings attachment (Part F of Form N–PORT), will not be made public. Below is a chart that describes the filing dates for larger funds groups' first reports on Form N–PORT.

Fiscal quarter end	First report on Form N–PORT must be filed on EDGAR by	Required monthly data
March 31, 2019	May 30, 2019	March 2019.
April 30, 2019	July 1, 2019[52]	March, April 2019.
May 31, 2019	July 30, 2019	March, April, May 2019.

We request comment on the compliance date for our amendments to Form N–PORT and rule 30b1–9.

- Do the current compliance dates provide adequate time for funds to prepare their systems for filing reports on Form N–PORT? If not, why not, and how much more time is needed?
- Should we provide relief to funds with fiscal quarters ending in March and April to allow them only to file reports for the third month of their quarter end in 2019? Should we extend this relief to funds with other quarter-ends? Will funds with other quarter ends have any operational difficulties with modifying their systems to file each monthly report on Form N–PORT 60 days after the end of their fiscal quarter?

D. Procedural and Other Matters

The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a rulemaking in the **Federal Register** and provide an opportunity for public comment.[53] This requirement does not apply, however, if the agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[54] We have determined to immediately adopt this modification to the filing requirements for Form N–PORT and the accompanying changes described above.

As discussed above, based on our recent evaluation of the data security protocols relating to Form N–PORT, and in light of our continued assessment of our internal cybersecurity risk profile, we have re-evaluated whether, in this particular case, we can meaningfully reduce the sensitivity of the data we will maintain while continuing to achieve our regulatory objectives. This recent re-evaluation has led us to determine that modifying the filing requirements for Form N–PORT is necessary. Additionally, as explained above, the modifications affect the timeliness of the data for the Commission's analysis but would not affect the current requirements regarding the content of the data that is

[46] As discussed above, the temporary final rule requires larger fund groups to satisfy their reporting obligations by maintaining in their records the information required to be included in Form N–PORT. *See* amended rule 30b1–9(T). Amended rule 30b1–9, among other things, makes such a data retention requirement permanent for all funds, subject to rule 31a–2(a)(2). *See supra* footnotes 33–34 and accompanying text. Additionally, smaller fund groups will continue to be required to submit their first reports on EDGAR by April 30, 2020. Moreover, after April 1, 2020, smaller fund groups will also be required to comply with amended rule 30b1–9's data retention requirement.

[47] *See* Adopting Release, *supra* footnote 1, section II.H.1.

[48] *See id.*

[49] Neither temporary rule 30b1–9(T) nor amended rule 30b1–9 requires funds to maintain Form N–PORT information in their records in an XML format. *See* Temporary Final Rule Release, *supra* footnote 9, at note 28. Without relief, funds with fiscal quarters ending in March or April would be required to create XML reports on Form N–PORT for the months that are covered by the temporary rule which would effectively require funds to create XML reports on Form N–PORT earlier than anticipated. Such funds will still be required to comply with rule 30b1–9's data retention requirements for the information required to be reported on Form N–PORT. *See* amended rule 30b1–9.

[50] For the reasons discussed above, we find that this relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. *See* 15 U.S.C. 80a–6(c).

[51] Because of the 6-month non-public phase in period for Form N–PORT, this report would not be made public. *See supra* footnote 47 and accompanying text.

[52] Because 60 days after the fund's April 30, 2019 fiscal quarter end falls on a Saturday (June 29, 2019), the report on Form N–PORT must be filed with the Commission no later than July 1, 2019 (the next business day). *See* General Instruction A to Form N–PORT (''If the due date falls on a weekend or holiday, the filing deadline will be the next business day.''). In order to make General Instruction A clearer for registrants, we are moving the due date instruction to the end of the paragraph. *See* amended General Instruction A to Form N–PORT.

[53] *See* 5 U.S.C. 553(b)–(c).

[54] 5 U.S.C. 553(b)(3)(B).

made public or when the data is made public. Given the limited nature of this change, and previous delays in implementation of the rule, we find that it is appropriate to implement this modification as an interim final rule. Soliciting public comment on this issue would be neither necessary, practicable, nor in the public interest.

Independently, providing immediate certainty to funds is critical because we understand that many funds are currently designing and testing their systems and procedures in light of the April 1, 2019 expiration of temporary rule 30b1–9(T)'s retention requirement. Funds need to know as soon as practicable that there will be a modification in the requirement for filing reports on Form N–PORT through the EDGAR system, and that as a result they will have to make changes to the timing of their reports. For example, absent the certainty provided by a final rule, funds may not be prepared to make all three Form N–PORT filings at quarter-end, especially in light of the compliance dates for larger fund groups. Providing notice and comment would defeat this goal of giving certainty as to funds' obligations in light of the modifications stemming from the Commission's recent cybersecurity initiatives.[55] Under these circumstances, soliciting public notice and comment would be unnecessary, impracticable, and contrary to the public interest. For these reasons, the Commission finds that good cause exists to dispense with notice and comment regarding the amendments to rule 30b1–9 and Form N–PORT outlined above.[56]

The APA also generally requires that an agency publish an adopted rule in the **Federal Register** at least 30 days before it becomes effective. This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.[57] For the reasons discussed above, and in order to give registrants immediate relief from filing reports on Form N–PORT with the Commission each month, we find good cause to make the rule effective upon publication in the **Federal Register**.

II. Economic Analysis

A. Introduction

Our modifications to the timing requirements for filing Form N–PORT will require funds to file each monthly report on Form N–PORT with the Commission no later than 60 days after a fund's fiscal quarter end. Information for the first two months of each fund's fiscal quarter will continue to be non-public and available for use by the Commission. Information reported on the quarter-end report on Form N–PORT will be made public immediately upon filing and thus will continue to be required to be publicly available with a delay of, at most, 60 days after the end of the fiscal quarter.[58] In addition, funds will be required to maintain in their records the information that is required to be included on Form N–PORT no later than 30 days after the end of each month.

The Commission is sensitive to the economic effects, including the benefits and costs and the effects on efficiency, competition, and capital formation that will result from the change in the timing of the EDGAR submission requirement for reports on Form N–PORT and the associated recordkeeping requirement.

B. Economic Baseline

The reporting and disclosure obligations created by the 2016 adoption of Form N–PORT serve as the baseline against which the costs and benefits as well as the effects on efficiency, competition, and capital formation of the modified timing requirements are discussed.[59] Additionally, the baseline takes into account the temporary rule that the Commission adopted on December 8, 2017, which delayed the initial reporting of Form N–PORT on EDGAR by nine months.[60]

Currently, the Commission generally receives portfolio information from registered management investment companies (other than money market funds and SBICs) on Form N–Q and Form N–CSR on a quarterly basis, 60 and 70 days after the end of the quarter, respectively. Once the temporary final rule expires on June 1, 2019, funds in larger fund groups would be required to submit reports on Form N–PORT within 30 days after each month-end.[61] The reports on Form N–PORT for the first two months of each fund's fiscal quarter would not be made public. Information reported on the quarter-end report, with the exception of the items identified in General Instruction F of Form N–PORT, would be made publicly available with a delay of 60 days after the end of the fiscal quarter. As a result, the Commission would confidentially maintain for at least 30 days Form N–PORT information that would eventually become publicly available.

The entities affected by the modified timing of the EDGAR submission requirement for reports on Form N–PORT are the funds that will report using this form and their investors. As of the end of 2017, approximately 101.9 million individuals owned shares of registered investment companies, representing 57.3 million or 45.4% of U.S. households.[62] As of September 2018, we estimate that there were 11,619 funds required to file Form N–PORT (*i.e.,* 8,976 mutual funds (excluding money market funds), 1,939 ETFs (including 8 ETFs organized as UITs and 1,931 ETFs that are management investment companies), and 704 closed-end funds (excluding SBICs)).[63]

C. Benefits and Costs of the Modified Timing Requirement for Filing Form N–PORT

The Commission relies on information included in reports filed by funds to monitor trends, identify risks, and inform its regulatory functions. Similarly, investors and other market participants rely on funds' public filings to assist in their investment decisions and understanding of financial markets. Form N–PORT, which requires reporting of a fund's complete portfolio holdings on a monthly basis with every third month available to the public, will contribute substantially to information made available to the Commission and the public by funds. As the Commission has previously stated, the adoption of Form N–PORT will modernize fund reporting, improve the ability of the Commission to fulfill its regulatory

[55] We similarly do not believe that notice and comment on the amendment to Form N–LIQUID are necessary given the limited and voluntary nature of the amendment.

[56] *See* Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impracticable, unnecessary, or contrary to the public interest''). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendments to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). The amendments also do not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a).

[57] 5 U.S.C. 553(d)(3).

[58] As discussed above, *see supra* footnote 32, certain data fields on the quarter-end report on Form N–PORT will continue to be masked from the public. *See* General Instruction F of Form N–PORT.

[59] *See* Adopting Release, *supra* note 3, section III.

[60] *See* Temporary Final Rule Release, *supra* footnote 9, at note 5.

[61] *See supra* footnotes 11–12 and accompanying text.

[62] 2018 Investment Company FactBook (''2017 IC FactBook''), A Review of Trends and Activities in the Investment Company Industry, 57th edition, at 2, *available at https://www.ici.org/pdf/2018_factbook.pdf.*

[63] Counts of mutual funds and ETFs are based on data from the ICI and the count of closed-end funds is based on registrants' filings with the Commission on Forms N–SAR and N–Q and data from Morningstar Direct as of September 2018.

functions, and allow investors to make more informed investment decisions.[64]

The data that the Commission will receive on Form N–PORT is sensitive and includes portfolio information for the first two months of a fund's fiscal quarter that is designated non-public, information for the third month of a fund's fiscal quarter before its scheduled publication, and information for the third month of a fund's fiscal quarter from non-public fields. The data at risk could, for example, harm fund shareholders by expanding the opportunities for professional traders and others to exploit this information.[65] In addition, an unauthorized intrusion could affect the Commission's future ability to collect the data necessary to support its mission.

We believe that increasing the delay in when funds must submit reports on Form N–PORT will reduce the value of non-public data maintained by the Commission. Reducing the value of this data may both reduce a potential motivation for cyberattacks and mitigate potential costs to funds and their investors in the event a fund's non-public data is exposed. First, the extension of the fiscal quarter-end filing deadline from 30 to 60 days allows the data in the quarter-end report on Form N–PORT to be public immediately upon filing, with the exception of the non-public fields described above.[66] As a result, the Commission will no longer have to keep this data non-public for at least a month after filing, thereby reducing the volume of non-public data maintained in our systems and the associated cybersecurity risks. Second, under the modified timing of the EDGAR filing requirement for reports on Form N–PORT, a fund's submission for the first and second months of a fund's fiscal quarter will be delayed until the time that the submission for the quarter-end report is filed and made public. We believe that these changes to the timing requirements for filing Form N–PORT will reduce the sensitivity of the data the Commission stores and maintains.

The portion of the Form N–PORT data that will be made publicly available and the timing of the public availability will not change. As a result, the benefits of the disclosure to public users of the data would remain unchanged from the baseline. These benefits include, for example, an increase in the transparency of a fund's investment strategies and an increase in the ability of investors to identify more efficiently the funds' risk exposures, differentiate investment companies based on their investment strategies, and make more informed investment decisions associated with the public availability of this data.

Increasing the Form N–PORT filing delay and requiring funds to maintain in their records the information that is required to be included on Form N–PORT no later than 30 days after the end of each month likely will not meaningfully change the costs for submitting the form and keeping records borne by fund groups, as the timing of collecting the information, the amount of information to be submitted, and the number of forms to complete is identical to the baseline.[67] In addition, the current compliance dates for Form N–PORT will not change.[68] In light of our ongoing assessment of our internal cybersecurity risk profile, we have re-evaluated whether, in this particular case, we can meaningfully reduce the sensitivity of the data we will maintain while continuing to achieve our regulatory objectives. On the one hand, the modifications in the EDGAR submission requirement will delay the filings of Form N–PORT data with the Commission in the ordinary course. Compared to the baseline, the data for monthly filings will be less current, by an average of 60 days. The delay will reduce the data's utility to the Commission for analyses of funds in the course of monitoring for industry trends and identifying issues for examination or inquiry. The impact of the delay on the Commission's analytical capabilities will vary across applications, and for certain applications, the impact of greater data staleness would decrease over time as the Commission builds up historical data. For example, historical trends inferred from a long time series of data would, in many cases, not be significantly affected by the delay in filing of monthly information. Moreover, requiring funds to maintain the Form N–PORT data in their records 30 days after the end of each month will ensure that the Commission can receive more timely information when necessary.[69]

D. Effects on Efficiency, Competition, and Capital Formation

The modification in the timing of the EDGAR submission requirements will—without materially affecting our ability to obtain data when we need it—reduce the risk of cybersecurity threats and thereby decrease the likelihood that exposure of sensitive data could hamper the Commission's future ability to collect the data necessary to support its mission. As a result, we believe that the modification will help the Commission maintain efficient capital markets through appropriate supervision and regulation.

A reduction in cybersecurity risk will also reduce the likelihood of related adverse impacts on an affected fund and its investors, as discussed above. To the extent that investors anticipate the potential impacts of cybersecurity risks, a reduction in this risk could increase the amount invested in funds. If this additional investment in funds does not represent substitution away from other forms of capital formation, such as direct investments in operating companies, the reduction in risk could thereby improve capital formation. We believe, however, that any such effect would likely be small.

Similarly, we believe that the modification would not have any significant competitive effects, as the delay affects all filers of Form N–PORT uniformly.

[64] *See* Adopting Release, *supra* footnote 3, at section II.A.

[65] The academic literature has argued that certain trading strategies by outside investors that make use of a fund's timely portfolio information, including trading ahead of a fund and mimicking a fund's holdings, can be costly for funds and their investors, particularly for funds that execute large orders or employ proprietary trading strategies. (*See, e.g.,* ICI, *The Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance,* Perspective Vol. 7, No. 3 (June 2001) and Vikas Agarwal, et al., *Mandatory Portfolio Disclosure, Stock Liquidity, and Mutual Fund Performance,* The Journal of Finance, Vol. 70, No. 6 (Dec. 2015)). In addition, the academic literature has studied the economic effects of cybersecurity risk in various settings. For example, one paper (*See* Campbell, Katherine, et. al., *The economic cost of publicly announced information security breaches: empirical evidence form the stock market,* Journal of Computer Security 11 (2003)) finds evidence suggesting that a firm's stocks price tends to decrease upon the announcement that an information security breach involving unauthorized access to confidential data has happened at the firm. However, we are not aware of any studies that would allow us to quantify the economic costs of a cybersecurity breach that revealed a fund's confidential portfolio information.

[66] *See supra* footnote 32.

[67] To the extent that it is more efficient for fund groups to submit all three monthly filings of Form N–PORT in one batch at quarter-end, rather than individually every month, the costs borne by fund groups may be marginally reduced under this increased delay.

[68] As discussed above, funds in larger fund groups with fiscal quarters ending in March, 2019, which may not be prepared to make initial filings of all three months of Form N–PORT reports on a single date, will only be required to file reports on Form N–PORT for the last month of that fiscal quarter. Larger fund groups with fiscal quarters ending in April, 2019, will only be required to file reports on Form N–PORT for the last two months of that fiscal quarter.

[69] In addition, the Commission will continue to receive reports on Form N–LIQUID, which provides us with more timely information on certain liquidity events at a fund. In order to allow funds the opportunity to communicate this information, we are amending Form N–LIQUID to provide for a voluntary explanatory notes section. *See* Part E of Amended Form N–LIQUID.

E. Alternatives

As an alternative to requiring monthly portfolio reporting (filed on a quarterly basis), the Commission considered requiring quarterly portfolio reporting. Under the alternative, the Commission would no longer receive non-public data for monthly portfolio reports related to the first two months in a fund's fiscal quarter, thereby reducing the amount of non-public information the Commission stores and maintains and further reducing the risk of cybersecurity risks. In addition, the alternative would likely reduce the costs for funds to file Form N–PORT. However, the alternative would eliminate the additional information in the monthly portfolio reporting that will allow the Commission to analyze the evolution of portfolio holdings and the fluctuations in the values of portfolio investments within a fund's fiscal quarter. We continue to believe that the higher frequency of monthly portfolio reporting will be useful to the staff to perform analyses of funds in the course of monitoring for industry trends or identifying issues for examination or inquiry, even if the Commission receives this information on a more delayed basis in the ordinary course.[70] Our modifications to the timing of filings and not the frequency of data reflect our belief that the greater usefulness to the Commission of monthly portfolio reporting on a quarterly basis justifies any attendant risk and larger costs for funds to report monthly rather than quarterly portfolio information.

As an alternative to requiring funds to file all three monthly Forms N–PORT within 60 days of a fund's fiscal quarter end, we considered requiring funds to submit Form N–PORT within 60 days of the end of each month. While this alternative would increase the delay in when funds would be required to submit Forms N–PORT for all three months of a fund's fiscal quarter compared to the baseline, the delay would be shorter compared to the modified timing requirement we are adopting today for the first two months of a fund's fiscal quarter. As a result, the decrease in the sensitivity of the data the Commission stores and maintains and the resulting reduction in cybersecurity risk would be smaller under this alternative. We acknowledge the shorter delay in the Commission's receipt of data for the first two months under this alternative would have a smaller impact on the Commission's analytical capabilities than the modification to filing that we are adopting. However, as discussed above in section II.C, we expect this impact to (i) vary across applications and (ii) be attenuated by the requirement that funds maintain the Form N–PORT data in their records 30 days after the end of each month, which will ensure that the Commission can receive more timely information, when necessary.

III. Paperwork Reduction Act

The Commission is modifying the requirement for reports on Form N–PORT to require all three monthly Form N–PORT reports for a particular fiscal quarter be filed with the Commission 60 days after the end of that quarter. Amended rule 30b1–9 will also require funds to maintain in their records the information that is required to be included on Form N–PORT no later than 30 days after the end of each month.[71] We do not believe that these changes will make any substantive modifications to any existing collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[72] While the reporting dates for Form N–PORT will change, the number of Form N–PORT filings, timing of collecting the data, and other related burdens will remain the same. As a result, the Commission believes that the current PRA burden estimates for the existing collection of information requirements remain appropriate.[73]

IV. Statutory Authority

We are adopting amendments to the rule 30b1–9, Form N–PORT, and Form N–LIQUID under the authority set forth in the Investment Company Act, particularly sections 6(c), 8, 30, 31, and 38 thereof [15 U.S.C. 80a *et seq.*], and 44 U.S.C. 3506.

[70] Our experience with large hedge fund adviser reporting on Form PF has shown us that quarterly reporting of monthly data, with a 60-day delay in its submission, is useful in providing regulators with data to identify emerging trends and risks. *See supra* footnote 39.

[71] We previously noted that the burden associated with preserving the information required by Form N–PORT in the fund's records in an easily accessible place is similar to the burden associated with submitting the prepared report on EDGAR. *See* Temporary Final Rule Release, *supra* footnote 9, at section III.A.

[72] 44 U.S.C. 3501 through 3521.

[73] ''Form N–PORT Under the Investment Company Act, Monthly Portfolio Investments Report'' (OMB Control No. 3235–0730). We similarly do not believe that our change to Form N–LIQUID will make any substantive modifications to the existing collection of information requirements within the meaning of the PRA. *See* ''Form N–LIQUID Under the Investment Company Act, Current Report, Open-End Investment Company Liquidity'' (OMB Control No. 3235–0754).

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

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

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Section 270.30b1–9 is revised to read as follows:

§ 270.30b1–9 Monthly report.

Each registered management investment company or exchange-traded fund organized as a unit investment trust, or series thereof, other than a registered open-end management investment company that is regulated as a money market fund under § 270.2a–7 or a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), must file a monthly report of portfolio holdings on Form N–PORT (§ 274.150 of this chapter), current as of the last business day, or last calendar day, of the month. A registered investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn. Each registered investment company that is required to file reports on Form N–PORT must maintain in its records the information that is required to be included on Form N–PORT no later than 30 days after the end of each month. Such information shall be treated as a record under section 31(a)(1) of the Act [15 U.S.C. 80a–30(a)(1)] and § 270.31a–1(b) of this chapter subject to the requirements of § 270.31a–2(a)(2) of this chapter. Reports on Form N–PORT for each month in each fiscal quarter of a registered investment company must be filed with the Commission no later than 60 days after the end of such fiscal quarter.

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

■ 3. The general authority citation for part 274 continues to read as follows:

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

* * * * *

■ 4. Section 274.150 is revised to read as follows:

§ 274.150 Form N–PORT, Monthly portfolio holdings report.

(a) Except as provided in paragraph (b) of this section, this form shall be used by registered management investment companies or exchange-traded funds organized as unit investment trusts, or series thereof, to file reports pursuant to § 270.30b1–9 of this chapter not later than 60 days after the end of each fiscal quarter.

(b) Form N–PORT shall not be filed by a registered open-end management investment company that is regulated as a money market fund under § 270.2a–7 of this chapter or a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or series thereof.

Note: The text of Form N–PORT will not appear in the *Code of Federal Regulations.*

■ 5. Form N–PORT (referenced in § 274.150) is amended as follows:

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

FORM N-PORT

MONTHLY PORTFOLIO INVESTMENTS REPORT

Form N-PORT is to be used by a registered management investment company, or an exchange-traded fund organized as a unit investment trust, or series thereof (''Fund''), other than a Fund that is regulated as a money market fund (''money market fund'') under rule 2a-7 under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Act'') (17 CFR 270.2a-7) or a small business investment company (''SBIC'') registered on Form N-5 (17 CFR 239.24 and 274.5), to file reports of monthly portfolio holdings pursuant to rule 30b1-9 under the Act (17 CFR 270.30b1-9). The Commission may use the information provided on Form N-PORT in its regulatory, enforcement, examination, disclosure review, inspection, and policymaking roles.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-PORT

Form N-PORT is the reporting form that is to be used for monthly reports of Funds other than money market funds and SBICs under section 30(b) of the Act, as required by rule 30b1–9 under the Act (17 CFR 270.30b1-9). Funds must report information quarterly about their portfolios and each of their portfolio holdings as of the last business day, or last calendar day, of each month. A registered investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

Reports on Form N-PORT must disclose portfolio information as calculated by the fund for the reporting period's ending net asset value (commonly, and as permitted by rule 2a-4, the first business day following the trade date). A Fund must maintain in its records the information that is required to be included on Form N-PORT no later than 30 days after the end of each month. Such information shall be treated as a record under section 31(a)(1) of the Act and rule 31a-1(b) thereunder subject to the requirements of rule 31a-2(a)(2). Reports on Form N-PORT for each month in each fiscal quarter of a fund must be filed with the Commission no later than 60 days after the end of such fiscal quarter. If the due date falls on a weekend or holiday, the filing deadline will be the next business day.

A Fund may file an amendment to a previously filed report at any time, including an amendment to correct a mistake or error in a previously filed report. A Fund that files an amendment to a previously filed report must provide information in response to all items of Form N-PORT, regardless of why the amendment is filed.

* * * * *

■ 6. Form N–LIQUID (referenced in § 274.223) is amended as follows:

Note: The text of Form N–LIQUID does not, and these amendments will not, appear in the Code of Federal Regulations.

FORM N-LIQUID

CURRENT REPORT

OPEN END MANAGEMENT INVESTMENT COMPANY LIQUIDITY

* * * * *

PART E. Explanatory Notes (if any)

Registrants may provide any information it believes would be helpful in understanding the information reported in response to any Item of this Form.

* * * * *

By the Commission.

Dated: February 27, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03958 Filed 3–5–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 11

[Docket No. RM19–13–000; Order No. 857]

Preliminary Permits, Qualifying Conduit Hydropower Facilities, and Commencement for Payment of Annual Charges

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issues this final rule to amend its regulations to conform to the enacted America's Water Infrastructure Act of 2018 (Water Infrastructure Act). This final rule revises regulations on preliminary permits, qualifying conduit hydropower facilities, and commencement for payment of annual charges. All revisions in this final rule are ministerial in nature.

DATES: This rule will become effective April 5, 2019.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background and Discussion

1. By this final rule, the Commission is amending parts 4 and 11 of its regulations to conform to the America's Water Infrastructure Act of 2018 (Water Infrastructure Act or Act),[1] enacted on October 23, 2018. Among other things, the Water Infrastructure Act amends sections of the Federal Power Act (FPA) pertaining to preliminary permits, qualifying conduit hydropower facilities, and commencement for payment of annual charges.

A. Amendment Pertaining to Preliminary Permits

2. Under section 5 of the FPA,[2] the Commission issues preliminary permits, which preserve the right of the permit holder to have the first priority in applying for a license or exemption for the project site. During the preliminary permit term, permittees conduct investigations and secure necessary data to determine the feasibility of a proposed project and to prepare a development (*i.e.,* license or exemption) application.

3. Prior to passage of the Water Infrastructure Act, the maximum permit term was three years. Additionally, the Commission could extend the term of a preliminary permit once, for not more than two additional years.

4. The Water Infrastructure Act amends section 5 of the FPA to give the Commission the authority to issue preliminary permits with maximum terms of four years. The Act also gives the Commission the authority to extend a preliminary permit term once for not more than an additional four years, if the Commission finds that the permittee has carried out activities under the permit in good faith and with reasonable diligence. And the Act authorizes the Commission to issue an additional permit following the end of an extension period, if the Commission determines that there are extraordinary circumstances warranting such an action. The Commission is revising its regulations at 18 CFR 4.82 to reflect the statutory changes regarding preliminary permits.

B. Amendments Pertaining to Qualifying Conduit Hydropower Facilities

5. Qualifying conduit hydropower facilities are a subset of hydropower projects that are not required to be licensed under Part I of the FPA. Prior to enactment of the Act, section 30 of the FPA[3] provided that a qualifying conduit hydropower facility could not have an installed capacity greater than five megawatts (MW).

6. The Water Infrastructure Act amends section 30 to increase the maximum installed capacity for qualifying conduit exemptions to 40 MW.

7. Section 30 previously established a 45-day period for entities to contest whether a project as to which qualifying conduit hydropower facility status is sought meets the requisite statutory definition. The Water Infrastructure Act shortens this period to 30 days.

8. The Commission is revising its regulations at 18 CFR 4.30 to reflect these statutory changes.

C. Amendment Pertaining to Obligation for Payment of Annual Charges

9. Licensees and exemptees pay annual charges to the Commission to reimburse the United States for the costs of administration of the Commission's hydropower regulatory program.[4] For unconstructed projects, the payment of annual charges starts on the date by which the licensee or exemptee is required to commence project construction, which is within two years of license issuance, or by any extension of that date. Prior to the Water Infrastructure Act, the Commission limited the start date for payment of annual charges to no later than four years after the issuance of the license or exemption,[5] because section 13 of the FPA limited the Commission to issuing one extension of the commencement of construction deadline, for no more than two additional years.

10. The Act revised section 13 to authorize the Commission to issue extensions of the commencement of construction deadline for up to eight years. Accordingly, the Commission is revising its regulations at 18 CFR 11.1 to eliminate the maximum four-year period before the commencement of annual changes and will instead commence those charges at the end of two years after license issuance or the expiration of any extended deadline.

D. Revised Regulations

11. By this final rule, the Commission is conforming its regulations to the Water Infrastructure Act. The Commission revises language on preliminary permits, qualifying conduit hydropower facilities, and obligations of annual charges in parts 4 and 11 of its regulations.

Information Collection Statement

12. The Paperwork Reduction Act[6] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection (including reporting, record keeping, and public disclosure requirements) of information directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements imposed by agency rules.[7] 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 an agency rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

13. The entities affected by this rule would be those with: (1) Future preliminary permit applications, (2) pending requests for a preliminary permit, (3) existing preliminary permits as to which extensions or successive permits are sought, (4) proposals to construct qualifying conduit hydroelectric facilities, and (5) unconstructed licensed or exempted facilities that have not yet begun paying annual charges. The Commission will submit the information collection requirements in this final rule to OMB for its review. The information collection requirements are included in FERC–505, ''Small Hydropower Projects and Conduit Facilities including License/Relicense, Exemption, and Qualifying Conduit Facility Determination.''

14. Overall the final rule reduces the current burden for affected entities. Those entities with qualifying conduit applications will incur less burden than before the Water Infrastructure Act; there will be no effect (neither an increase nor a decrease) on burden imposed for entities with preliminary permit applications or seeking extension of a preliminary permit term.

[1] Public Law 115–270, 132 Stat. 3765 (2018).

[2] 16 U.S.C. 798 (2012), *amended by,* America's Water Infrastructure Act of 2018, Public Law 115–270, 3001, 132 Stat. 3765, 3862 (2018).

[3] 16 U.S.C. 823a (2012), *amended by,* Hydropower Regulatory Efficiency Act of 2013, Pub. L. 113–23, 4, 127 Stat. 493, 494 (2013).

[4] 18 CFR 11.1(a) (2018).

[5] *See* 18 CFR 11.1(c)(5) (2018).

[6] 44 U.S.C. 3501–3520 (2012).

[7] *See* 5 CFR 1320.10 (2018).

ANNUAL CHANGES PROPOSED BY THE FINAL RULE IN DOCKET NO. RM19–13–000

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response [8] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
FERC–505 (reduction).	[9] 1	1	1	30 hrs.; $2,370 (reduction).	30 hrs.; $2,370 (reduction).	$2,370 (reduction)

[8] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $79.00/hour = Average cost/response. The figure is the 2018 FERC average hourly cost (for wages and benefits) of $79.00 (and an average annual salary of $164,820/year). Commission staff is using the FERC average salary and benefits cost, because we consider any reporting requirements completed in response to the FERC–505 to be compensated at rates similar to the work of FERC employees.

[9] Based on applications we have received since 2013 for conduit hydropower facilities with an installed capacity between five and 40 MW that would now meet the qualifying conduit hydropower facilities criteria, we anticipate one respondent per year.

15. *Title:* FERC–505, ''Small Hydropower Projects and Conduits including License/Relicense, Exemption, and Qualifying Conduit Facility Determination.''

16. *Action:* Revisions to the FERC–505 information collection.

17. *OMB Control Nos.:* 1902–0115 (FERC–505).

18. *Respondents:* Municipalities, businesses, private citizens, and for-profit and not-for-profit institutions.

19. *Necessity of Information:* The revised regulations implement the Water Infrastructure Act's amendments to preliminary permits, qualifying conduit hydroelectric facilities, and obligations of annual charges. The revised regulations for the most part affect only the frequency that entities would file permit extensions with the Commission in addition to the number of entities that would file applications with the Commission. Thus, the Water Infrastructure Act does not require new information from applicants, licensees, or exemptees. The Commission will continue to use its existing regulations and procedures to accept requests for preliminary permits, permit extensions or successive permits, notices of intent to construct qualifying conduit hydropower facilities, and determining the start date for charging of annual payments.

20. *Internal Review:* The Commission has reviewed the revisions and has determined that they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

21. *Comments:* The revised information collection requirements will not be effective or enforceable until OMB approves the information collection changes described in this order.

22. The Commission solicits comments on the Commission's need for this information; whether the information will have practical utility; the accuracy of provided burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Comments are due within 30 days of the date this order is published in the **Federal Register**. After receipt and analysis of public comments, the Commission will submit the reporting requirements to OMB for approval.

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

24. Comments concerning the information collections in this final rule and the associated burden estimates should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Additionally, the Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* Commenters that are not able to file comments electronically should send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Environmental Analysis

25. 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.[10] Excluded from this requirement are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.[11] This final rule amends the Commission's regulations to conform to recent legislation and does not substantially change the effect of the underlying legislation or regulations being revised.

Regulatory Flexibility Act

26. The Regulatory Flexibility Act of 1980 (RFA) [12] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.

27. However, final rules promulgated without the publication of a general notice of proposed rulemaking under section 553 of the Administrative Procedure Act (APA) [13] are exempt from the RFA's requirements.[14] Section 553(b)(3)(A) of the APA states that final rules that are interpretive rules may be published without general notice of proposed rulemaking. Interpretive rules are defined as rules that ''generally interpret the intent expressed by Congress'' where an agency ''does not insert its own judgments in implementing a rule, and simply regurgitates statutory language.'' [15] They

[10] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 41 FERC ¶ 61,284 (1987).

[11] 18 CFR 380.4(a)(2)(ii) (2018).

[12] 5 U.S.C. 601–612 (2012).

[13] 5 U.S.C. 553 (2012).

[14] 5 U.S.C. 604(a) (2012).

[15] Small Business Administration, Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (May

are an ''agency's reading of a statute'' that do not ''intend to create new rights or duties, but only remind affected parties of existing duties.'' [16]

28. This final rule is an interpretive rule because it modifies the Commission's regulations to conform to the Water Infrastructure Act. It does not create new rights or duties. Rather, it reminds affected parties of existing duties required by the Water Infrastructure Act, with which the Commission and non-agency entities have complied since the Act's enactment.

Document Availability

29. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

30. From FERC'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.

31. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Effective Date and Congressional Notification

32. These regulations are effective April 5, 2019. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

2012), *http://www.sba.gov/sites/default/files/rfaguide_0512_0.pdf.*

[16] *Orengo Caraballo* v. *Reich,* 11 F.3d 186, 195 (D.C. Cir. 1993).

List of Subjects

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 11

Dams, Electric power, Indians-lands, Public lands, Reporting and recordkeeping requirements.

By the Commission.
Issued: February 22, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission is amending parts 4 and 11, chapter I, title 18, *Code of Federal Regulations,* as follows:

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

■ 1. The authority citation for part 4 is revised to read:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

§ 4.30 [Amended]

■ 2. In § 4.30(b)(26)(ii), remove the number ''5'' and add in its place the number ''40''.

§ 4.81 [Amended]

■ 3. In § 4.81(a)(5), remove the number ''36'' and add in its place the number ''48''.

■ 4. In § 4.82, remove ''five'' and add in its place ''eight'' in paragraphs (a) and (c) and add paragraph (d) to read as follows:

§ 4.82 Amendments.

* * * * *

(d) At the end of the extension period granted under paragraph (a) of this section, the Commission may issue an additional permit to the permittee if the Commission determines that there are extraordinary circumstances that warrant the issuance of the additional permit.

§ 4.400 [Amended]

■ 5. In § 4.400, remove ''by the Hydropower Regulatory Efficiency Act of 2013''.

§ 4.401 [Amended]

■ 6. In § 4.401:

■ a. In paragraph (a)(3), remove ''the date of enactment of the Hydropower Regulatory Efficiency Act,''.

■ b. In paragraph (b), remove ''by section 4 of the Hydropower Regulatory Efficiency Act of 2013''.

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

■ 7. The authority citation for part 11 is revised to read:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

§ 11.1 [Amended]

■ 8. In § 11.1(c)(5), remove '', but in no case longer than four years after the issuance date of the license or exemption''.

[FR Doc. 2019–03742 Filed 3–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2015–F–2712]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenomethionine Hydroxy Analogue

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, we, or the Agency) is amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of selenomethionine hydroxy analogue as a source of selenium in feed for chickens, turkeys, and swine, as well as to provide for the safe use of silicon dioxide as a carrier for selenomethionine hydroxy analogue. This action is in response to a food additive petition filed by Adisseo France S.A.S.

DATES: This rule is effective March 6, 2019. See section V of this document for further information on the filing of objections. Submit either electronic or written objections and requests for a hearing on the final rule by April 5, 2019.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. Electronic objections must be submitted on or before April 5, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 5, 2019. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the

delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic objections in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting objections. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your objection, that information will be posted on *https://www.regulations.gov.*

• If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper objections submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–F–2712 for ''Food Additives Permitted in Feed and Drinking Water of Animals; Selenomethionine Hydroxy Analogue.'' Received objections, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies in total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of objections. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your objections and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper objections received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Chelsea Trull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl. (HFV–224), Rockville, MD 20855, 240–402–6729, *chelsea.trull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In documents published in the **Federal Register** of August 13, 2015 (80 FR 48471), and October 30, 2018 (83 FR 54526), FDA announced that we had filed a food additive petition (animal use) (FAP 2291) submitted by Adisseo France S.A.S., Immeuble Antony Parc II, 10 Place du Général de Gaulle, 92160 Antony, France. The petition proposed that the regulations for food additives permitted in feed and drinking water of animals be amended to provide for the safe use of selenomethionine hydroxy analogue as a source of selenium in feed for chickens, turkeys, swine, dairy cattle, and beef cattle and the safe use of silicon dioxide as a carrier for selenomethionine hydroxy analogue at a level not to exceed 95 percent of the selenomethionine hydroxy analogue in its packaged form. Subsequently, the intended use of selenomethionine hydroxy analogue was limited to chickens, turkeys, and swine.

II. Conclusion

FDA concludes that the data establish the safety and utility of selenomethionine hydroxy analogue as a source of selenium in feed for chickens, turkeys, and swine, as well as silicon dioxide as a carrier for selenomethionine hydroxy analogue and that the food additive regulations should be amended as set forth in this document. This is not a significant regulatory action subject to Executive Order 12866.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and documents we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 571.1(h), we will delete from the documents any materials that are not available for public disclosure.

IV. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provision of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any

particular objection shall constitute a waiver of the right to a hearing on the objection.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. Amend § 573.920 by:
■ a. Revising paragraph (b) and paragraph (c) introductory text,
■ b. Adding new paragraphs (c)(4) and (5);
■ c. Removing paragraph (d);
■ d. Redesignating paragraphs (e) through (h) as paragraphs (d) through (g);
■ e. Revising newly redesignated paragraph (g)(4); and
■ f. Adding new paragraph (h).

The revisions and additions read as follows:

§ 573.920 Selenium.

* * * * *

(b) The food additive selenium is a nutrient administered in animal feed as sodium selenite or sodium selenate as provided in paragraph (c) of this section, as a controlled-release sodium selenite bolus as provided in paragraph (f) of this section, as selenium yeast as provided in paragraph (g) of this section, or as selenomethionine hydroxy analogue as provided in paragraph (h) of this section.

(c) Selenium, as sodium selenite or sodium selenate, is added to feed as follows:

* * * * *

(4) The additive, as sodium selenite or sodium selenate, shall be incorporated into feed as follows:

(i) It shall be incorporated into each ton of complete feed by adding no less than 1 pound of a premix containing no more than 272.4 milligrams of added selenium per pound.

(ii) It shall be incorporated into each ton of salt-mineral mixture for sheep or beef cattle from a premix containing no more than 4.5 grams of added selenium per pound.

(5) Usage of the additive must conform to the requirements of paragraphs (d) and (e) of this section.

* * * * *

(g) * * *

(4) Usage of this additive must conform to the requirements of paragraphs (d) and (e) of this section.

(h) Selenomethionine hydroxy analogue [R,S–2-hydroxy-4-methylselenobutanoic acid (CAS 873660–49–2)] is manufactured by the reaction of elemental selenium with methyllithium to form a methylseleno salt, which is then reacted with R,S–2-hydroxybutyrolactone to form a salt of 2-hydroxy-4-methylselenobutanoic acid. After acidification and purification, the additive consists of not less than 39.5 percent total selenium by weight with a selenomethionine hydroxy analogue content of not less than 98 percent of total selenium. The total organic selenium content of the additive is not less than 99 percent of total selenium.

(1) The selenomethionine hydroxy analogue meets the following specifications:

(i) Arsenic, not more than 2 parts per million (ppm);

(ii) Cadmium, not more than 1 ppm;

(iii) Lead, not more than 1 ppm; and

(iv) Mercury, not more than 1 ppm.

(2) Selenium, as selenomethionine hydroxy analogue, is added to complete feed for chickens, turkeys, and swine at a level not to exceed 0.3 ppm.

(3) To ensure safe use of the additive, in addition to the other information required by the Federal Food, Drug, and Cosmetic Act, the label and labeling of selenomethionine hydroxy analogue in its packaged form shall contain:

(i) The name, selenomethionine hydroxy analogue;

(ii) Minimum and maximum guarantees for a total selenium content of not less than 2.08 percent (weight/weight) and not more than 2.24 percent;

(iii) Minimum guarantee for selenomethionine hydroxy analogue content of not less than 5.2 percent;

(iv) The following statement, ''Storage Conditions: Selenomethionine hydroxy analogue must be stored in a closed package at temperatures not higher than 20 °C (68 °F).''; and

(v) An expiration date not to exceed 1 year from the date of manufacture.

(4) The additive, as selenomethionine hydroxy analogue, shall be incorporated into each ton of complete feed by adding no less than 1 pound of a premix containing no more than 272.4 milligrams of added selenium per pound.

(5) Usage of this additive must conform to the requirements of paragraphs (d) and (e) of this section.

■ 3. Amend § 573.940 by adding an entry for ''Selenomethionine hydroxy analogue'' to the end of the table in paragraph (d) to read as follows:

§ 573.940 Silicon dioxide.

* * * * *

(d) * * *

Feed component	Limitations (percent)
* * * * *	
Selenomethionine hydroxy analogue	95

* * * * *

Dated: February 28, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–03909 Filed 3–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. FDA–2019–N–0138]

Medical Devices; Obstetrical and Gynecological Devices; Classification of the Software Application for Contraception

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the software application for contraception into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the software application for contraception's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective March 6, 2019. The classification was applicable on August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Paige Brown, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G627, Silver Spring, MD 20993–0002, 301–796–6417, *Paige.Brown@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the software application for contraception as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act to a predicate device that does not require premarket approval (see 21 U.S.C. 360c(i)). We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA shall classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application (PMA) in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

For this device, FDA issued an order on August 28, 2017, finding Natural Cycles not substantially equivalent to a predicate not subject to PMA. Thus, the device remained in class III in accordance with section 513(f)(1) of the FD&C Act when we issued the order.

On September 20, 2017, Natural Cycles Nordic AB submitted a request for De Novo classification of Natural Cycles. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on August 10, 2018, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 884.5370. We have named the generic type of device software application for contraception, and it is identified as a device that provides user-specific fertility information for preventing a pregnancy. This device includes an algorithm that performs analysis of patient-specific data (*e.g.,* temperature, menstrual cycle dates) to distinguish between fertile and non-fertile days, then provides patient-specific recommendations related to contraception.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—SOFTWARE APPLICATION FOR CONTRACEPTION RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Unintended pregnancy.	Software verification, validation, and hazard analysis; clinical performance testing; human factors and usability testing; and labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the

Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in part 820, regarding design controls, have been approved under OMB control number 0910–0073; the collections of information in part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 2. Add § 884.5370 to subpart F to read as follows:

§ 884.5370 Software application for contraception.

(a) *Identification.* A software application for contraception is a device that provides user-specific fertility information for preventing a pregnancy. This device includes an algorithm that performs analysis of patient-specific data (*e.g.,* temperature, menstrual cycle dates) to distinguish between fertile and non-fertile days, then provides patient-specific recommendations related to contraception.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must demonstrate the contraceptive effectiveness of the software in the intended use population.

(2) Human factors performance evaluation must be provided to demonstrate that the intended users can self-identify that they are in the intended use population and can correctly use the application, based solely on reading the directions for use for contraception.

(3) Software verification, validation, and hazard analysis must be performed. Documentation must include the following:

(i) A cybersecurity vulnerability and management process to assure software functionality; and

(ii) A description of the technical parameters of the software, including the algorithm used to determine fertility status and alerts for user inputs outside of expected ranges.

(4) Labeling must include:

(i) The following warnings and precautions:

(A) A statement that no contraceptive method is 100% effective.

(B) A statement that another form of contraception (or abstinence) must be used on days specified by the application.

(C) Statements of any factors that may affect the accuracy of the contraceptive information.

(D) A warning that the application cannot protect against sexually transmitted infections.

(ii) Hardware platform and operating system requirements.

(iii) Instructions identifying and explaining how to use the software application, including required user inputs and how to interpret the application outputs.

(iv) A summary of the clinical validation study and results, including effectiveness of the application as a stand-alone contraceptive and how this effectiveness compares to other forms of legally marketed contraceptives.

Dated: February 28, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–04028 Filed 3–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0126]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Port Gibson, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing an emergency temporary safety zone for all navigable waters of the Lower Mississippi River, extending the entire width of the river, from mile marker (MM) 405 to MM 408. This emergency safety zone is necessary to protect persons, property, and infrastructure from potential damage and safety hazards associated with vessels transiting this area during high water. This rule prohibits persons and vessels from entering the safety zone area unless specifically authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or a designated representative.

DATES: This rule is effective without actual notice from March 6, 2019 through 7 p.m. on April 15, 2019, or until the high water event ceases, whichever occurs first. For the purposes of enforcement, actual notice will be used from February 28, 2019 through March 6, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2019–0126 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 Petty Officer Todd Manow, Sector Lower Mississippi River Prevention Department, U.S. Coast Guard; telephone 901–521–4813, email *Todd.M.Manow@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Lower Mississippi River
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. Increasing high water in

this area requires immediate action to protect persons, property and power plant infrastructure from the potential safety hazards associated with vessels transiting this area during high water. This safety zone must be established immediately to protect people and vessels associated with and resulting from the high water and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to protect personnel, vessels, and the marine environment from potential hazards created by the increasing high water.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Lower Mississippi River (COTP) has determined that there are potential hazards associated with increasing high water, including possible emergency operations to repair damage to power distribution infrastructure taking place on the left descending bank of the Lower Mississippi River between Mile Marker (MM) 405 and 408 in the vicinity of the Entergy Grand Gulf Nuclear Power Facility, in Port Gibson, MS. Loss of the power distribution lines system would be catastrophic to large areas of Louisiana and Mississippi. This rule is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with vessels transiting this safety zone during high water.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lower Mississippi River, extending the entire width of the river, from MM 405 to MM 408. Transit into and through this area is prohibited for all traffic beginning on February 28, 2019 to continue through 7 p.m. on April 15, 2019. The COTP will terminate the enforcement of this safety zone before April 15, 2019, if the high water event ceases. Entry into this safety zone is prohibited unless specifically authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

Requests for entry will be considered and reviewed on a case-by-case basis. The COTP may be contacted by telephone at 1–866–777–2784 or can be reached by VHF–FM channel 16. Persons and vessels permitted to transit this safety zone shall not meet, pass, or overtake any vessel currently transiting, shall maintain slowest speed for safe navigation, and shall comply with all lawful directions issued by the COTP or the designated representative.

This safety zone may include closures and/or navigation restrictions and requirements that are vital to maintaining safe navigation on the Lower Mississippi River during the high water. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. This emergency safety zone will restrict vessel traffic from entering or transiting through a three-mile section of the navigable waterways of the Lower Mississippi River from MM 405 to MM 408, in the vicinity of Port Gibson, MS, from February 28, 2019 through 7 p.m. on April 15, 2019.

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 temporary safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have 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 an emergency safety zone lasting approximately one and a half months that will prohibit entry into a three-mile stretch of the Lower Mississippi River during a hazardous high-water event. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination will be made 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: 46 U.S.C. 70034; 46 U.S.C. 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.35T08–0229 to read as follows:

§ 165.35T08–0229 Safety Zone; Lower Mississippi River; Port Gibson, MS.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River, extending the entire width of the river, from mile marker (MM) 405 to MM 408, in the vicinity of Port Gibson, MS.

(b) *Period of enforcement.* This section is effective without actual notice from March 6, 2019 through 7 p.m. on April 15, 2019, or until the high water event ceases, whichever occurs first. For the purposes of enforcement, actual notice will be used from February 28, 2019 through March 6, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. To seek entry into the safety zone, contact the COTP or the COTP's representative by telephone at 1–866–777–2784 or on VHF–FM channel 16.

(3) Persons and vessels permitted to enter this safety zone shall not meet, pass, or overtake any vessel currently transiting, shall maintain slowest speed for safe navigation, and shall comply with all lawful directions issued by the COTP or the designated representative.

(d) *Informational broadcasts.* This safety zone may include closures and/or navigation restrictions and requirements that are vital to maintaining safe navigation on this section of the Lower Mississippi River during the high water. The COTP or a designated representative will inform the public through broadcast notices to mariners of any changes in the enforcement period for the safety zone.

Dated: February 28, 2019.

R. Tamez,

Captain, U. S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2019–04014 Filed 3–5–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0116]

Safety Zone for Fireworks Displays; Upper Potomac River, Washington Channel, DC

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulations.

SUMMARY: The Coast Guard will enforce a temporary safety zone for two fireworks displays taking place over the Washington Channel, adjacent to The Wharf DC, Washington, DC; the first on March 2, 2019, (no alternate date) and the second on April 6, 2019, (with an alternate date on April 7, 2019). This action is necessary to ensure the safety of life on navigable waterways during these fireworks displays. Our regulation for recurring fireworks displays from January 12, 2019, through December 31, 2019 identifies the temporary safety zones for these fireworks display events. During the enforcement periods, persons and vessels are prohibited from entering the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative.

DATES: The regulations in 33 CFR 165.T05–1011 will be enforced for the location specified in paragraph (a) of that section from 5:30 p.m. through 7 p.m. on March 2, 2019; from 8 p.m. through 9:30 p.m. on April 6, 2019, and if necessary due to inclement weather, from 8 p.m. through 9:30 p.m. on April 7, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region, Waterways Management Division; telephone 410–576–2674, email *D05-*

DG-SectorMD-NCR-MarineEvents@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the temporary safety zone in 33 CFR 165.T05–1011 (84 FR 4333, Feb. 15, 2019) for a fireworks display from 5:30 p.m. through 7 p.m. on March 2, 2019. There is no alternate date for this fireworks display event. The Coast Guard will enforce the temporary safety zone in 33 CFR 165.T05–1011 for a fireworks display from 8 p.m. through 9:30 p.m. on April 6, 2019. If necessary due to inclement weather, the fireworks display event will be rescheduled and the safety zone will be enforced from 8 p.m. through 9:30 p.m. on April 7, 2019. These are the first and second of eight recurring fireworks displays held adjacent to The Wharf DC, Washington, DC, anticipated from January 12, 2019, through December 31, 2019. This action is being taken to provide for the safety of life on navigable waterways during the fireworks displays. Our regulation for this fireworks display, § 165.T05–1011, specifies the location of the regulated area for these temporary safety zones, which encompass portions of the Washington Channel, adjacent to The Wharf DC, Washington, DC. During the enforcement periods, as specified in § 165.T05–1011(c), persons and vessels may not enter the safety zones unless authorized by the Captain of the Port Sector Maryland-National Capital Region (COTP) or the COTP's designated representative. All vessels underway within the safety zones at the time they are activated are to depart the zones. The Coast Guard may be assisted by other federal, state, or local agencies in the enforcement of these safety zones.

This notice of enforcement is issued under authority of 33 CFR 165.T05–1011 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of these enforcement periods via the Local Notice to Mariners and marine information broadcasts.

Dated: February 28, 2019.

Joseph B. Loring,

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

[FR Doc. 2019–04015 Filed 3–5–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0631; FRL–9990–32–Region 4]

Air Plan Approval; Tennessee; NO_X SIP Call and CAIR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to conditionally approve a portion of a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC) with a letter dated February 27, 2017, to establish a SIP-approved state control program to comply with the obligations of the Nitrogen Oxides (NO_X) SIP Call with respect to certain sources. EPA is also taking final action to fully approve the remaining portion of the same Tennessee SIP revision to remove the SIP-approved portions of the State's Clean Air Interstate Rule (CAIR) Program rules from the Tennessee SIP. In addition, EPA is also fully approving a revision to the Tennessee SIP submitted with a letter dated April 3, 2018, to remove regulations related to a previous NO_X trading program.

DATES: This rule will be effective April 5, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0631. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information 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 electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Sanchez can be reached by telephone at (404) 562–9644 or via electronic mail at *sanchez.madolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under Clean Air Act (CAA or Act) section 110(a)(2)(D)(i)(I), which EPA has traditionally termed the good neighbor provision, states are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each state's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the state that significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that interfere with maintenance of the NAAQS, in any other state.

In October 1998 (63 FR 57356), EPA finalized the ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone''—commonly called the ''NO_X SIP Call.'' The NO_X SIP Call addressed the good neighbor provision for the 1979 1-hour ozone NAAQS and was designed to mitigate the impact of transported NO_X emissions, one of the precursors of ozone.[1] The rule originally required 22 states—including Tennessee—and the District of Columbia to amend their SIPs to reduce NO_X emissions that contribute to ozone nonattainment in downwind states. EPA developed the NO_X Budget Trading Program, an allowance trading program that states could adopt to meet their obligations under the NO_X SIP Call. The NO_X Budget Trading Program allowed certain types of sources to participate in a regional NO_X cap and trade program: generally electric generating units (EGUs) greater than 25 megawatts (MW); and industrial non-electric generating units, such as boilers and turbines, with a rated heat input greater than 250 million British thermal units per hour

[1] *See* 63 FR 57356 (October 27, 1998). As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but EPA subsequently stayed the rule's provisions with respect to that standard. 40 CFR 51.121(q).

(MMBtu/hr), referred to as ''large non-EGUs.'' [2] On January 22, 2004, EPA approved into the Tennessee SIP the State's NO_X Budget Trading Program rule.[3] The NO_X Budget Trading Program was implemented from 2003 to 2008, and in 2009 it was effectively replaced by the ozone season NO_X program under CAIR.

On May 12, 2005 (70 FR 25162), EPA promulgated CAIR to address transported emissions that would significantly contribute to downwind states' nonattainment or interfere with maintenance of the 1997 ozone and fine particulate matter ($PM_{2.5}$) NAAQS. CAIR required SIP revisions in 28 states—including Tennessee—and the District of Columbia to reduce emissions of sulfur dioxide (SO_2) and/or NO_X, precursors of $PM_{2.5}$ (SO_2 and NO_X) and ozone (NO_X). Under CAIR, EPA developed separate cap-and-trade programs for annual NO_X, ozone season NO_X, and annual SO_2 emissions. On April 28, 2006 (71 FR 25328), EPA also promulgated federal implementation plans (FIPs) requiring the EGUs greater than 25 MW in each affected state, but not large non-EGUs, to participate in the CAIR trading programs. An affected state could comply with the requirements of CAIR either by remaining under the FIP, which applied only to EGUs, or by submitting a CAIR SIP revision that achieved the required emission reductions from EGUs and/or other types of sources. States had the further option to remain subject to the CAIR FIP generally, but also adopt ''abbreviated'' CAIR SIP provisions that made certain modifications to the trading programs by allocating allowances among covered units, allowing units to opt-in to the trading programs, or expanding applicability of the CAIR ozone season NO_X trading program to the non-EGUs that formerly participated in the NO_X Budget Trading Program under the NO_X SIP Call.

On August 20, 2007, EPA approved into the Tennessee SIP an abbreviated CAIR SIP revision with allowance allocation and opt-in provisions.[4] On November 25, 2009, EPA approved into the Tennessee SIP a further abbreviated CAIR SIP revision expanding applicability of the CAIR ozone season NO_X trading program to NO_X SIP Call non-EGUs.[5]

EPA discontinued administration of the NO_X Budget Trading Program in 2009 upon the start of the CAIR trading programs. The NO_X SIP Call requirements continued to apply, however, and EGUs that formerly participated in the NO_X Budget Trading Program in almost all states continued to meet their NO_X SIP Call requirements under the generally more stringent requirements of the CAIR ozone season trading program. States needed to assess their NO_X SIP Call requirements and take other regulatory action as necessary to ensure that their obligations for the large non-EGUs continued to be met either through submission of a CAIR SIP or other NO_X regulation. EPA has implementing regulations for the NO_X SIP Call at 40 CFR 51.121.

On December 23, 2008, CAIR was remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina* v. *EPA,* 531 F.3d 896 (2008), *modified on rehearing,* 550 F.3d 1176. This ruling allowed CAIR to remain in effect until a new interstate transport rule consistent with the Court's opinion was developed. While EPA worked on developing a new rule to address the interstate transport of air pollution, the CAIR program continued to be implemented with the NO_X annual and ozone season programs beginning in 2009 and the SO_2 annual program beginning in 2010.

EPA issued the Cross-State Air Pollution Rule (CSAPR) in July 2011 to replace CAIR [6] and address the requirements of the good neighbor provision for the 1997 Annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, and the 1997 8-hour Ozone NAAQS. As amended (including by the 2016 CSAPR Update, which addressed good neighbor requirements for the 2008 8-hour Ozone NAAQS), CSAPR currently requires 27 Eastern states—including Tennessee—to limit their statewide emissions of SO_2 and/or NO_X in order to mitigate transported air pollution impacting other states' ability to attain or maintain the previously-listed NAAQS. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: A program for annual NO_X emissions, two geographically separate programs for annual SO_2 emissions, and two geographically separate programs for ozone-season NO_X emissions. Currently, through FIP provisions established in CSAPR and subsequent SIP revisions from various states, each affected state's units are required to participate in up to three of the five CSAPR trading programs.

The CSAPR trading programs for annual NO_X, annual SO_2, and ozone season NO_X are applicable to the large EGUs (*i.e.,* EGUs that are greater than 25 MW) in each covered state, and a state may also expand trading program applicability to include certain smaller EGUs. Under CSAPR as originally promulgated, states could not expand the applicability under CSAPR's ozone season NO_X trading program to include non-EGUs that formerly participated in the NO_X Budget Trading Program. Starting in 2017, with implementation of the CSAPR Update, states once again have this option, as they did under CAIR.

With respect to Tennessee, large EGUs in Tennessee are currently subject to three of the CSAPR trading programs, including one addressing ozone season NO_X emissions. Tennessee has not chosen to expand CSAPR applicability to small EGUs or non-EGUs.

In a notice of proposed rulemaking (NPRM) published on December 17, 2018 (83 FR 64497), EPA proposed to conditionally approve the portion of a February 27, 2017, SIP revision to add Tennessee Comprehensive Rules and Regulation (TCRR) 1200–03–27–.12—''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' (except paragraph 1200–03–27–.12(7)(b)4.) to the Tennessee SIP,[7] which establishes a state control program to comply with the obligations of the NO_X SIP Call, as clarified in a July 24, 2018, letter.[8] EPA stated that approval of this portion of the February 27, 2017, SIP revision would be conditioned on Tennessee submitting by December 31, 2019, a complete SIP revision amending the rule's

[2] The NO_X SIP Call also identified potential emissions reductions from other non-EGUs, including cement kilns and stationary internal combustion (IC) engines.

[3] *See* 69 FR 3015 (January 22, 2004).

[4] *See* 72 FR 46388 (August 20, 2007).

[5] *See* 74 FR 61535 (November 25, 2009).

[6] Implementation of CAIR was formally sunset upon the implementation of CSAPR, which—because of extended litigation—was delayed until 2015. *See* 79 FR 71663 (December 3, 2014) and 81 FR 13275 (March 14, 2016).

[7] TCRR 1200–03–27–.12(7)(b) specifies additional reporting and recordkeeping requirements related to each facility, which require the facility to report its emissions and to generally maintain records for at least five years. The February 27, 2018 SIP submission contains paragraph 1200–3–27–.12(7)(b)4 that requires sources to report to the Tennessee Division of Air Pollution Control, in addition to EPA. However, as reporting to EPA continues to be required for sources, Tennessee withdrew 1200–3–27–.12(7)(b)4 from the February 27, 2018 submission in a July 24, 2018 letter (hereinafter ''the July 24, 2018 Letter''). As a result, EPA is not acting on the withdrawn paragraph.

[8] The July 24, 2018 Letter clarifies that, consistent with TCRR 1200–03–27–.12(6)(a), the State interprets TCRR 1200–03–27–.12(6)(d) to require that any adjusted allowance allocation amounts for existing affected units under 1200–03–27.12(6)(d) be submitted to EPA for approval as a SIP revision to be incorporated into the SIP prior to allocation. EPA's action on Tennessee's SIP is therefore based on the clarification of the State's interpretation of this provision as explained in the July 24, 2018 Letter.

applicability provisions to cover certain potential new units as discussed in section II.A. of the NPRM, consistent with the State's commitment in letters to EPA dated May 11, 2018, and October 11, 2018.[9] In addition, EPA proposed to fully approve the portion of the February 27, 2017, SIP submission to remove the SIP-approved portions of the State's CAIR trading program rules from the Tennessee SIP at TCRR 1200–03–14–.04—''CAIR SO_2 Annual Trading Program,'' 1200–03–27–.10—''CAIR NO_X Annual Trading Program,'' and 1200–03–27–.11—''CAIR NO_X Ozone Season Trading Program.'' Further, EPA proposed to fully approve an April 3, 2018, SIP revision to remove a previous NO_X SIP Call trading program at TCRR 1200–03–27–.06—''NO_X Budget Trading Program for State Implementation Plans.'' The details of Tennessee's submissions and the rationale for EPA's actions are explained in the NPRM. Comments on the proposed rulemaking were due on or before January 16, 2019. EPA did not receive any comments on the proposed action. EPA is now taking final action consistent with its proposal.

II. Incorporation by Reference

In this document, 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 TCRR 1200–03–27–.12—''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' (with the exception of paragraph 1200–3–27–.12(7)(b)4.), state effective February 19, 2017, which establishes a state control program to comply with the obligations of the NO_X SIP Call. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 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 CAA 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.[10]

III. Final Action

As described above and in the NPRM, EPA is conditionally approving the portion of the February 27, 2017, SIP revision to add TCRR 1200–03–27–.12—''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' (except paragraph 1200–03–27–.12(7)(b)4.) to the Tennessee SIP, as clarified in the July 24, 2018 Letter. Approval of this portion of the February 27, 2017, SIP revision is conditioned on Tennessee submitting by December 31, 2019, a complete SIP revision amending the rule's applicability provisions to cover certain potential new units as discussed in section II.A. of the NPRM, consistent with the State's commitment. In addition, EPA is approving the portion of the February 27, 2017 SIP submission to remove the SIP-approved portions of the State's CAIR trading program rules from the Tennessee SIP at TCRR 1200–03–14–.04—''CAIR SO_2 Annual Trading Program,'' 1200–03–27–.10—''CAIR NO_X Annual Trading Program,'' and 1200–03–27–.11—''CAIR NO_X Ozone Season Trading Program.'' Further, EPA is approving the April 3, 2018, SIP revision to remove a previous NO_X SIP Call trading program at TCRR 1200–03–27–.06—''NO_X Budget Trading Program for State Implementation Plans.''

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. *See* 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. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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 CAA, petitions for judicial review of this

[9] On May 11, 2018, Tennessee submitted a commitment letter requesting conditional approval of the 2017 NO_X SIP Call Rule and committing to provide a SIP revision to EPA by April 30, 2019, that addresses the deficiency discussed in Section II.A. of the NPRM by revising the definition of ''affected unit'' to remove the unqualified exclusion for any unit that serves a generator that produces power for sale. In a letter dated October 11, 2018, Tennessee revised the commitment date from April 30, 2019, to December 31, 2019.

[10] *See* 62 FR 27968 (May 22, 1997).

action must be filed in the United States Court of Appeals for the appropriate circuit by May 6, 2019. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 20, 2019.

Mary S. Walker,

Acting Regional Administrator, Region 4.

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 RR—Tennessee

■ 2. Section 52.2219 is added to read as follows:

§ 52.2219 Conditional approval.

Tennessee submitted a SIP revision on February 27, 2017, to add TCRR 1200–03–27–.12—''NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines'' (except paragraph 1200–03–27–.12(7)(b)4.) to the Tennessee SIP, which establishes a state control program to comply with the obligations of the NO_X SIP Call. In letters dated May 11, 2018 and October 11, 2018, Tennessee committed to submit, by December 31, 2019, a complete SIP revision amending the rule's applicability provisions to cover certain potential new units. EPA conditionally approved the portion of the February 27, 2017, SIP revision to add TCRR 1200–03–27–.12 to the SIP in an action published in the **Federal Register** on March 6, 2019 based on this commitment. If Tennessee fails to meet its commitment by December 31, 2019, the conditional approval will become a disapproval and EPA will issue a notice to that effect.

■ 3. Section 52.2220(c) Table 1 is amended:

■ a. Under CHAPTER 1200–3–14 by removing the entry for ''Section 1200–3–14–.04'', and

■ b. Under CHAPTER 1200–3–27 by:

■ i. Removing the entries for ''Section 1200–3–27–.06'', ''Section 1200–3–27–.10'', and ''Section 1200–3–27–.11''; and

■ ii. Adding an entry in numerical order for ''Section 1200–3–27–.12''.

The revisions and additions read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
CHAPTER 1200–3–27 Nitrogen Oxides				
*	*	*	*	*
Section 1200–3–27–.12.	NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines.	2/19/17	3/6/19 [Insert **Federal Register** citation].	With the exception of paragraph 1200–3–27–.12(7)(b)4. The remainder of Section 1200–3–27–.12 is conditionally approved through December 31, 2019.
*	*	*	*	*

* * * * *

[FR Doc. 2019–03956 Filed 3–5–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2018–0588; FRL–9990–45—Region 5]

Air Plan Approval; Minnesota; Commercial and Industrial Solid Waste Incineration Units and Other Solid Waste Incineration Units Negative Declarations for Designated Facilities and Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that we have received negative declarations from Minnesota pertaining to the presence of Commercial and Industrial Solid Waste Incineration (CISWI) units and Other Solid Waste Incineration (OSWI) units in Minnesota. The Minnesota Pollution Control Agency (MPCA) submitted its CISWI negative declaration by letter dated February 3, 2017, and its OSWI negative declaration by letter dated June 21, 2017. MPCA notified EPA in its negative declaration letters that there are no CISWI or OSWI units subject to the requirements of the Clean Air Act (Act) currently operating in Minnesota. On September 27, 2018, EPA published a notice of proposed rulemaking for these declarations.

DATES: This final rule is effective on April 5, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0588. 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, *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 Margaret Sieffert, Environmental Engineer, at (312) 353–1151 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@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. Background
II. What action is EPA taking?
III. Statutory and Executive Order Reviews

I. Background

On February 3, 2017, MPCA submitted its CISWI negative declaration, in which MPCA certified that there are no existing CISWI units currently operating in Minnesota.

On June 21, 2017, MPCA submitted its OSWI negative declaration, in which it certified that there are no existing OSWI units currently operating in Minnesota.

On September 27, 2018, EPA published a notice of proposed rulemaking (NPRM) proposing notice of Minnesota's negative declarations for CISWI and OSWI. The specific details of Minnesota's request and the rationale for EPA's approval are discussed in the NPRM and will not be restated here. EPA did not receive any comments on the proposed action.

II. What action is EPA taking?

EPA is notifying the public of EPA's receipt of MPCA's negative declarations for both CISWI and OSWI facilities and amending 40 CFR part 62 to reflect both negative declarations. For CISWI, EPA received the negative declaration on February 3, 2017, and for OSWI, EPA received the negative declaration on June 21, 2017. In this action, EPA is finalizing its notification. EPA is also adding 40 CFR part 62.5880 and 62.5890 to reflect these notifications.

III. Statutory and Executive Order Reviews

A. General Requirements

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under E.O. 12866. This action merely approves state law as meeting Federal requirements and merely notifies the public of EPA's receipt of negative declarations from an air pollution control agency without any existing CISWI or OSWI units in its state. This action imposes no requirements beyond those imposed by the state. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule pertains to pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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). This rule 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). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely provides notice of receipt of negative declarations, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it just notifying the public regarding receipt of the negative declarations.

In reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. With regard to negative declarations for designated facilities received by EPA from states, EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan submission or negative declaration for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan or negative declaration submission, to use VCS in place of a state plan or negative declaration submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 May 6, 2019. 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 62

Administrative practice and procedure, Air pollution control, Environmental protection, Commercial and Industrial Solid Waste Incinerators, Intergovernmental relations, Other Solid Waste Incinerator Units, Reporting and record-keeping requirements.

Dated: February 25, 2019.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

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

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

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

■ 2. Add §§ 62.5880 and 62.5890 and their undesignated center headings to subpart Y to read as follows:

* * * * *

Control of Air Emissions From Commercial and Industrial Solid Waste Incineration Units

§ 62.5880 Identification of plan—negative declaration.

On February 3, 2017, the Minnesota Pollution Control Agency submitted a negative declaration letter to EPA certifying that there are no existing Commercial and Industrial Solid Waste Incineration (CISWI) units in the State of Minnesota subject to the emissions guidelines at 40 CFR part 60, subpart DDDD.

Control of Air Emissions From Other Solid Waste Incineration Units

§ 62.5890 Identification of plan—negative declaration.

On June 21, 2017, the Minnesota Pollution Control Agency submitted a negative declaration letter to EPA certifying that there are no existing Other Solid Waste Incineration (OSWI) units in the State of Minnesota subject to the emissions guidelines at 40 CFR part 60, subpart FFFF.

[FR Doc. 2019–04069 Filed 3–5–19; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Part 1148

RIN 3135–AA27

Procedures for Disclosure of Records Under the Freedom of Information Act; Corrections

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Correcting amendments.

SUMMARY: On February 27, 2019, the National Endowment for the Arts revised its FOIA rules. That document inadvertently contained two paragraphs with the same designation. This document corrects the final regulations.

DATES: Effective March 6, 2019.

FOR FURTHER INFORMATION CONTACT: Daniel Fishman, Attorney Advisor, National Endowment for the Arts, 400 7th St. SW, Washington, DC 20506, Telephone: 202–682–5514.

SUPPLEMENTARY INFORMATION: On February 27, 2019, the Arts Endowment published its final action in Procedures for Disclosure of Records under the Freedom of Information Act (84 FR 6344). The final regulatory text inadvertently contained two paragraphs that were both designated to appear at § 1148.10(a)(1)(ii). This correction amends the regulations to properly designate these paragraphs.

List of Subjects in 45 CFR Part 1148

Administrative practice and procedure, Archives and records, Freedom of information.

Accordingly, 45 CFR chapter XI, subchapter B, part 1148 is corrected by making the following correcting amendments:

PART 1148—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

■ 1. The authority citation for part 1148 continues to read as follows:

Authority: 5 U.S.C. 552; 28 U.S.C. 1746; 31 U.S.C. 3717; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp.

§ 1148.10 [Amended]

■ 2. In § 1148.10, redesignate the second paragraph (a)(1)(ii) as paragraph (a)(1)(iii).

Dated: February 28, 2019.

Jillian Miller,

Director, Office of Guidelines and Panel Operations, National Endowment for the Arts.

[FR Doc. 2019–03968 Filed 3–5–19; 8:45 am]

BILLING CODE 7537–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90, WT Docket No. 10–208; FCC 18–183]

Connect America Fund; Universal Service Reform—Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Commission extends the timeframe for the collection of speed test data for Mobility Fund Phase II (MF–II) challenges and for the collection of data by respondents to MF–II challenges by 90 days. Speed test data in support of a challenge will be accepted if collected on or after February 27, 2018, and through November 26, 2018. Respondents may submit information that was collected any time on or after April 29, 2018, through the close of the response window.

DATES: The Order is effective March 6, 2019.

FOR FURTHER INFORMATION CONTACT: Office of Economics and Analytics, Auctions Division, Audra Hale-Maddox, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Report and Order in WC Docket No. 10–90 and WT Docket No. 10–208; FCC 18–183, adopted on December 13, 2018, and released on January 03, 2019. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's website at *http://wireless.fcc.gov,* or by using the search function on the EDOCS web page at *https://www.fcc.gov/edocs.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Regulatory Flexibility Analysis: As required by the Regulatory Flexibility

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

Paperwork Reduction Act: This Third Report and Order implements the information collection requirements adopted in the *MF–II Challenge Process Order,* 82 FR 42473, September 8, 2017, (PRA approval published 83 FR 6562 (Feb. 14, 2018)), and does not contain any additional information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. On February 7, 2018, the Commission received PRA approval from the Office of Management and Budget (OMB) for the information collection requirements related to the challenge process, as adopted in the *MF–II Challenge Process Order.* Because this Third Report and Order does not adopt any additional information collection requirements beyond those adopted in the *MF–II Challenge Process Order* and approved by OMB, it does not implicate the procedural requirements of the PRA or the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

Congressional Review Act: The Commission will send a copy of this Third Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

Synposis: On December 13, 2018, the Commission adopted a Third Report and Order in WC Docket No. 10–90 and WT Docket No. 10–208 extending the data collection periods for MF–II challenges and responses by 90 days. Previously, the Commission extended the deadline for the close of the Mobility Fund Phase II challenge window by 90 days. Challengers had until November 26, 2018, to submit speed test data in support of a challenge. At the time that the Commission extended the challenge window, it also proposed to extend by 90 days the periods during which challengers and respondents could collect data.

I. Background

1. In 2017, the Commission adopted rules to move forward on a reverse auction that will direct up to $4.53 billion of MF–II support over ten years to providers in geographic areas lacking unsubsidized 4G Long Term Evolution (LTE) services. The Commission also determined that it would establish standards for mobile providers to make a one-time submission of current 4G LTE coverage data, compile a list of areas that were presumptively eligible for MF–II support, and provide a timeframe before the auction during which interested parties could challenge areas that were not listed as presumptively eligible (*i.e.,* ''presumptively ineligible'' areas). Mobile providers had to file their coverage data with certifications by a qualified engineer, under penalty of perjury. The Rural Broadband Auctions Task Force, in conjunction with the Wireless Telecommunications Bureau and the Wireline Competition Bureau, compiled the one-time collection of 4G LTE coverage data and subsidy data from the Universal Service Administrative Company (USAC) to create the resulting map of areas presumptively eligible for MF–II support.

2. The *MF–II Challenge Process Order* established the framework for a robust challenge process that will refine the map of areas presumptively eligible to receive MF–II support. This challenge process is designed to efficiently resolve disputes about the eligibility of presumptively ineligible areas using mobile network speed test data. During the challenge window, interested parties could contest the initial determination of areas deemed presumptively ineligible for MF–II support. An eligible challenger could access USAC's web data portal and download the provider-specific confidential coverage data necessary to begin conducting speed tests to challenge assertions of coverage. After the close of the challenge window, a respondent would have the opportunity to respond to challenges by submitting its own speed test data or certain technical information that is probative of the validity of the challenger's speed tests. Challenged parties will have 30 days to review challenges and supporting data in the USAC portal before the opening of the response window. Once opened, the response window will close 30 days later.

3. The Commission initially established a challenge window of 150 days, which began on March 29, 2018, and it was scheduled to close on August 27, 2018. After the Commission adopted the timeframe for the challenge window, the Rural Wireless Association (RWA) submitted *ex parte* data regarding estimated burdens of the challenge process, including specific estimates of the amount of time required to conduct speed tests in certain areas. Taking this *ex parte* burden data into account, the Commission extended the challenge window in its August 2018 *MF–II Challenge Process Extension Order,* 83 FR 44241, August 30, 2018, for an additional 90 days, to November 26, 2018.

4. Under the standards adopted in the *MF–II Challenge Process Order,* speed test data for a challenge would only be accepted if such data were collected within the six months preceding the scheduled close of the challenge window. The Commission adopted the six-month collection period for speed test data because ongoing deployment of new 4G LTE service raised concerns ''that speed measurements taken before the submission of updated coverage maps may not reflect the current consumer experience.'' That six-month period commenced on February 27, 2018, upon the publication of the map of presumptively eligible areas. Similarly, the standard for data to be submitted by a respondent required that such data be collected within six months before the close of the response window.

5. When extending the challenge window in the *MF–II Challenge Process Extension Order,* the Commission proposed in the MF–II Challenge Process Extension Notice of Proposed Rulemaking, 83 FR 44254, August 30, 2018, to extend the periods during which both challengers and challenged parties could collect information from six months to at least nine months. The Commission offered these proposals in recognition that challengers could have already collected speed test data before the challenge window was extended, in which case data collected between February 27, 2018, and May 28, 2018, would not be acceptable absent an expansion of the initially adopted six-month data collection period. The Commission tentatively concluded that this modification to the data timeframe requirements would serve the public interest by preventing challengers from having to repeat speed tests and would more effectively implement MF–II policy. Three parties submitted comments in response to the Notice of Proposed Rulemaking (NPRM). No commenters opposed the proposed modification to the data timeframe requirements.

II. Order Extending the Challenge Data Collection Window

6. The Commission adopts the proposal to accept speed test data for

MF–II challenges collected on or after February 27, 2018, through the new close of the challenge window, November 26, 2018. All commenters support the proposal. RWA stated that some of its member companies spent significant amounts of money performing testing before May 28 and that those expenses would be wasted if the timeframe for acceptable testing were not also extended. U.S. Cellular and Competitive Carriers Association (CCA) agreed with the Commission's stated rationale that extending the timeframe would avoid unnecessary retesting while collecting accurate data. To relieve challengers of the needless repetition of speed tests conducted before May 28 and to more effectively implement the MF–II challenge process, the Commission modifies the initially adopted requirement that challenger speed test data be collected within six months before the scheduled close of the challenge window. This modification allows challengers to submit the results of speed tests taken during the entire nine-month challenge process data collection window. When setting the original challenge process data collection window, the Commission stated that it was concerned that challenge data collected before deployments made in conjunction with the submission of updated coverage maps from current providers might not reflect the current consumer experience. The Commission therefore required that challenge data be collected after the publication of the initial eligibility map and within six months of the scheduled close of the challenge window (which at the time were exactly contiguous periods). But given the Commission's extension of the challenge window by three months, extending the data collection period by a similar period does not permit submission of data collected prior to the submission of the updated coverage maps.

7. Likewise, the Commission adopts the proposal to afford respondents the same additional amount of time as challengers to collect information for the MF–II challenge process. Hence, during the response window, respondents may submit information that was collected any time on or after April 29, 2018, through the close of the response window. This change is consistent with the *MF–II Challenge Process Order's* generally parallel standards for challengers and respondents. CCA supports an extension to provide respondents with a similar timing requirement as challengers. As CCA observes, providing respondents with a similar data collection time period appropriately balances the interests of respondents with the Commission's interest in receiving data collected recently. As stated above for challengers, this extension of the data collection period for respondents would not permit submission of any data collected before the publication of the presumptively eligible areas map, and therefore the permitted data would not create data recency concerns. Accordingly, a respondent would have at least nine months to collect speed test data for its own network or certain technical information probative of the validity of the challenger's speed tests. Respondents' speed tests collected on or after April 29, 2018, will be considered valid.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

8. The Third Report and Order implements the information collection requirements adopted in the *MF–II Challenge Process Order* and does not contain any additional information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. On February 7, 2018, the Commission received PRA approval from the Office of Management and Budget (OMB) for the information collection requirements related to the challenge process, as adopted in the *MF–II Challenge Process Order.* Because this Order does not adopt any additional information collection requirements beyond those adopted in the *MF–II Challenge Process Order* and approved by OMB, this Order does not implicate the procedural requirements of the PRA or the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

B. Congressional Review Act

9. The Commission will send a copy of the Third Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

C. Final Regulatory Flexibility Certification

10. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for a notice-and-comment rulemaking proceeding, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. As required by the RFA, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the USF/ICC Transformation FNPRM, 76 FR 78384, December 16, 2011, the 2014 CAF FNPRM, 79 FR 39195, July 9, 2014, and the MF–II FNPRM, 82 FR 13413, March 13, 2017 (collectively, MF–II FNPRMs). The Commission sought written public comment on the proposals in MF–II FNPRMs including comments on the IRFAs and Supplemental IRFA. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the CAF Report & Order, 79 FR 39163, July 9, 2014, and Further Notice of Proposed Rulemaking (FNPRM), 79 FR 39196, July 9, 2014, the MF–II Report & Order, 82 FR 15422, March 28, 2017, the *MF–II Challenge Process Order,* and the MF–II Second Order on Reconsideration, 83 FR 17934, April 25, 2018 (collectively, the MF–II Orders).

12. The new requirements adopted in this Order provide additional time for valid data collection for both challengers and respondents. In so doing, this change will align the challenge process data requirements with the procedural rule change, adopted in the *MF–II Challenge Process Extension Order,* extending the challenge window deadline by 90 days. Due to the minor effect of these changes, the Commission anticipates that there will be no significant economic impact on any of the small entities identified in the MF–II FNPRMs and MF–II Orders. Therefore, the Commission certifies that the requirements of the Order will not have a significant economic impact on a substantial number of small entities.

IV. Ordering Clauses

13. Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 4(i) and (j), 254, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 254, 303(r), 332, and §§ 1.1 and 1.425 of the Commission's rules, 47 CFR 1.1, 1.425, this Order *is adopted.*

14. *It is further ordered* that, pursuant to the authority contained in sections 1, 4(i) and (j), 254, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j), 254,

303(r), 332, and §§ 1.1 and 1.425 of the Commission's rules, 47 CFR 1.1, 1.425, the windows for challengers and respondents to collect information in connection with the MF–II challenge process *are extended*, to the extent described herein.

15. *It is further ordered* that, pursuant to § 1.427(b) of the Commission's rules, 47 CFR 1.427(b), this Order *shall be effective* upon its publication in the **Federal Register**.

16. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–03635 Filed 3–5–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172 and 173

[Docket No. PHMSA–2016–0014 (HM–224I)]

RIN 2137–AF20

Hazardous Materials: Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft (FAA Reauthorization Act of 2018)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Interim final rule (IFR).

SUMMARY: PHMSA issues this interim final rule (IFR) to revise the Hazardous Materials Regulations for lithium cells and batteries transported by aircraft. This IFR prohibits the transport of lithium ion cells and batteries as cargo on passenger aircraft; requires lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge aboard cargo-only aircraft when not packed with or contained in equipment; and limits the use of alternative provisions for small lithium cell or battery shipments to one package per consignment. This IFR does not restrict passengers or crew members from bringing personal items or electronic devices containing lithium cells or batteries aboard aircraft, or restrict cargo-only aircraft from transporting lithium ion cells or batteries at a state of charge exceeding 30 percent when packed with or contained in equipment or devices.

DATES:

Effective date: This interim final rule is effective on March 6, 2019.

Comment date: Comments must be received by May 6, 2019.

ADDRESSES: You may submit comments identified by Docket Number [PHMSA–2016–0014 (HM–224I)] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

FOR FURTHER INFORMATION CONTACT: Shelby Geller, (202) 366–8553, Standards and Rulemaking Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

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I. Executive Summary

The safe transport of lithium batteries by air has been an ongoing concern due to the unique challenges they pose to safety in the air transportation environment. Unlike other hazardous materials, lithium batteries contain both a chemical and an electrical hazard. This combination of hazards, when involved in a fire encompassing significant quantities of lithium batteries, may exceed the fire suppression capability of the aircraft and lead to a catastrophic loss of the aircraft.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) issues this interim final rule (IFR) to amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to (1) prohibit the transport of lithium ion cells and batteries as cargo on passenger aircraft; (2) require all lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and (3) limit the use of alternative provisions for small lithium cell or battery to one package per consignment. These amendments will predominately affect air carriers (both passenger and cargo-only) and shippers offering lithium ion cells and batteries for transport as cargo by aircraft. The amendments will not restrict passengers or crew members from bringing personal items or electronic devices containing lithium cells or batteries aboard aircraft, or restrict the air transport of lithium ion cells or batteries when packed with or

contained in equipment. To accommodate persons in areas potentially not serviced daily by cargo aircraft, PHMSA, through the requirement in the FAA Reauthorization Act of 2018, is providing a limited exception, with the approval of the Associate Administrator, for not more than two replacement lithium cells or batteries specifically used for medical devices to be transported by passenger aircraft. Furthermore, these batteries may be excepted from the state of charge requirements, when meeting certain provisions. See ''Section V.D. Limited Exceptions to Restrictions on Air Transportation of Medical Device Cells or Batteries'' for further discussion.

This IFR is necessary to address an immediate safety hazard, meet a statutory deadline, and harmonize the HMR with emergency amendments to the 2015–2016 edition of the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). The serious public safety hazards associated with lithium battery transportation and the statutory deadline in the FAA Reauthorization Act of 2018 necessitate the immediate adoption of these standards in accordance with sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedure Act (APA). While PHMSA values public participation in the rulemaking process, the current risk of a lithium battery incident and statutory deadline imposed by Congress makes it impractical and contrary to public interest to delay the effect of this rulemaking until after a notice and comment period. However, with the publication of this IFR, PHMSA encourages persons to participate in this rulemaking by submitting comments containing relevant information, data, or views. PHMSA will consider all comments received on or before the IFR closing comment date, consider late-filed comments to the extent practicable, and make any necessary amendments as appropriate.

In developing this IFR, PHMSA considered the findings of lithium battery research conducted by the Federal Aviation Administration's William J. Hughes Technical Center (FAA Technical Center), the National Transportation Safety Board (NTSB), and several other well-respected academic sources on lithium batteries and their hazards. The FAA Technical Center's research found that lithium batteries subject to certain conditions could result in adverse events, such as smoke and fire, that could impair the safe operation of the aircraft. Specifically, they found that in a lithium battery fire, flammable gases could collect, ignite, and ultimately exceed the capabilities of an aircraft's fire suppression system. The ICAO also recognized these dangers and enacted international regulations, which went into effect on April 1, 2016. The potential for a catastrophic loss of an aircraft, the need for harmonization of the HMR with emergency amendments to the ICAO Technical Instructions, and the statutory deadline in the FAA Reauthorization Act of 2018 provide compelling justification to immediately adopt these changes into the HMR without prior notice and comment.

A Regulatory Impact Analysis (RIA) is included in the docket for this rulemaking and supports the amendments made in this IFR. PHMSA examined the benefits and costs of these rulemaking provisions using the post-ICAO baseline [1] as shown in the analysis below. Table 1 shows the costs by affected section and rulemaking provision over a 10-year period, discounted at a 7 percent rate:

TABLE 1—SUMMARY OF BENEFITS AND COSTS FOR LITHIUM BATTERY PROVISIONS—POST ICAO

Provision	Benefits	Unquantified costs	10-Year quantified cost (7%)
State of Charge	• Limits the volume of flammable gases emitted by lithium ion cells propagated in a thermal runaway. • Results in a less energetic thermal runaway event if one should occur. • Reduces the likelihood of thermal propagation from cell to cell. • Harmonization facilitates international trade by minimizing the burden of complying with multiple or inconsistent safety requirements (although currently domestic shippers and carriers have the option to voluntarily comply with ICAO requirements). Consistency between regulations reduces compliance costs and helps to avoid costly frustrations of international shipments.	• Potential changes in manufacturing procedures to ensure compliance with state of charge provision. • Reevaluation of management practices and potentially instituting changes to avoid or lessen supply chain impacts such as reduced shelf life of batteries and battery quality issues. • Additional time for end users needed to charge the batteries from 30 percent state of charge or less instead of the typical levels of 40 percent or 50 percent at which manufacturers currently set the state of charge.	$2,304,551 These estimates include only the cost for entities to apply for permission to ship batteries at higher charge levels.

[1] The post-ICAO baseline is the international operating environment present after April 1, 2016; this would (1) restrict lithium ion batteries to a 30 percent state of charge for international air shipments, (2) restrict the number of Section II packages to one per consignment on international air shipments, and (3) prohibit the shipping of lithium ion batteries as cargo on international passenger flights. This environment also includes a level of voluntary domestic compliance with the above provisions in the United States.

TABLE 1—SUMMARY OF BENEFITS AND COSTS FOR LITHIUM BATTERY PROVISIONS—POST ICAO—Continued

Provision	Benefits	Unquantified costs	10-Year quantified cost (7%)
Consignment Limit	• Reduces the risk of fire from shipping large quantities of excepted batteries that were previously being consolidated in overpacks, pallets, in single-unit load devices and single aircraft cargo compartments.. • Reduces the propensity for large numbers of batteries or packages shipped in accordance with regulatory exceptions.. • Harmonization facilitates international trade by minimizing the burden of complying with multiple or inconsistent safety requirements (although currently domestic shippers and carriers have the option to voluntarily comply with ICAO requirements). Consistency between regulations reduces compliance costs and helps to avoid costly frustrations of international shipments..	• Costs due to modal shift that might occur from air transport to ground or marine transport due to higher shipping costs by air. The end receivers may be inconvenienced by longer shipping times that imply less prompt access to goods purchased..	$44,328,936 Costs include additional hazard communication and employee training.
Lithium Battery Prohibition as Cargo on Passenger Aircraft.	• Safety benefits expected to be low or none given evidence of pre-IFR compliance.. • Eliminates the risk of an incident induced by lithium ion batteries shipped as cargo in a passenger aircraft.. • Eliminates the risk of a fire exacerbated by the presence of lithium ion batteries involving the cargo hold of a passenger aircraft.. • Harmonization facilitates international trade by minimizing the burden of complying with multiple or inconsistent safety requirements (although currently domestic shippers and carriers have the option to voluntarily comply with ICAO requirements). Consistency between regulations reduces compliance costs and helps to avoid costly frustrations of international shipments.	• Potential additional costs to air carriers transporting cargo shipments of lithium ion batteries on cargo planes instead of passenger aircraft. They vary for each air carrier based on the size of the airline and the areas they service, the availability of cargo-only aircraft fleet, the capacity usage and cargo volume availability of cargo aircraft fleet, and the volume of lithium ion batteries they were transporting by passenger airplanes.. • Cost due to modal shift that might occur as higher costs to ship by air may induce shippers to send by ground and marine transportation. The end receivers may be inconvenienced by longer shipping times that imply less prompt access to goods purchased. This can have potential impacts on rural and remote communities not serviced daily by cargo aircraft or only serviced by passenger aircraft. For customers needing lithium batteries used in devices, other than medical devices, the delays in the delivery of the required batteries could result in a range of consequences depending on their intended need..	Impact expected low given evidence of pre-IFR compliance.
Total	.....	.....	10-Year: $46,633,487 Annualized: $6,639,559

Based on the analysis described in the RIA, at the mean, PHMSA estimates the present value costs about $46.6 million over 10 years and about $6.6 million annualized (at a 7 percent discount rate).

While PHMSA examined the benefits and the costs of the provisions of this rulemaking using the post-ICAO baseline as the basis for the analysis, we acknowledge that using the pre-ICAO baseline [2] would produce different cost and benefit figures. That said, given the significant data uncertainties regarding pre-ICAO baseline and operational practices, PHMSA was unable to completely quantify the pre-ICAO baseline. PHMSA has provided a discussion of these qualitative benefits and costs. For more detail on cost and benefits of the pre-ICAO baseline, see ''Section 11 Alternative Baseline Analysis'' of the RIA included in the docket for this rulemaking. PHMSA requests public comment on the RIA as it applies to the benefits and costs under both baselines.

[2] The pre-ICAO baseline is the international operating environment present before April 1, 2016 with: (1) No limitations of state of charge, (2) No limitation on the number of Section II packages offered in a single consignment, and (3) No prohibition of shipping Lithium ion batteries as cargo on passenger carrying aircraft.

II. Current Lithium Battery Transportation Requirements

Lithium cells and batteries fall into one of two basic categories: lithium metal, including lithium alloy (also known as primary lithium batteries), and lithium ion, including lithium ion polymer (also known as secondary lithium batteries). As the name indicates, lithium metal cells and batteries contain a small amount of metallic lithium or a lithium alloy. Lithium metal batteries are mostly non-rechargeable and are often used in medical devices, computer memory, and as replaceable batteries (AA and AAA size) suitable for electronic devices. The lithium content in these cells and

batteries ranges from a fraction of a gram to a few grams and typical geometries include coin cells, cylindrical, and rectangular. Conversely, lithium ion cells and batteries contain a lithium compound (*e.g.,* lithium cobalt dioxide, lithium iron phosphate). Lithium ion batteries are generally rechargeable and are most often found in portable computers, mobile phones, and power tools. Common configurations are cylindrical and rectangular. For the purposes of the HMR, the size of lithium ion cells and batteries is measured in Watt-hours (Wh).

Lithium cells and batteries are capable of efficiently storing large amounts of energy and have a higher specific energy (capacity) and energy density relative to other battery chemistries, such as alkaline, nickel metal hydride (NiMH), and nickel cadmium (NiCd). However, when subjected to mechanical abuse, internal or external short circuit, overcharge, or excessive heat, a lithium cell or battery is susceptible to thermal runaway, which is a chain reaction leading to self-heating and release of stored energy.[3] [4] A lithium ion cell sufficiently heated can induce a thermal runaway event. Cells in thermal runaway can release excessive heat (up to 1400 °F (760 °C)), as well as flammable and toxic gases, and the heat from a single cell in thermal runaway can spread to adjacent cells in a battery or package.[5] [6] This cascading effect, or spreading, (hereafter referred to as propagation) increases the potential ignition of adjacent combustible materials. In addition, the pressure inside a cell can increase, causing the cell to rupture and resulting in a projectile hazard and the release of flammable gases. Vented gases from only a small number of cells, if ignited, can result in a pressure pulse that can compromise the fire suppression capability of an aircraft cargo compartment.[7] Based on FAA Technical Center data, the volume of flammable cell gas ignited to produce a 1.2 psi pressure rise corresponded to only 6.4 cells at 100 percent state of charge or 20 cells at 50 percent state of charge. Cargo compartments are only designed to withstand an approximate 1-psi pressure differential.

Triggering events to a thermal event include external short circuits, mechanical damage, exposure to heat, and manufacturing defects that result in an internal short circuit. While the likelihood of a thermal event occurring on an aircraft is low, the consequences of an event are high. The inability of the aircraft fire suppression systems to address lithium cell or battery fires poses an unacceptable safety risk, even if the likelihood of an event is low.

The HMR include separate entries for lithium metal batteries (UN3090), lithium metal batteries packed with equipment (UN3091), lithium metal batteries contained in equipment (UN3091), lithium ion batteries (UN3480), lithium ion batteries packed with equipment (UN3481), and lithium ion batteries contained in equipment (UN3481). Both the HMR and the 2015–2016 ICAO Technical Instructions already prohibit the transport of lithium metal batteries (UN3090) as cargo on passenger aircraft.[8] [9]

The requirements for the transport of lithium batteries are based on risk and are designed to work together to create layers of safety, accounting for battery chemistry (lithium metal and lithium ion), battery size, and package quantity. Lithium batteries are subject to design type testing, various hazard communication, and packaging requirements. Design testing serves to ensure that batteries are able to withstand certain transport and abuse conditions without hazardous consequences.[10] However, the tests are not meant to ensure that lithium batteries are safe in all conditions, such as extreme heat or damage. Lithium cells and batteries may still be subject to mishandling in transport that can result in severe mechanical damage or short circuits.[11] This hazard drives the need for protection against damage and short circuits, as well as the use of strong outer packaging. Hazard communication (*i.e.,* package marks, labels, and shipping documents) serves to alert transport workers throughout the supply chain of the presence of lithium cells or batteries, the need to handle them properly, and the measures to take in the event of an emergency. Hazmat employees must be trained in accordance with the HMR, ensuring that personnel responsible for preparing for transport and transporting do so in compliance with the HMR and maintain safety throughout the supply chain.

In § 173.185, PHMSA sets forth general requirements for lithium cells and batteries, such as United Nations (UN) design testing requirements, packaging requirements, and provisions for small cells and batteries.[12] Unless otherwise specified in § 173.185, the hazard communication and training requirements are located in part 172 of the HMR.

Section 173.185(c) of the HMR describes provisions for the carriage of up to 8 small lithium cells or 2 small lithium batteries per package with alternative hazard communication that replaces the Class 9 label with a lithium battery mark that communicates the presence of lithium batteries and indicates (1) that the package is to be handled with care, (2) that a flammable hazard exists if the package is damaged, and (3) that special procedures must be followed in such event that the package is damaged (*i.e.,* inspection and repacking (if necessary), as well as a telephone number for additional information). Further, when used, an air waybill must indicate compliance with the provisions of § 173.185(c) or the applicable ICAO packing instruction.[13] Consignments of lithium batteries that comply with these provisions are provided alternatives from the standard hazard communication and relief from the acceptance checks that air carriers use to recognize and accept or reject hazardous materials as appropriate.

[3] Bandhauer, Todd M., Garimella, Srinivas, and Fuller, Thomas F., *A Critical Review of Thermal Issues in Lithium-ion Batteries,* The Journal of the Electrochemical Society, Vol. 158 R–21–R25, January 2011.

[4] Mikolajczak, Celina, P.E., Kahn, Michael, Ph.D., White, Kevin, Ph.D., and Long, Richard T., P.E., *Fire Protection Research Foundation Report: Lithium-Ion Batteries Hazard and Use Assessment,* Exponents Failure Analysis Associates, Inc., July 2011.

[5] Webster, H., *Fire Protection for the Shipment of Lithium Batteries in Aircraft Cargo Compartments,* FAA Technical Center, DOT/FAA/AR–10/31, November 2010. *http://www.fire.tc.faa.gov/pdf/10-31.pdf*

[6] Panagiotou, Joseph, Materials Laboratory Study Report, National Transportation Safety Board, Office of Research and Engineering, Materials Laboratory Division, Report No. 12–019, March 2012.

[7] Webster, Harry, Summer, Steven M., Maloney, Thomas, Dadia, Dhaval, Rehn, Steven J., Karp, Matthew, ''Summary of FAA Studies Related to the Hazards Produced by Lithium Cells in Thermal Runaway in Aircraft Cargo Compartments, FAA Report DOT/FAA/TC–16/37, June 2016, *available at https://www.fire.tc.faa.gov/pdf/TC-16-37.pdf.*

[8] Hazardous Materials: Prohibition on the Transportation of Primary Lithium Batteries and Cells Aboard Passenger Aircraft; Interim Final Rule; [69 FR 75208] December 15, 2004.

[9] Dangerous Goods Panel Working Group on Lithium Batteries; April 7–11, 2014; DGP–WG/LB/2–WP/8.

[10] The tests and procedures are described in the United Nations Manual of Tests and Criteria, Part III, Subsection 38.3.

[11] A lithium battery incident at LAX in 1999 was the result of severe mishandling of lithium metal batteries. Hazardous Materials Factual Report, DCA–99–MZ–005. Retrieved from *http://dms.ntsb.gov/public/13000-13499/13470/559466.pdf.*

[12] Small cells and batteries for the purposes of this rulemaking are a lithium metal cell containing not more than 1 gram of lithium metal, a lithium metal battery containing not more than 2 grams of lithium metal, a lithium ion cell not more than 20 Wh, and a lithium ion battery not more than 100 Wh (See § 173.185(c) and Section II of Packing Instructions 965 and 968 in the ICAO Technical Instructions).

[13] See 49 CFR 173.185(c)(4).

Currently, § 173.185(c) does not place a limit on the number of packages containing such lithium batteries permitted in overpacks,[14] pallets, single unit load devices, or single aircraft cargo compartments. This condition allows large numbers of packages of small cells and batteries to be placed near each other without standard declaration to the air carrier or pilot in command.

III. Need for the Rule

Lithium batteries are increasingly prevalent in today's consumer market due to their ability to store substantially more energy than other batteries of the same size and weight. This trend toward lithium ion battery technology has continued over the last decade as illustrated by an increase in lithium ion cell production from approximately 3 billion cells in 2007 to over 7 billion lithium ion cells produced in 2017. PHMSA identified a total of 39 incidents in air cargo transportation between 2010 and 2016 with 13 of these incidents involving lithium batteries and smoke, fire, extreme heat, or explosion that would have been affected by this rulemaking. Many of these incidents were identified at an air cargo sort facility either before or after a flight. In at least one instance, packages of lithium ion cells were found smoldering in an aircraft unit load device during unloading. This indicates that the initial thermal runaway likely occurred while the shipment was on the aircraft. PHMSA also notes three aircraft accidents in 2007, 2010, and 2011 where lithium ion batteries transported as cargo were suspected as either the cause or a factor that increased the severity of the fire. Collectively these accidents resulted in the complete loss of all three aircraft and four lives. These accidents highlight the potential for lithium batteries to contribute to an incident resulting in loss of life and/or loss of aircraft.

Testing conducted by the FAA Technical Center to assess the flammability characteristics of lithium ion rechargeable cells and the potential hazard associated with shipping them on transport aircraft confirmed that fires involving lithium batteries sometimes include a mechanical energy release that can create projectile hazards; thermal runaway from a single cell that can spread to adjacent cells and packages; and the venting of flammable gases that can occur even when the fire is suppressed. Cell failure resulting in a mechanical energy release was observed during testing and was more energetic at 100 percent state of charge relative to cells tested a lower state of charge. However, a state of charge at less than 100 percent still has the potential to result in a mechanical energy release. For example, the FAA testing conducted in 2010 using lithium ion 18650 LiCoO2 cells at a 50 percent state of charge resulted in all 100 cells experiencing thermal runaway.[15] Testing conducted by the NTSB confirmed the potential for fire and projectile hazards and further concluded that aircraft unit load device design can impact the time it takes to detect a fire originating from inside a cargo container.[16] Additionally, the FAA testing determined that Halon 1301, the fire-suppressant agent used in Class C cargo compartments, could suppress the electrolyte and burning packaging fires, but it had no effect on stopping the propagation of thermal runaway from cell to cell. See 14 CFR 25.857 for aircraft cargo compartment classification, including Class C. Halon 1301 was also shown to be ineffective in suppressing an explosion of the flammable gases vented from lithium ion cells during thermal runaway.

A. FAA Technical Center Testing

The FAA Technical Center issued a series of test reports in 2004, 2006, 2010, and 2014 that characterized the hazards posed by lithium cells and batteries transported as cargo on aircraft and the effectiveness of aircraft fire suppression agents, packagings, and packaging configurations. Specifically, the FAA Technical Center tested the ability of various fire extinguishing agents and fire resistant packagings to control fires involving lithium batteries. This testing revealed that: (1) The ignition of the unburned flammable gases associated with a lithium cell or battery fire could lead to a catastrophic loss of the aircraft; (2) the current design of the Halon 1301 fire suppression system [17] in a Class C cargo compartment in passenger aircraft is incapable of preventing such an explosion; and (3) the ignition of a mixture of flammable gases could produce an over pressure, which would dislodge pressure relief panels, allow leakage of Halon from the associated cargo compartment, and compromise the ability of fire suppression systems to function as intended. As a result, the smoke and fire can spread to adjacent compartments and potentially compromise the entire aircraft. Moreover, the FAA testing concluded neither oxygen starvation through depressurization in the case of cargo aircraft nor common shipping containers (*e.g.,* unit load devices) is effective in containing or suppressing a lithium cell or battery fire.

When controlling lithium battery fires, aircraft fire extinguishing agents must both extinguish the electrolyte fire and cool remaining cells to stop the propagation of thermal runaway. Gaseous agents (such as Halon) are somewhat effective against lithium ion battery fires; however, while Halon is effective in extinguishing the electrolyte fire and nearby combustible materials such as packaging, it has no effect in stopping the propagation of thermal runaway from cell to cell. Conventional fiberboard packagings initially protect cells and batteries but eventually ignite and add to the fire load. Special packagings originally designed for chemical oxygen generators are effective in containing a fire from burning lithium ion cells but allow smoke and fumes to escape the package. Currently available fire containment covers (FCC) and fire resistant containers (FRC) that suppress fires by means of oxygen starvation are not effective in controlling lithium ion cell or battery fires. The fire load for each test consisted of 5,000 lithium ion 18650 LiCoO2 cells, with the balance of the interior volume containing the standard fire test load of cardboard boxes filled with shredded paper. The state of charge was measured to be around 40 percent. The FCCs tested were unable to contain a fire involving lithium ion batteries and flames escaped from under the cover, while tests on the FRCs resulted in explosions that were caused by the ignition of accumulated flammable gases vented from burning cells and/or batteries.[18]

The 2004 tests concluded that the presence of a consignment of lithium metal batteries can significantly increase the severity of an in-flight cargo compartment fire and that Halon 1301 is ineffective in such occurrences.[19]

[14] See 49 CFR 171.8. An overpack means an enclosure that is used by a single consignor to provide protection or convenience in handling of a package or to consolidate two or more packages. *Overpack* does not include a transport vehicle, freight container, or aircraft unit load device. Examples of overpacks are one or more packages:

(1) Placed or stacked onto a load board such as a pallet and secured by strapping, shrink wrapping, stretch wrapping, or other suitable means; or

(2) Placed in a protective outer packaging such as a box or crate.

[15] Webster, H. See footnote 5.

[16] Panagiotou, Joseph. See footnote 6.

[17] Halon systems work by flooding the cargo compartment with Halon gas. The concentration of Halon in the local atmosphere interferes with the burning reaction and suppresses the flame. Halon is stored in pressurized containers and distributed via a series of pipes and fire suppression nozzles.

[18] Webster et al. See footnote 7.

[19] Webster, Harry, *Flammability Assessment of Bulk-Packed, Nonrechargeable Lithium Batteries in*

Furthermore, the report stated that the ignition of a lithium metal battery releases burning electrolytes and a molten lithium spray capable of perforating the aircraft cargo compartment liners, while also generating a pressure pulse that can dislodge the cargo compartment pressure relief panels. The dislodged pressure relief panels allow the Halon 1301 fire suppressant to leak out, reducing its effectiveness and permitting the fire to spread beyond the cargo compartment. These test results identified that the Halon fire suppression system required on passenger aircraft could not effectively suppress a fire involving lithium metal batteries, but they were inconclusive with respect to lithium ion batteries. Based on the 2004 FAA Technical Center test results, PHMSA published an IFR in December 2004 [69 FR 75208] prohibiting the transport of lithium metal batteries as cargo on passenger aircraft and indicated plans for the continued assessment of the hazards associated with lithium ion batteries in transportation. ICAO later aligned with the HMR.

The 2006 tests concluded that the Halon fire suppression system is effective in suppressing a fire arising from lithium ion batteries. Cells continued to vent due to the air temperature but did not ignite in the presence of Halon.[20]

The 2010 tests investigated the ability of various packages and shipping configurations to contain the effects of lithium battery fires and prevent the propagation of thermal runaway.[21] The baseline for these tests was a common shipping configuration for lithium ion cells consisting of a fiberboard box containing 100 cells with fiberboard separators. A single cell was removed from the package and replaced with a cartridge heater to initiate thermal runaway. The cartridge heater was activated at time zero, and its temperature reached 1000 °F (538 °C) at the 9-minute mark and peaked at 1250 °F (677 °C) at approximately 19 minutes, at which point the power to the cartridge heater was shut off. The fiberboard box began to smoke 8 minutes into the test and then caught fire at the 11-minute mark. As cells went into thermal runaway, strong torch flames erupted from the box as electrolytes were vented and ignited by the burning fiberboard. The fire continued to burn vigorously for 45 minutes until all of the cells were consumed. Data was collected until all thermocouples returned to near ambient temperature. In a subsequent test, the fiberboard separators were replaced with a fiberglass material used as a flame barrier in aircraft thermal acoustic insulation that was cut to the same dimensions as the fiberboard separators. The fiberglass separators were not successful in controlling the propagation of thermal runaway. In additional tests, the fiberboard dividers were replaced with those coated with intumescent paint or aluminum foil. This modification only delayed adjacent batteries from being driven into thermal runaway and did not prevent its propagation. Finally, the FAA Technical Center evaluated the ability of an overpack originally designed for the transport of chemical oxygen generators to protect against a lithium ion battery fire initiated from a single cell. This package consists of a fiberboard container with a foil and/or ceramic insulator that meets the requirements of HMR provisions found in appendix D to part 178—*Thermal Resistance Test* and appendix E to part 178—*Flame Penetration Resistance Test.* A fiberboard package with 100 cells and fiberboard separators was placed into the overpack. Thermal runaway was initiated and allowed to propagate until all cells were consumed. The overpack successfully contained the fire but allowed smoke and fumes to escape due to increased pressure. The chemical oxygen generator overpack standard did not account for the accumulation of vented flammable gases and was therefore not effective in containing lithium ion battery fires.

In 2013, the FAA Technical Center conducted a series of tests to examine the effectiveness of fire extinguishing agents for suppressing lithium metal and lithium ion battery fires and preventing thermal runaway propagation (DOT/FAA/TC–13/53). These tests used five 2600mAh lithium ion 18650 LiCoO2cells charged to 50 percent capacity. Aqueous agents were the most effective at preventing thermal runaway propagation.[22] The FAA Technical Center further tested the effectiveness of passive protection of lithium battery shipments and published a report in February 2016. For these tests, a packet of water placed above the cells in a package containing 16 lithium ion 18650 LiCoO2 cells (at 50 percent state of charge) was the most effective method of stopping thermal runaway propagation, aside from a lowered state of charge.[23] Early tests with small numbers of cells predicted that the Halon 1301 extinguishing agent would suppress the open flames but not prevent the propagation of thermal runaway from cell to cell. Further tests confirmed that, in some instances, the Halon fire suppression system was unable to mitigate a fire involving lithium ion batteries effectively. These tests were conducted with fiberboard boxes containing 100 lithium ion 18650 LiCoO2 cells. A single cell was removed and replaced with a cartridge heater to simulate a cell in thermal runaway. The test chamber was flooded with a 6 percent Halon 1301 concentration at the first indication of open flames. The agent extinguished the open flame and prevented open flames for the duration of the test. Thermal runaway continued to propagate throughout the box until all cells were consumed. Tests on FCCs and FRCs that suppress fires by means of oxygen starvation showed that these fire suppression methods are not effective in controlling lithium ion cell or battery fires. The fire load for these tests consisted of 5,000 lithium ion 18650 LiCoO2 cells, with the balance of the interior volume containing the standard fire test load of cardboard boxes filled with shredded paper. The state of charge was measured to be around 40 percent. Since Halon has no cooling effect, the temperatures found in a suppressed cargo fire were high enough that cells continued to vent, creating an ignition source for the accumulated gas. The buildup and subsequent ignition of these gases ruptured the container. The container and its contents were destroyed by the ensuing fire.[24]

Transport Category Aircraft, DOT/FAA/AR–04/26, June 2004.

[20] Webster, H., *Flammability Assessment of Bulk-Packed, Rechargeable Lithium-Ion Cells in Transport Category Aircraft,* FAA Report DOT/FAA/AR–06/38, September 2006.

[21] Webster, H. See footnote 5.

[22] Maloney, T., *Extinguishment of Lithium-Ion and Lithium-Metal Battery Fires,* DOT/FAA/TC–13/53, January 2014.

[23] Maloney, T., and Dadia, D., *Passive Protection of Lithium Battery Shipments,* DOT/FAA/TC–15/38, February 2016.

[24] Webster et al. See footnote 7.

In July 2015, in response to the FAA Technical Center testing, two major aircraft manufacturers issued notices to aircraft operators warning of these hazards and supporting a prohibition on the carriage of high-density packages of lithium ion batteries on passenger aircraft until safer methods of transport were implemented.[25] [26] [27] Additionally, the aircraft manufacturers recommended that operators who choose to carry lithium batteries as cargo on cargo aircraft conduct a safety risk assessment that considers specific criteria listed in the July 2015 notices. While the likelihood of a cargo fire involving lithium batteries is low, the potential for catastrophic consequences including loss of life and loss of aircraft results in an unacceptable safety risk under the existing regulations.

B. ICAO Activities

The ICAO Technical Instructions set minimum standards for the international air transport of hazardous materials—including lithium batteries. PHMSA periodically amends the HMR to adopt revisions to the ICAO Technical Instructions. The harmonization between the HMR and the ICAO Technical Instructions creates consistency in hazardous materials transportation standards both internationally and domestically. The amendments in this IFR will aid in maintaining this alignment by adopting requirements consistent with the 2015–2016 ICAO Technical Instructions.

Based largely on the FAA Technical Center testing, which identified hazard factors leading to the potential compromise of the cargo compartment fire protection capabilities due to a loss of Halon containment and significant damage to the aircraft, ICAO conducted several Multidisciplinary Lithium Battery Transport Coordination Meetings consisting of a group of experts from hazardous materials, air operations, airworthiness, battery manufacturing, and package manufacturing disciplines. This multidisciplinary group met three times between 2014 and 2015 and developed a series of recommendations and high-level performance standards intended to mitigate the hazard of transporting lithium ion batteries by air to an acceptable level.[28] Several of these recommendations were directed to the attention of the ICAO Dangerous Goods Panel (DGP), including the development of performance standards to be met at the cell, battery, or package level; the implementation of interim measures, such as reducing the state of charge for lithium ion batteries; and the recommendation to no longer use the current provisions for small batteries for large consignments.

The FAA Technical Center's research was presented to the DGP over the last five years and specifically at each of the previous three meetings (ICAO DGP: Working Group 14, Working Group 2015, and DGP/25). The research was subsequently given to the ICAO Flight Operations Panel (FLTOPSP) and the ICAO Airworthiness Panel (AIRP), which are staffed with global experts in each discipline as well as representatives from appropriate Non-Government Organizations (NGO). The DGP determined that the implementation of a 30 percent state of charge provision and the reduction in the number of small cells and batteries permitted in a consignment and overpack were required to reduce the risk being introduced into the aviation system. In addition, the DGP determined that offering small cell and battery consignments separately to the air carrier will allow for better awareness of each shipment, enabling operators to have a more informed approach to safety risk management and ultimately a more robust safety management system. As a result, operators can apply more targeted controls to mitigate risks introduced into their system by shipments of lithium batteries. Mitigation strategies will be based on the characteristics of the operator's system and may include, but are not limited to, limiting quantities and using certain protective equipment when transporting these consignments. The major airframe manufacturers recommended that operators perform a safety risk assessment to establish whether they can manage the risks associated with the transport of lithium batteries. We expect that operators would incorporate information on lithium battery shipments to develop risk mitigation strategies as part of their safety management activities. Mitigations will vary but could include evaluating the specific fire protection features of the aircraft; how and where shipments are loaded including proximity of lithium batteries to each other and other hazardous materials, such as flammable liquids; and additional acceptance and handling procedures. This IFR will apply these important safety provisions to the small cell and battery consignments consistent with international requirements.

The FLTOPSP stressed the need for air carriers to conduct appropriate safety risk management activities to ensure that lithium cells and batteries can be carried safely.[29] The AIRP determined that the continued transportation of lithium ion batteries on passenger aircraft presents ''an unacceptable risk to aircraft'' under current conditions, and that ''lithium batteries and cells should not be transported in aircraft engaged in commercial air transport operations as cargo unless acceptable means to mitigate the risk can be established.'' The panel further emphasized the following:

> A growing body of test data has identified that existing cargo compartment fire protection systems certified to EASA CS 25.857 and U.S. CFR part 25.857 (CS/CFR part 25) regulations are unable to suppress or extinguish a fire involving significant quantities of lithium batteries, resulting in reduced time available for safe flight and landing of an aircraft to a diversion aerodrome.[30]

ICAO recognized the safety hazard associated with the offering and acceptance of lithium batteries as cargo and addressed it by taking action to implement addenda to the current ICAO Technical Instructions based on input and expertise from the AIRP, FLTOPSP, DGP, Air Navigation Commission, and the FAA Technical Center research. Based on this information, the ICAO Council authorized the issuance of an addendum—an ICAO tool used for a high consequence event resulting in, or creating a direct risk of, loss of life or serious injury to a person or damage to the aircraft—to address the immediate safety risk. The FAA subsequently issued Safety Alert for Operators (SAFO) 16001: *Risks of Fire or Explosion when Transporting Lithium Ion Batteries or Lithium Metal Batteries as Cargo on Passenger and Cargo*

[25] Boeing Multi Operator Message MOM–MOM–15–0469–01B, Information—Transporting Lithium Batteries, July 17, 2015. See *http://www2.anac.gov.br/transparencia/audiencia/2015/aud19/anexoVI.pdf.*

[26] Airbus In-Service Information Transport of Dangerous Goods, Lithium Batteries, reference: 00.00.00182, July 24, 2015. See *http://www2.anac.gov.br/transparencia/audiencia/2015/aud19/anexoV.pdf.*

[27] A single quantifiable measurement for high density is not possible because of the variable effects battery chemistry, cargo compartment characteristics, and loading configurations. As such, high-density quantities of lithium batteries could be any number of batteries or cells having the potential to overwhelm cargo compartment fire protection features.

[28] A report of each ICAO Multidisciplinary Lithium Battery Transport Coordination Meeting is available through the following URL: *http://www.icao.int/safety/DangerousGoods/Pages/Multidisciplinary.aspx.*

[29] Flight Operations Panel (FLTOPSP); Second Meeting; October 12–16, 2015; FLTOPSP/2–WP/31.

[30] Airworthiness Panel (AIRP); Third Meeting; December 7–11, 2015; AIRP/3–WP/21.

Aircraft on January 19, 2016, advising operators of the safety hazard associated with lithium batteries in cargo. SAFO 16001 specifically recommends performing a safety risk assessment and implementing risk mitigation strategies.[31]

Public Meeting

In consideration of the recommendations put forward by the multidisciplinary group, and in preparation for the ICAO DGP/25 meeting, DOT (with representatives from PHMSA, FAA, and OST) hosted a public meeting on September 18, 2015, to obtain feedback on how to better enhance the safe transport of lithium batteries by air.[32] DOT specifically requested public input on mitigation strategies, information, and data. The meeting included a discussion on pertinent safety recommendations from the multidisciplinary group and possible amendments to the ICAO Technical Instructions. DOT noted both in the meeting notice and during the public meeting that we may consider adopting new standards or revised ICAO Technical Instructions in a future rulemaking action. Additionally, on October 8, 2015, FAA hosted a public meeting to discuss the agenda for ICAO DGP/25, including those proposals related to lithium batteries.

ICAO agreed to a series of measures to address the previously and newly identified hazards, such as prohibiting the transport of lithium ion batteries as cargo on passenger aircraft and requiring all lithium ion cells and batteries transported on cargo-only aircraft to be shipped at a reduced state of charge of not more than 30 percent until such time that detailed performance standards could be developed and implemented. An approval provision would allow competent authorities to authorize transport of lithium ion batteries on cargo-only aircraft at a higher state of charge provided an equivalent level of safety can be established. ICAO also agreed to greatly reduce the application of long-standing provisions for the transport of small batteries (commonly referred to in the ICAO Technical Instructions as Section II batteries). Per this amendment, the Section II provisions apply only to a single small package offered and accepted for transport, thus eliminating the ability to ship multiple packages in a single consignment without standard hazard communication. ICAO agreed that these provisions should be incorporated in the current 2015–2016 edition of the ICAO Technical Instructions by way of addenda as they address immediate hazards to air transport safety.

Specifically, ICAO agreed to the following measures effective April 1, 2016:[33] [34]

1. Prohibit the transport of lithium ion batteries (not packed with or contained in equipment) as cargo on passenger aircraft;

2. Require all lithium ion batteries (not packed with or contained in equipment) to be shipped at not more than a 30 percent state of charge on cargo-only aircraft;

3. Restrict the use of Section II[35] (both lithium ion and lithium metal) cell and battery shipments to one package per consignment or overpack.

ICAO agreed that prohibiting the transport of lithium ion batteries as cargo on passenger aircraft addresses a pressing safety issue and further determined that a reduced state of charge, combined with restricting Section II batteries to one package per consignment or overpack, is significantly safer than the current transport requirements. ICAO also agreed to include in the 2017–2018 ICAO Technical Instructions a provision highlighting the need for air carriers who wish to transport hazardous materials to include a safety risk assessment process for the transport of hazardous materials before choosing to do so. The provision will further state that safety risk assessments should include appropriate information to result in the implementation of safety measures that ensure the safe transport of hazardous materials, including lithium cells and batteries, as cargo.

C. Risk Potential

The respective FAA Technical Center and NTSB testing demonstrate that current packages, hazmat handling requirements, shipping configurations, and cargo compartment fire protection systems do not provide adequate protection and may be unable to effectively mitigate a fire involving lithium ion batteries. The results further demonstrate that a relatively small fire of only 450 °F (232 °C) is sufficient to heat lithium ion cells to thermal runaway and that the heat from a single cell in thermal runaway, which can reach 1100 °F (593 °C), is capable of igniting adjacent packaging materials.

Furthermore, while the Halon 1301 fire suppression system in Class C cargo compartments has been shown to effectively suppress the open fire associated with the burning electrolyte and greatly reduce the potential ignition of adjacent flammable materials, it is not effective in cooling any cells already engaged in thermal runaway. Thermal runaway will continue to propagate until all the cells in the consignment have been consumed. Aircraft cargo containers delay the detection of smoke and fire originating from container contents, thereby decreasing the time interval between when smoke and fire become detectable and taking immediate action to suppress a fire and protect the aircraft.[36] Flammable gases produced during a thermal runaway event may continue to develop and collect in a confined space, and the ignition of these gases is sufficient to rupture packages and dislodge pressure relief panels that could result in loss of Halon containment, significant damage to the aircraft, and danger to both the traveling public and flight crews.

This information was presented to the Multidisciplinary Meeting on Lithium Batteries that recommended mitigating measures be taken to reduce the risk of a fire involving significant quantities of lithium cells and batteries (UN3090 and UN3480) that may exceed the fire suppression capability of the aircraft and could lead to a catastrophic loss of the aircraft. Various other groups including the International Coordination Council for Aerospace Industry Association (ICCAIA), major airframe manufacturers, the International Federation of Airline Pilots Association (IFALPA), AIRP, and FLTOPSP endorsed the recommendations from the Multidisciplinary Meeting on Lithium Batteries and separately provided additional recommendations. The ICAO Council approved the adoption of additional requirements to mitigate risks posed by lithium batteries as cargo on cargo-only aircraft. This decision was based upon the input and expertise from

[31] The FAA Safety Alert for Operators (SAFO) 16001 is available through the following URL: *http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo/all_safos/media/2016/safo16001.pdf.*

[32] The public meeting notice and the comments received are available on the public docket DOT–OST–2015–0169 available through *www.regulations.gov.*

[33] Addendum 3 to the 2015–2016 edition of the ICAO Technical Instructions, issued January 15, 2016. *http://www.icao.int/safety/DangerousGoods/AddendumCorrigendum%20to%20the%20Technical%20Instructions/Doc%209284-2015-2016.ADD-3.pdf.*

[34] Addendum 4 to the 2015–2016 edition of the ICAO Technical Instructions, issued February 23, 2016. *http://www.icao.int/safety/DangerousGoods/AddendumCorrigendum%20to%20the%20Technical%20Instructions/Doc%209284-2015-2016.ADD-4.en.pdf.*

[35] The term ''Section II'' is not used in the HMR but identical provisions for small cells and batteries are included. (See 49 CFR 173.185(c)).

[36] Panagiotou, J. See footnote 6.

the AIRP, FLTOPSP, DGP, Air Navigation Commission, and the FAA Technical Center research. The prohibition of the transport of lithium ion batteries (UN3480) as cargo on passenger aircraft was made in response to tests that demonstrate that fire involving lithium ion batteries may exceed the capability of aircraft cargo fire protection systems. The additional requirements to mitigate risks posed by lithium batteries, which will continue to be permitted for transport on cargo aircraft, include transporting all lithium ion batteries at a state of charge not exceeding 30 percent of their rated capacity and limiting the number of packages of small lithium ion or lithium metal batteries. While the likelihood of a fire involving a shipment of lithium batteries in air transport is low, the consequences of such an incident would be catastrophic. With the potential for an uncontrolled fire involving a relatively small quantity of lithium batteries to lead to a catastrophic failure of the airframe, the inability of the package or the aircraft fire suppression system to control such a fire presents an unacceptable safety risk. PHMSA acknowledges that there are advancements in packaging design and packaging configurations, including fill materials and fire suppression agents, which are promising and may eventually provide safe and reliable ways to continue to transport lithium batteries on board passenger aircraft. However, PHMSA identified a total of 39 incidents in air cargo transportation between 2010 and 2016, with 13 of these incidents involving lithium batteries and smoke, fire, extreme heat, or explosion, that would have been affected by this IFR. These types of incidents are indicative of the types of events that are possible if lithium ion batteries continue to be transported on passenger aircraft. Below are summaries of three U.S. and international events that highlight the potential for lithium batteries to contribute to an incident resulting is loss of life and/or loss of aircraft.

- *February 7, 2006:* Incident at the Philadelphia International Airport in which a fire suspected to have been caused by lithium ion batteries destroyed a cargo aircraft and much of its cargo.
- *September 3, 2010:* Dubai, United Arab Emirates, a 747–400 cargo aircraft (U.S. flag) crashed while attempting to land at the Dubai International Airport after a fire was discovered. Both pilots were killed, and the aircraft and its cargo, which included a significant quantity of lithium ion batteries, were destroyed.
- *July 28, 2011:* The Republic of Korea, a 747–400 cargo aircraft crashed into international waters. The two pilots aboard the flight were killed. The Korea Aviation and Railway Accident Investigation Board determined that the cause of this accident was a fire that developed on or near two pallets containing hazardous materials packages, including hybrid-electric vehicle lithium ion batteries and flammable liquids.

Please see the Appendix A of the RIA for this rulemaking, a copy of which has been placed in the docket, for more detail on PHMSA Incident Reports involving lithium batteries.

Although the aforementioned measures provide significant improvements to safety, they do not eliminate all risks and should be coupled with other mitigation strategies as part of a layered approach to safety. In this IFR, PHMSA is adopting the changes approved by ICAO that were informed by aviation safety experts and are already implemented in international air transportation.

As discussed in ''Section IV. Good Cause for Immediate Adoption,'' PHMSA has determined that proceeding with notice and comment to adopt additional safety measures for transport of lithium ion batteries is impracticable.

D. Alternative Transport Conditions

PHMSA considered an alternative in which the IFR would prescribe specific conditions authorizing the transport of lithium ion batteries at a charge greater than 30 percent on cargo-only aircraft or as cargo on passenger aircraft. The conditions would need to mitigate the safety risks posed by the batteries, which include fire, thermal runaway, and explosion from ignition of vented gases. The conditions considered included limits on the size and number of cells, a reduced state of charge, the number of packages, the packaging, additional fire suppression systems, and manufacturing controls on the cells themselves. PHMSA was unable to identify a general set of conditions in which it would be safe to transport any quantity or type of lithium ion cells as cargo on a passenger aircraft or at a charge greater than 30 percent on cargo-only aircraft.

However, PHMSA is authorizing, with the approval of the Associate Administrator, up to two lithium batteries used for medical devices to be transported on passenger aircraft, and as applicable, at a state of charge higher than 30 percent, when the intended destination of the batteries is not serviced daily by cargo aircraft. See ''Section V.D. Limited Exceptions to Restrictions on Air Transportation of Medical Device Cells or Batteries'' for further discussion. This provision addresses the legislation titled ''FAA Reauthorization Act of 2018'' signed on October 5, 2018, by the President, which instructs the Secretary to issue limited exceptions for lithium ion and metal cells or batteries used for a medical device to be transported on passenger aircraft. *See* Public Law 302–89. Additionally, the provision addresses comments submitted to Docket No. DOT–OST–2015–0169 announcing a public meeting to seek input on issues concerning lithium batteries that were to be discussed by the ICAO DGP, in which the Medical Device Battery Transport Council (MDBTC) noted concerns relevant to shipping medical devices and batteries by air (*e.g.,* delivery to remote locations and increased supply chain constraints). The MDBTC noted that prohibiting the transport of lithium ion batteries on passenger aircraft and the 30 percent state of charge restriction would negatively impact the transport of replacement lithium ion batteries for medical devices. The provision also addresses comments to the docket that identified a need to ship lithium ion cells and batteries to remote areas.

As previously discussed in ''Subsection A. FAA Technical Center Testing'' of this section, the ineffectiveness of fire suppression systems (Halon or oxygen starvation) to control propagation of thermal runaway from cell to cell or to control the production of large quantities of flammable gases drives the need for additional safety controls. The ICAO Council adopted a prohibition on the transport of lithium ion batteries as cargo on passenger aircraft due to the inability of aircraft fire suppression systems to mitigate a fire involving lithium ion batteries. Determination of the aircraft fire suppression system vulnerability was based on assessments and positions presented by a wide range of global experts in the field of aircraft design, certification, and operations. The additional requirements to mitigate risks posed by lithium batteries, which will continue to be permitted for transport on cargo aircraft, include transporting all lithium ion batteries at a state of charge not exceeding 30 percent of their rated capacity and limiting the number of packages of small lithium ion or lithium metal batteries.

Therefore, in this IFR, PHMSA is implementing the revisions approved by ICAO and informed aviation safety experts to address the risks created by the air transport of lithium batteries,

along with an exception for the limited transport of lithium cells or batteries specifically used for a medical device where the intended destination is not serviced daily by cargo aircraft, with the approval of the Associate Administrator.

IV. Good Cause for Immediate Adoption

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* generally requires public notice before promulgating regulations. See 5 U.S.C. 553(b). The APA provides an exception, however, when there is good cause to conclude that notice and public comment is impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B).

PHMSA finds that compliance with the notice-and-comment process for this rulemaking would be impracticable. Accordingly, PHMSA finds that there is good cause for this IFR to be exempt from the notice-and-comment process. Interested parties will still have an opportunity to submit comments in response to this IFR before a permanent final rule is issued.[37] PHMSA's finding of good cause is based on the impracticability of providing the public with notice-and-comment while attempting to comply with the 90-day statutory rulemaking mandate in the FAA Reauthorization Act of 2018, Public Law 115–254 (October 5, 2018, FAA Reauthorization Act of 2018).[38]

Section 333 of the FAA Reauthorization Act of 2018 requires the Secretary of Transportation to conform U.S. regulations on the air transportation of lithium cells and batteries to the 2015–2016 edition of the ICAO Technical Instructions, including the amendments that were made effective on April 1, 2016. The act was signed into law on October 5, 2018, and requires DOT to take this action within 90 days, which is January 3, 2019. This IFR adopts the 2015–2016 edition of the ICAO Technical Instructions and subsequent revised standards effective April 1, 2016, into the domestic HMR, as required. The IFR is necessary to allow PHMSA to come close to complying with the 90-day timeframe required by the FAA Reauthorization Act of 2018. The statutory mandated deadline does not provide PHMSA with sufficient time to prepare and publish a proposed regulation in the **Federal Register**, provide an opportunity to comment, and issue a final rule.

The purpose of Section 333 is to address the potential safety risk in transporting lithium batteries by air. Indeed, the caption of the provision is ''Safe Air Transportation of Lithium Cells and Batteries.'' Congress's choice to single out Section 333 for rapid implementation suggests that it perceived this safety risk to warrant accelerated intervention. The need to follow Congress's directive to address, within 90 days, a status quo that Congress itself regarded as demanding urgent remediation would make the notice-and-comment process ordinarily applicable under the APA ''contrary to the public interest'' in this instance. Congress's desire to eliminate, as speedily as possible, potential air transportation risks associated with lithium batteries among air operators which have not already voluntarily adopted ICAO's 2015–2016 lithium battery standards is supported by FAA Technical Center testing showing the potential for an uncontrolled fire involving a relatively small quantity of lithium batteries and the potential buildup of flammable gases in a suppressed lithium ion battery fire that could lead to a catastrophic failure of the airframe, as well as the large body of research conducted by DOT, NTSB, and other respected sources that demonstrates the potential safety risks of lithium batteries transported by air under the current regulations and the connection of the revised regulations to those hazards.

PHMSA finds that the use of notice and comment procedures before issuing this rulemaking is impracticable. This IFR is the only rulemaking option that will allow PHMSA to come close to meeting the statutory deadline in the FAA Reauthorization Act of 2018 while addressing the potential safety risk in transporting lithium batteries by air. Additionally, while the APA generally requires that publication of a substantive rulemaking be made at least 30 days before its effective date, the APA provides for dispensation of the 30-day effectiveness delay upon good cause similar to the notice and comment requirements. 5 U.S.C. 553(d). For the reasons discussed above, PHMSA finds good cause to dispense with the 30-day delay in effectiveness upon publication. Accordingly, this IFR is effective upon publication in the **Federal Register**.

V. Summary of Changes

To ensure the safe transport of lithium batteries by air and protect the traveling public, flight crews, and for harmonization with international regulations from ICAO, PHMSA amends the HMR to prohibit the transport of lithium ion cells and batteries (UN3480) as cargo on passenger aircraft; require all lithium ion cells and batteries (UN3480) to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and restrict small lithium cell or battery shipments to one package per consignment or overpack. Also, PHMSA is providing a limited exception, with the approval of the Associate Administrator, to the restrictions on the air transport of replacement medical device cells and batteries if the intended destination for the cells or batteries is not serviced daily by cargo aircraft. PHMSA would authorize the transport on passenger aircraft of not more than two lithium cells or batteries specifically used for a medical device and would waive the 30 percent state of charge limit for lithium ion cells and batteries, with an approval of the Associate Administrator. PHMSA further defines medical device for the purposes of the HMR as an instrument, apparatus, implement, machine, contrivance, implant, or in vitro reagent, including any component, part, or accessory thereof, which is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, of a person. See ''Subsection D. Limited Exceptions to Restrictions on Air Transportation of Medical Device Cells or Batteries'' of this section for further discussion.

A. Passenger Aircraft Prohibition

PHMSA is prohibiting the transport of lithium ion batteries (UN3480) as cargo on passenger aircraft because of their unique challenges associated with thermal runaway: Pressure pulses, venting of flammable gas, and resistance to extinguishment. The FAA Technical Center investigated the ability of various fire suppression measures—fire suppression agents, depressurization, FCC, and FRC—to control lithium ion battery fires. The results concluded that gaseous fire suppression agents were effective in extinguishing the electrolyte fire but had no effect in stopping the propagation of thermal runaway from cell to cell. Therefore, a lithium ion battery fire can still compromise the aircraft critical systems even in the presence of Halon, which is the current

[37] DOT has sought public input on multiple occasions prior to this rulemaking. DOT held a public meeting on September 18, 2015, to discuss the ICAO Technical Instructions lithium battery amendments and to obtain input on mitigation strategies, information, and data on how to better ensure the safe transportation of lithium batteries by air. *See* Notice of Lithium Battery Safety Public Meeting and Request for Information, 80 FR 52368 (August 28, 2015). Additionally, FAA hosted a public meeting on October 8, 2015, to discuss the agenda for ICAO's lithium battery proposed amendments.

[38] PHMSA's compliance with the statutory deadline was negatively impacted by a lapse in funding from December 22, 2018 through January 25, 2019, that affected PHMSA, FAA, and other government agencies.

means of suppression in passenger aircraft cargo compartments. A lithium ion battery fire was marginally controlled through oxygen starvation, which is the primary means of controlling fires in Class E cargo compartments.[39] The FCCs were unable to contain flames and flammable gases from escaping, and tests involving FRCs resulted in explosions. The FRCs permitted flammable gases generated from cells in thermal runaway to accumulate in a confined area within the FRC before being ignited by burning packages, or a spark from a burning cell, and exploding. An analysis of the batteries consumed in the FRC fire test indicated that only a small fraction of the 5,000 cells went into thermal runaway, vented, and caused the explosion.

As discussed in this IFR, the FAA Technical Center tested the ability of several common shipping containers to contain the effects of a thermal runaway originating from a single lithium cell. Currently authorized packages, package configurations, shipping containers, and consignment limits could neither contain a lithium battery fire nor prevent the propagation of fire from one package to another. FCCs and FRCs were unable to contain a fire involving lithium batteries. Overpack containers designed to transport chemical oxygen generators successfully contained the fire from lithium ion batteries but permitted smoke and vapors to escape. Neither were fire suppression systems, including the Halon that is currently used in cargo compartments, entirely effective against lithium battery fires. Of the package configurations that were tested, the only effective methods to stop propagation of thermal runaway were reducing the state of charge to 30 percent and adding a pack of water above the cells.[40] The inability of the package or the aircraft fire suppression system to control a fire involving lithium ion batteries presents an immediate safety hazard of which the actions in this IFR will address, while also harmonizing to the ICAO Technical Instructions.

This IFR is consistent with the July 2015 aircraft manufacturer notices to air carriers warning of these hazards and supporting a prohibition on the carriage of high-density packages of lithium ion batteries on passenger aircraft. Several large passenger air carriers responded to the notices by voluntarily instituting bans on the transport of lithium ion batteries.

Removal of Authorization for Lithium Ion Aircraft Batteries

As a consequence of the prohibition on the transport of lithium ion batteries (UN3480) as cargo on passenger aircraft, PHMSA is removing the authorization in § 172.102(c)(2) special provision A51 that permits the transport of lithium ion aircraft batteries on passenger aircraft. Special provision A51 was added to the HMR in the HM–215L final rule. 78 FR 987 (Jan. 7, 2013). This amendment, which became effective on January 1, 2013, harmonized the HMR with an authorization added to the 2013–2014 ICAO Technical Instructions that allowed a package containing a single lithium ion aircraft battery with a net mass not exceeding 35 kg on passenger aircraft. In 2013, shortly after the authorization in special provision A51 became effective, there were two incidents involving lithium ion batteries installed in Boeing Model 787–8 aircraft. The first incident on January 7, 2013, involved a Japan Airlines Boeing 787–8 that was parked at the gate at Logan International Airport in Boston, MA. Maintenance personnel observed smoke coming from the lid of the auxiliary power unit battery case, as well as a fire with two distinct flames at the electrical connector on the front of the case. No passengers or crewmembers were aboard the airplane at the time and none of the maintenance or cleaning personnel aboard the airplane was injured.[41] A second incident on January 16, 2013, on an All Nippon Airways flight required the flight to make an emergency landing. Four passengers out of the 173 occupants on board the aircraft suffered minor injuries during the evacuation. It appears that in both cases the heat from a single overheated cell propagated to adjacent cells resulting in a thermal runaway.[42] In response to these incidents, ICAO issued an addendum in February 2013 to disallow lithium ion batteries from being transported under special provision A51. Lithium ion batteries with a net weight of up to 35 kg may continue to be transported on cargo-only aircraft.[43]

B. State of Charge Requirement

PHMSA is requiring all lithium ion cells and batteries transported as UN3480 (not packed with or contained in equipment) on cargo-only aircraft be shipped at a state of charge of not more than 30 percent of their rated capacity. This requirement was determined based on FAA Technical Center test results demonstrating that the propagation of thermal runaway could be greatly reduced or eliminated at this level. The hazardous effects of thermal runaway were markedly less when the cells were at 30 percent state of charge or less relative to higher states of charge. The FAA tested lithium ion 18650 LiCoO2 cells at five charge states: 100% (two tests), 50%, 40%, 30%, and 20%.

The results can be summed up as follows:

- The 100% cell exploded in both tests, and rapid cooling was observed. Peak temperature: 1030 °F.
- The 50% test consumed all cells. Peak temperature: 1044 °F.
- At 40%, two cells were consumed, and the peak temperature 760 °F decreased after thermal runaway in Cell 2.
- At 30%, venting occurred in Cell 1 with no thermal runaway. Peak temperature: 560 °F.
- At 20%, venting occurred in Cell 1 with no thermal runaway. Peak temperature: 502 °F.

These results apply to lithium ion cells of this size and chemistry and thermal runaway effects may be different for different cell sizes and chemistries. However other studies involving different lithium ion cell chemistries show a similar trend of reduced hazardous effects at a reduced state of charge. The ICAO agreed that a 30 percent state of charge limit was appropriate based on the testing information available.

In implementing the ICAO Technical Instructions, PHMSA has fully transmitted the provisions into the HMR. Consistent with the ICAO Technical Instructions, PHMSA authorizes the transport of lithium ion cells or batteries on cargo-only aircraft at a higher state of charge subject to the approval of the Associate Administrator for Hazardous Materials Safety. Also, consistent with ICAO, PHMSA did not provide an authorization for transporting lithium ion batteries as

[39] Class E cargo compartments are common on the upper deck cargo compartments of freighter aircraft. Class E compartments have fire detection systems, the means to shut off ventilation flow, and the means to exclude hazardous quantities of smoke, flames, and noxious gases from the flight crew compartment. Class C cargo compartments also include an approved built-in fire extinguishing or suppression system controllable from the cockpit. See 14 CFR 25.857.

[40] Maloney, T., and Dadia, D. See footnote 23.

[41] Aircraft Incident Report; Auxiliary Power Unit Battery Fire; National Transportation Safety Board NTSB/AIR–14/01; Adopted November 21, 2014.

[42] Aircraft Serious Incident Investigation Report, Japan Transport Safety Board; AI25014–4; September 25, 2014.

[43] Addendum 1 to the 2013–2014 edition of the ICAO Technical Instructions, issued February 12, 2013. *http://www.icao.int/safety/DangerousGoods/Documents/Doc%209284-2013-2014Edition_Addendum-1.en.pdf.*

cargo on passenger aircraft. Accordingly, if there is a need to transport lithium ion batteries on a passenger aircraft, an applicant must apply for a special permit in accordance with the provisions of part 107, subpart B.

An approval is written consent, including a competent authority approval, from the Associate Administrator or other designated Department official, to perform a function that requires prior consent under the HMR. Approvals are an extension of the regulations and facilitate the continued safe transport of hazardous materials by providing specific regulatory relief on a case-by-case basis. Approvals are valid for both domestic and international transportation and are recognized as approval by a competent authority for the purposes of the ICAO Technical Instructions and other international hazardous materials regulations. When shipping internationally, approval is required from the country of origin and the country of the air carrier. Only a single approval is required for shipments originating in the United States transported by a domestic air carrier. PHMSA's approval application procedures are set forth in 49 CFR part 107, subpart H. PHMSA specifies an expiration date in each approval, which is typically 2 years from the date of issuance. It is important to note that PHMSA only grants approvals for activities allowed (if approved) under specific conditions identified in the HMR. Applications for approvals and supporting documentation may be submitted by mail, by facsimile, electronically via email, or through PHMSA's online system. Unless emergency processing is requested and granted, applications are usually processed in the order in which they are filed.

Lithium ion batteries contain both a chemical and an electrical hazard. It is the combination of these two hazards that creates a unique challenge to safety in the air transportation environment. As referenced in this section, numerous private and public sector studies have clearly demonstrated and validated through physical testing that reducing a cell or battery's state of charge measurably reduces this risk. A number of factors can lead to an incident in transport, including but not limited to thermal, mechanical, or electrical abuse; substandard cell design; and internal cell faults associated with cell manufacturing defects. Existing transport requirements reduce the likelihood of thermal runaway from damage and external short circuits. Internal short circuits can form during charge and discharge cycles, physical damage to the cell or battery or manufacturing defects. Thermal runaway events originating from internal cell faults appear to be rare, but do nevertheless occur. Regardless of the cause, the hazardous effects of a thermal runaway event are the same. Cell chemistry, state of charge, and heat transfer environment are some of the significant factors that influence the effects of failure.[44] Multiple independent studies have shown that, independent of the initiating factor, reducing the state of charge measurably reduces both the likelihood and consequence of an incident involving lithium ion batteries. Most significantly, lowering the state of charge reduces or eliminates the ability of a cell to experience thermal runaway and the potential for propagation. Reducing the state of charge for lithium ion cells and batteries offered for transport translates to a safer transport environment.

Specifically, reducing the state of charge of a lithium ion cell or battery:

- Decreases the likelihood of thermal runaway; [45]
- Decreases or eliminates the potential for thermal runaway to spread to adjacent cells or batteries; [46]
- Increases the cell's ability to tolerate a short circuit and significantly reduces the maximum temperature achieved at the point of shorting; [47]
- Reduces the quantities of gases released if thermal runaway occurs; [48 49 50 51]
- Reduces the magnitude of the heating rate if thermal runaway occurs.[52 53 54 55 56]

Comprehensive laboratory testing from various sources, including the FAA, has shown that lithium ion batteries are thermally more stable and the hazardous effects of thermal runaway are less when the battery is at a reduced state of charge. Both Roth et al.[57] and Doughty and Roth [58] found that a higher state of charge in commercially-available lithium ion 18650 LiCoO2 cells resulted in lower onset temperature of self-generated heating and that the magnitude of a cell's response to internal short circuit is influenced by state of charge. Other studies, such as that done by Somandepalli et al.[59] have observed that the volume of gas vented from cells in thermal runway is less at lower states of charge. More importantly, a sufficiently reduced state of charge for the most commonly carried cells eliminates propagation of thermal runaway and the potential for a chain reaction in the event of a single cell failure.

In an aviation environment, the safety benefits associated with a reduced state of charge are more pronounced than for other modes due to the potential consequences of an in-flight event. As evidenced by testing conducted by the FAA Technical Center and supported by analyses performed by a major aircraft manufacturer, an incident involving even a relatively small number of lithium ion cells is sufficient to overwhelm existing aircraft safety systems and compromise the integrity of the aircraft. Taking this into account, manufacturers often preemptively ship lithium ion batteries at a reduced state of charge as a business practice.

[44] Mikolajczak et al. See footnote 4.

[45] Doughty, Dan, and Roth, E. Peter, *A General Discussion of Li Ion Battery Safety,* The Electrochemical Society Interface, Vol. 21, No.2, Summer 2012.

[46] Doughty, Dan, and Roth, E. Peter. See footnote 45.

[47] Doughty, Dan, and Roth, E. Peter. See footnote 45.

[48] Doughty, Dan, and Roth, E. Peter. See footnote 45.

[49] Somandepalli, V., Marr, Kevin C., and Horn, Quinn C., *Quantification of Combustion Hazards of Thermal Runaway Failures in Lithium-Ion Batteries,* SAE International. J. Alt. Power, Vol. 3, No. 1, May 2014.

[50] Golubkov, Andrey W., Scheikl, Sebastian, Planteu, René, Voitic, Gernot, Wiltsche, Helmar, Stangl, Christoph, Fauler, Gisela, Thaler, Alexander, and Hacker, Viktor, *Thermal runaway of commercial 18650 Li-ion batteries with LFP and NCA cathodes—impact of state of charge and overcharge,* Royal Society of Chemistry Advances, Issue 70, June 2015.

[51] Roth, E. P., Crafts, CC, Doughty, D. H., and McBreen J., *Advanced Technology Development Program for Lithium-Ion Batteries: Thermal Abuse Performance of 18650 Li-Ion Cells,* Sandia Report: SAND2004–0584, March 2004.

[52] Doughty, Dan, and Roth, E. Peter. See footnote 45.

[53] Somandepalli et al. See footnote 49.

[54] Bandhauer et al. See footnote 3.

[55] Roth et al. See footnote 51.

[56] Golubkov et al. See footnote 52.

[57] Roth et al. See footnote 51.

[58] Doughty, Dan, and Roth, E. Peter. See footnote 45.

[59] Somandepalli et al. See footnote 49.

Existing aircraft protection systems simply cannot mitigate the accumulation and potential for ignition of flammable gases, which can completely overwhelm current aircraft safety systems and lead to loss of the aircraft's flight capabilities. Requiring cells and batteries to be transported at a sufficiently reduced state of charge would immediately and measurably reduce both the likelihood and consequences of an incident involving lithium ion cells or batteries in an aviation environment. As demonstrated by multiple studies and physical testing, the exothermic reaction experienced by a cell is highly dependent on the state of charge.[60] [61] For the most commonly carried cell, the lithium ion 18650 LiCoO2 cell, research and testing is particularly significant. The FAA Technical Center testing has specifically demonstrated that for these cells, a state of charge of 30 percent not only reduces the intensity of thermal runaway but also completely eliminates propagation of thermal runaway.[62] While no one safety measure known today is singularly effective in eliminating all hazards inherent in the transport of lithium ion batteries, this particular measure dramatically reduces the possibility of an unmanageable event that could lead to loss of the aircraft and the lives of those aboard. Further research and additional work is necessary to more comprehensively assess the most effective mechanisms to mitigate those hazards. While this work continues, it is in the best interest of the public that carriage of lithium ion cells or batteries as cargo on passenger aircraft be prohibited and that state of charge be reduced on lithium ion cells and batteries being carried as cargo on cargo-only aircraft.

C. Consignment and Overpack Restriction

PHMSA is restricting the use of alternative provisions for small lithium cells and batteries to one package per overpack or consignment to prevent the consolidation of large numbers of lithium cell and battery shipments in a single overpack or consignment under provisions designed for small quantities of batteries. Shippers can still offer lithium cells or batteries in an overpack or a consolidated consignment, but these must be identified to the air operator as hazardous materials. The identification of these consignments as hazardous materials will allow operators to consider safety risk assessments and implement mitigation strategies appropriate to the operator's specific capabilities, thus reducing the hazards posed by such consignments.

The hazardous materials regulatory system has for decades proven its effectiveness in mitigating risks associated with hazardous materials transportation. Shippers and operators understand this system and have included steps in their processes to ensure compliance. Current provisions for small batteries were developed based on the reduced risk posed by a limited number of small batteries in a single package. These provisions were developed before current research and testing that demonstrate the significant fire hazard posed by consolidations of such packages in an aviation environment. ICAO considered reducing or eliminating the provisions for Section II of the ICAO Technical Instructions because such consignments do not require shipping papers or notification to the pilot in command. Shipping papers provide air carriers with information (*i.e.,* quantity, type of package, package weight) that is essential to accurately identify packages of lithium batteries and to conduct effective safety assessments. ICAO ultimately agreed to limit provisions for Section II batteries by restricting to one the number of packages that can be offered as a single shipment or placed into a single overpack and noted that this action would ensure such consignments were subject to standard hazard communication, thereby improving awareness to the operator. ICAO considered recent actions by government regulators and the industry, and various recommendations from the Third International Multidisciplinary Lithium Battery Transport Coordination Meeting:

- A safety alert for operators issued by the FAA in 2010 (SAFO 10017) recommending that operators load bulk consignments of Section II batteries in Class C cargo compartments or locations where alternate fire suppression was available; [63]
- A multi-operator message issued by the Boeing Company in 2015 (MOM–MOM–15–0469–01B) advising operators who transport lithium batteries to conduct a safety risk assessment that takes into account, among other factors, the types and quantities of lithium batteries carried, the quantity per flight, their location within the cargo compartment, and their proximity to other dangerous goods;
- An in-service information article issued by Airbus Industries in 2015 (ISI 00.00.00182) advising operators who transport lithium batteries to conduct a safety assessment that considers, among other factors, information on the types of lithium batteries being shipped, as well as the quantity and density of the consignment. Airbus further recommended that all consignments of lithium batteries be identified and notified, and that policy to notify the flight crew of all lithium battery consignments is established; and
- Interim recommendations from the Third International Multidisciplinary Lithium Battery Transport Coordination Meeting (see paragraph 5.1.3 and appendix A to the report available at *http://www.icao.int/safety/DangerousGoods/Pages/Multidisciplinary.aspx*), including safety risk assessments by operators who wished to transport lithium batteries that would require consideration of information on the types and quantities of lithium batteries and cells being transported.

Alignment of the HMR with the revised Section II provisions in the ICAO Technical Instructions for small batteries directly addresses NTSB Recommendation A–07–109 that the Department ''eliminate regulatory exemptions for the packaging, marking, and labeling of cargo consignments of small secondary lithium batteries (no more than 8 grams equivalent lithium content) until the analysis of the failures and the implementation of risk-based requirements asked for in Safety Recommendation A–07–108 are completed.'' This recommendation was closed by NTSB when the DOT took an ''Acceptable Alternative Action'' by harmonizing the HMR with the 2013–2014 ICAO Technical Instructions, which included amended provisions for Section II batteries. The relevant amendments to the 2013–2014 ICAO Technical Instructions were adopted by ICAO on the basis that those amendments were considered to ensure that:

> [T]raining would now be required for many more shippers preparing lithium battery shipments; operators would now be required to perform acceptance checks on all large shipments of lithium batteries prior to loading and stowage aboard an aircraft; pilots would be notified of the presence, location and quantity of lithium batteries aboard the aircraft . . . and regulators would be

[60] Mikolajczak, C.J., and A. Wagner-Jaureff, *US FAA-Style Flammability Assessment of Lithium Ion Cells and Battery Packs in Aircraft Cargo Holds,* Exponent Failure Analysis Report, April 15, 2005 Retrieved from: *http://www.prba.org/wp-content/uploads/Exponent_PRBA_burn_box_report_final1.pdf.*

[61] Webster, H. See footnote 20.

[62] Maloney, T., and Dadia, D. See footnote 23.

[63] The FAA Safety Alert for Operators (SAFO) 10017 is available through the following URL: *http://www.faa.gov/news/press_releases/media/safo10017.pdf.*

provided a framework in which better training, oversight and enforcement could be applied.

However, implementation of the revised ICAO provisions in practice revealed a deficiency in that large numbers of Section II packages continued to enter the air transport stream in bulk (overpacked and/or palletized) configurations. Adopting the amendments in this IFR will bring the HMR into alignment with the ICAO Technical Instructions and address this deficiency.

D. Limited Exceptions to Restrictions on Air Transportation of Medical Device Cells or Batteries

To execute the mandate in Section 333 of the FAA Reauthorization Act of 2018, PHMSA is authorizing, with the approval of the Associate Administrator, the transport of not more than two lithium cells or batteries used for a medical device to be transported on passenger aircraft and an exception from the 30 percent state of charge limit under specified conditions. This provision applies when the intended destination of the batteries is not serviced daily by cargo aircraft and the batteries are required for medically necessary care. The medical device cells or batteries must be (1) individually packed in an inner packaging that completely encloses the cell or battery, (2) placed in a rigid outer packaging, and (3) protected to prevent short circuiting.[64] PHMSA is also adopting the definition of medical device as used in the FAA Reauthorization Act of 2018 as follows: ''A medical device means an instrument, apparatus, implement, machine, contrivance, implant, or in vitro reagent, including any component, part, or accessory thereof, which is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, of a person.''

Several aspects necessary to implement the FAA Reauthorization Act of 2018 requirements, are not defined in the congressional mandate. In this IFR, PHMSA defines requirements based on previous interpretations, current regulatory requirements, and ease of implementation. PHMSA requests comments on these criteria, including potential impacts these criteria may have on stakeholders.

- The limitation to ''not more than two replacement lithium cells or batteries'' applies to the number of cells or batteries per package, as approved by the Associate Administrator.
- A destination is no longer considered to be ''serviced daily by a cargo aircraft'' when it is impracticable[65] to reach the intended destination by cargo aircraft and subsequent motor vehicle transportation. The person applying for the approval of the Associate Administrator must demonstrate that this provision applies. PHMSA has not provided a specific distance of when a location is no longer considered serviced daily by a cargo aircraft to allow for flexibility in evaluating each scenario on a case-by-case basis; however, PHMSA seeks comment on whether a distance should be considered.
- Batteries ''required for medically necessary care'' are batteries that are needed for a medical device that is used by the recipient for medical care.

PHMSA's standard operating procedures [for approvals and special permits] will be updated when reviewing applications for consignments of lithium cells or batteries for medical devices, as prescribed in Section 333 paragraph (b)(1) of the FAA Reauthorization Act of 2018. Specifically, PHMSA will either grant or deny an application for air transportation of lithium ion cells or batteries specifically used for medical devices, no later than 45 days after receipt of the application. A draft will be submitted to the FAA no later than 30 days after the date of application, and the FAA will conduct an on-site inspection no later than 20 days after receiving the draft from PHMSA. Section 333 paragraph (b)(1) applies to only lithium ion cells and batteries, but since paragraph (b)(2) applies to both lithium ion and metal batteries for medical devices, PHMSA understands the FAA Reauthorization Act of 2018 language in section 333 paragraph (b)(1) to also apply to lithium metal batteries for medical devices. PHMSA seeks comments on the application requirements or evaluation process, including any potential impacts on applicants or airlines, such as package design, distance between the intended destination and an airport not serviced daily by a cargo aircraft, communication requirements, and the FAA on-site inspection.

This limited exception also addresses comments submitted to Docket No. DOT–OST–2015–0169, which identified a need to transport lithium ion batteries to remote areas that are accessible by passenger aircraft only.

VI. Regulatory Analysis and Notices

A. Statutory/Legal Authority for This Rulemaking

This IFR is published under the authority of the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This IFR revises regulations for the safe transport of lithium cells and batteries by air and the protection of aircraft operators and the flying public.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866 (''Regulatory Planning and Review'') requires agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.''

This IFR is considered a significant regulatory action under E.O. 12866 and the Regulatory Policies and Procedures of the Department of Transportation. 44 FR 11034. However, this IFR is not an economically significant regulatory action as defined by section 3(f)(1) under E.O. 12866, because it does not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. A Regulatory Impact Analysis (RIA) is available for review in the public docket for this rulemaking and summarized below. Please see the RIA for more details on the benefits and costs of the IFR.

As previously discussed, the safe transport of lithium batteries by air has been an ongoing concern for PHMSA, FAA, and DOT. Lithium batteries pose unique challenges to safety in a transportation environment because, unlike other hazardous materials, they contain both a chemical and an electrical hazard. This combination of hazards, when involved in a fire encompassing significant quantities of

[64] PHMSA notes methods to prevent short circuiting include, but are not limited to: Packaging each battery in fully enclosed inner packages made of non-conductive material, packaging batteries in a manner to prevent contact with other batteries, devices or conductive materials, and ensuring exposed terminals or connectors are protected with non-conductive caps, non-conductive tape, or by other appropriate means. See PHMSA Letter of Interpretation, Reference Number 16–0174; May 18, 2018.

[65] PHMSA has previously used the term ''impracticable'' in the HMR. See §§ 173.150(f) and 175.310(a).

lithium batteries, may exceed the fire suppression capability of the aircraft and lead to a catastrophic loss of the aircraft.

In response to both the hazards posed by the transport of lithium ion batteries by air, as evidenced by the FAA Technical Center testing results (see ''Section III.A. FAA Technical Center Testing''), and the recent developments in the international community, PHMSA is amending the HMR applicable to lithium cells and batteries not contained in or packed with equipment to:

(1) Prohibit the transport of lithium ion cells and batteries (not packed with or contained in equipment) as cargo on passenger aircraft;

(2) Require all lithium ion cells and batteries (not packed with or contained in equipment) to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and

(3) Restrict small lithium cell and battery shipments to one package per consignment or overpack.

Some costs and benefits are related to the total number of companies or employees affected. The IFR potentially impacts approximately 99 domestic passenger airlines, 468 shipping firms, and over 27,000 employees on average. PHMSA examined the benefits and the costs of the provisions of this rulemaking using the post-ICAO baseline [66] as the basis for the analysis as shown below. Table 2 summarizes the benefits and costs by rulemaking provision over a 10-year period and annualized, discounted at a 7 percent rate.

TABLE 2—SUMMARY OF BENEFITS AND COSTS FOR LITHIUM BATTERY PROVISIONS—POST ICAO

Provision	Benefits	Unquantified costs	10-Year quantified cost (7%)
State of Charge	• Limits the volume of flammable gases emitted by lithium ion cells propagated in a thermal runaway. • Results in a less energetic thermal runaway event if one should occur. • Reduces the likelihood of thermal propagation from cell to cell. • Harmonization facilitates international trade by minimizing the burden of complying with multiple or inconsistent safety requirements (although currently domestic shippers and carriers have the option to voluntarily comply with ICAO requirements). Consistency between regulations reduces compliance costs and helps to avoid costly frustrations of international shipments.	• Potential changes in manufacturing procedures to ensure compliance with state of charge provision. • Reevaluation of management practices and potentially instituting changes to avoid or lessen supply chain impacts such as reduced shelf life of batteries and battery quality issues. • Additional time for end users needed to charge the batteries from 30 percent state of charge or less instead of the typical levels of 40 or 50 percent at which manufacturers currently set the state of charge.	$2,304,551. These estimates include only the cost for entities to apply for permission to ship batteries at higher charge levels.
Consignment Limit	• Reduces the risk of fire from shipping large quantities of excepted batteries that were previously being consolidated in overpacks, pallets, in single-unit load devices and single aircraft cargo compartments. • Reduces the propensity for large numbers of batteries or packages shipped in accordance with regulatory exceptions. • Harmonization facilitates international trade by minimizing the burden of complying with multiple or inconsistent safety requirements (although currently domestic shippers and carriers have the option to voluntarily comply with ICAO requirements). Consistency between regulations reduces compliance costs and helps to avoid costly frustrations of international shipments.	• Costs due to modal shift that might occur from air transport to ground or marine transport due to higher shipping costs by air. The end receivers may be inconvenienced by longer shipping times that imply less prompt access to goods purchased.	$44,328,936. Costs include additional hazard communication and employee training.

[66] The post-ICAO baseline is the international operating environment present after April 1, 2016; this would (1) restrict lithium ion batteries to a 30 percent state of charge for international air shipments, (2) restrict the number of Section II packages to one per consignment on international air shipments, and (3) prohibit the shipping of lithium ion batteries as cargo on international passenger flights. This environment also includes a level of voluntary domestic compliance with the above provisions in the United States.

TABLE 2—SUMMARY OF BENEFITS AND COSTS FOR LITHIUM BATTERY PROVISIONS—POST ICAO—Continued

Provision	Benefits	Unquantified costs	10-Year quantified cost (7%)
Lithium Battery Prohibition as Cargo on Passenger Aircraft.	• Safety benefits expected to be low or none given evidence of pre-IFR compliance. • Eliminates the risk of an incident induced by lithium ion batteries shipped as cargo in a passenger aircraft. • Eliminates the risk of a fire exacerbated by the presence of lithium ion batteries involving the cargo hold of a passenger aircraft. • Harmonization facilitates international trade by minimizing the burden of complying with multiple or inconsistent safety requirements (although currently domestic shippers and carriers have the option to voluntarily comply with ICAO requirements). Consistency between regulations reduces compliance costs and helps to avoid costly frustrations of international shipments.	• Potential additional costs to air carriers transporting cargo shipments of the lithium ion batteries on cargo planes instead of passenger airplanes. They vary for each air carrier function of the size of the airline and the areas they service, the availability of cargo-only aircraft fleet, the capacity usage and cargo volume availability of their cargo aircraft fleet, the volume of lithium ion batteries they were transporting by passenger airplanes. • Cost due to modal shift that might occur as higher costs to ship by air may induce shippers to send by ground and marine transportation. The end receivers may be inconvenienced by longer shipping times that imply less prompt access to goods purchased. This can have potential impacts on rural and remote communities not serviced daily by cargo aircraft or only serviced by passenger aircraft. For customers needing lithium batteries used in devices other than medical devices, the delays in the delivery of the required batteries could result in a range of consequences depending on their intended need.	Impact expected low given evidence of pre-IFR compliance.
Total			10-Year: $46,633,487. Annualized: $6,639,559.

Based on the analysis described in this RIA, at the mean, PHMSA estimates the present value costs about $46.6 million over 10 years and about $6.6 million annualized (at a 7 percent discount rate).

While PHMSA examined the benefits and the costs of the provisions of this rulemaking using the post-ICAO baseline, we acknowledge that using the pre-ICAO baseline [67] would produce different cost and benefit figures. That said, given the significant data uncertainties regarding pre-ICAO baseline and operational practices, PHMSA was unable to completely quantify the pre-ICAO baseline. For more detail on cost and benefits of the pre-ICAO baseline see the ''Section 11 Alternative Baseline Analysis'' of the RIA included in the docket for this rulemaking.

PHMSA reviewed incidents involving lithium batteries shipped by air to determine how many reported incidents would be affected by the scope of this IFR. The following summary provides a breakdown of U.S. passenger and cargo-only aircraft incidents involving lithium batteries from 2010 to 2016 in which a Hazardous Materials Incident Report, DOT Form 5800.1, was submitted.

We filtered incidents for those involving lithium batteries and fire, extreme heat, or explosion. In addition, we filtered passenger aircraft incidents for those occurring in cargo as opposed to passenger baggage. We also filtered both passenger and cargo-only aircraft incidents for those involving lithium ion batteries as opposed to lithium metal batteries given applicability of the three provisions and the extent that information was available in the incident report. We further filtered incidents for undeclared shipments or those without labels and markings where possible.

U.S. Passenger Aircraft Lithium Battery Incidents: PHMSA identified a total of 21 lithium battery incidents in passenger air transportation relevant to the scope of this rulemaking. PHMSA started with a set of 36 lithium battery incidents in passenger air transportation and filtered out 15 of the incidents involving lithium ion batteries and fire, extreme heat, or explosion. PHMSA determined that the incidents resulting in fire involved lithium ion batteries transported in passenger baggage or were packed in equipment. While these incidents indicate the potential harm from the presence of a lithium ion battery fire, the scope of this rulemaking does not affect lithium ion batteries carried in airline passenger baggage or packed in equipment. There were no fatalities or hospitalizations associated with these incidents.

U.S. Cargo Aircraft Lithium Battery Incidents: PHMSA identified a total of 139 incidents in air cargo transportation. Thirteen of these incidents involved lithium batteries and fire, extreme heat or explosion that would be affected by the IFR. PHMSA cannot be certain of how many of the 13 lithium battery incidents in cargo transportation relate to the consignment limit provision. However, based on review of the narratives of the incidents, PHMSA believes that at least five of the incidents are related to the consignment limit provision.

Summary of Benefits

PHMSA expects the IFR will improve safety for flight crews, air cargo operators, and the public as a result of the state of charge requirement and the consignment and overpack restriction by reducing the possibility of fire on cargo-only aircraft. Additionally, the IFR will harmonize the prohibition of

[67] The pre-ICAO baseline is the international operating environment present before April 1, 2016 with: (1) No limitations of state of charge, (2) No limitation on the number of Section II packages offered in a single consignment, and (3) No prohibition of shipping Lithium ion batteries as cargo on passenger carrying aircraft.

lithium ion batteries as cargo on passenger aircraft and eliminate the possibility of a package of lithium ion batteries causing or contributing to a fire in the cargo hold of a passenger aircraft.

Passenger Aircraft Prohibition

The provision prohibiting lithium ion batteries as cargo on passenger aircraft will provide safety benefits to air operators and the public by virtually eliminating the possibility of (1) an incident induced by lithium ion batteries shipped as cargo in a passenger aircraft and (2) a fire exacerbated by the presence of lithium ion batteries in the cargo compartment of a passenger aircraft. In addition, this rulemaking will harmonize U.S. regulations with the ICAO Technical Instructions.

State of Charge Requirement

The provision limiting the state of charge will provide safety benefits to air cargo operators and the public by reducing the available energy and limiting the propagation of heat and fire in the event of thermal runaway in lithium ion cells and batteries. The FAA Technical Center report, *Hazards Produced by Lithium Batteries in Thermal Runaway in Aircraft Cargo Compartments,* found that the volume of gases emitted by lithium ion cells in thermal runaway is dependent on the state of charge of the cell and higher states of charge yield greater volumes of flammable gases. Further, reducing the state of charge of lithium ion 18650 LiCoO2 cells to not more than 30 percent resulted in a less energetic thermal runaway event and greatly reduced the likelihood of thermal propagation from cell to cell.[68] As such, the state of charge requirement in this rulemaking will serve to mitigate the likelihood of thermal propagation for lithium ion cells stored in cargo holds of cargo-only aircraft, particularly for lithium ion 18650 LiCoO2 cells, by preventing the propagation of thermal runaway.

Consignment and Overpack Restriction

The provision restricting the number of packages per consignment or overpack when transported in accordance with limited hazard communication will provide safety benefits to air cargo operators and the public by addressing the fire hazard associated with shipping large quantities of small lithium cells and batteries that were previously being consolidated in overpacks, pallets, in single unit load devices. The existing regulations permit large quantities of closely packed lithium ion batteries to be transported by aircraft without requiring the shipper to disclose information to the air operator or the pilot in command. The potential for a small number of lithium batteries in thermal runaway to vent flammable gas and propagate thermal runaway between cells in the same package and between adjacent packages and material caused the ICAO to review the effectiveness of the existing safety standards. ICAO adopted a consignment restriction to preclude abuse of the relief provided for small quantities of small lithium cells and batteries.

Based on the estimated mean 10-year undiscounted cost of $65.84 million and the estimated economic consequences of $34.9 million for a cargo-only flight incident, the rulemaking would need to prevent 1.9 incidents over the next 10 years for the benefits to exceed the quantified costs, or approximately one every 5 years. The rulemaking would need to prevent a larger number of incidents to exceed the rulemaking's cost when non-quantified costs are considered. There have been two fatalities in the U.S. safety record,[69] which covers the period related to accidents involving lithium ion batteries shipped by air.

C. Executive Order

This rulemaking is considered an Executive Order 13771 regulatory action. Details on the estimated costs of this rulemaking can be found in the rulemaking's economic analysis.

D. Executive Order 13132

This IFR has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and the President's memorandum (''Preemption'') published in the **Federal Register** on May 22, 2009 [74 FR 24693]. This IFR will preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. If adopted, this IFR will preempt any State, local, or tribal requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' as the Federal requirements. In addition, this IFR does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

E. Executive Order 13175

This IFR has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rulemaking does not significantly or uniquely affect the communities of Tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Regulatory Flexibility Act, Executive Order 13272, and DOT Regulatory Policies and Procedures

Section 603 of the Regulatory Flexibility Act (RFA) requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever an agency is required by 5 U.S.C. 553 to publish a general notice of proposed rulemaking for any proposed rulemaking. Similarly, section 604 of the RFA requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after being required to publish a general notice of proposed rulemaking. Because of the contributing factors and the need to address the identified safety risk, PHMSA has found that there is good cause to forgo notice and comment pursuant to the exceptions in 5 U.S.C. 553(b)(B)(3). Accordingly, PHMSA has not analyzed the effects of this action under 5 U.S.C. 603 and 604.

G. Paperwork Reduction Act

PHMSA currently has approved information collections under Office of Management and Budget (OMB) Control Numbers 2137–0034, ''Hazardous Materials Shipping Papers and Emergency Response Information'' and 2137–0557, ''Approvals for Hazardous Materials.'' A review of the baseline and change of paperwork and recordkeeping burden related to this IFR would bring small lithium batteries into fully regulated status, thus requiring shipping papers. PHMSA estimates that there will be an additional 28,242 shipments annually that will require a shipping paper. PHMSA estimates that each shipping paper takes one minute and thirty seconds to complete (28,242 shipments × 1 minute 30 seconds), which results in approximately 741 burden hours. PHMSA does not

[68] Webster et al. See footnote 7.

[69] For the purposes of this analysis, the scope of the U.S. safety record includes incidents reported to PHMSA over a 10-year period using a DOT Form 5800.1. Furthermore, PHMSA is unable to conduct a root cause analysis on many lithium battery incidents due to the destruction of evidence in fire.

estimate any increase in out-of-pocket costs. These shipments will also require a notification to the pilot in command (NOPIC) taking 1 minute per shipment (28,242 shipments × 1 minute), which results in an increase of approximately 471 burden hours. PHMSA does not estimate any increase in out-of-pocket costs. In total for this information collection, PHMSA estimates an approximate increase of 56,484 annual number of responses (28,242 shipping paper responses + 28,242 NOPIC responses) and approximate increase of 1,212 burden hours (741 shipping paper burden hours + 471 NOPIC burden hours).

PHMSA also estimates that an additional 468 approval requests will result from the new requirements in this IFR. PHMSA estimates that it takes 40 hours to complete the paperwork portion of an approval request, resulting in 18,720 additional burden hours (468 approval requests × 40 hours per request). PHMSA does not estimate any increase in out-of-pocket costs.

A summary of the information collection changes can be found below:

OMB Control Number 2137–0034

Annual Increase in Number of Respondents: 0.

Annual Increase in Annual Number of Responses: 56,484.

Annual Increase in Annual Burden Hours: 1,212.

Annual Increase in Annual Burden Costs: $0.

OMB Control Number: 2137–0557

Annual Increase in Number of Respondents: 468.

Annual Increase in Annual Number of Responses: 468.

Annual Increase in Annual Burden Hours: 18,720.

Annual Increase in Annual Burden Costs: $0.

Under the Paperwork Reduction Act of 1995, Public Law 104–13, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of title 5 of the CFR requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. Please direct your requests for a copy of the information collection to Steven Andrews or Shelby Geller, U.S. Department of Transportation, Pipeline & Hazardous Materials Safety Administration (PHMSA), East Building, Office of Hazardous Materials Standards, 1200 New Jersey Avenue Southeast, Washington DC 20590, Telephone (202) 366–8553.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

I. Unfunded Mandates Reform Act

This IFR does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either State, local, or Tribal governments, in the aggregate, or to the private sector, and it is the least burdensome alternative that achieves the objective of the rulemaking.

J. Environmental Assessment

The National Environmental Policy Act of 1969, 42 U.S.C. 4321–4375 (NEPA) requires Federal agencies to consider the environmental impacts of proposed actions in their decision-making process. Where an agency does not anticipate significant environmental impacts, the Council on Environmental Quality (CEQ) regulations implementing NEPA require Federal agencies to conduct an environmental assessment to consider (1) the need for the action, (2) alternatives considered, (3) the human and environmental impacts of the action and alternatives, and (4) a list of the agencies and persons consulted. *See* 40 CFR 1508.9(b). This IFR would amend the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), with the following provisions to (1) prohibit the transport of lithium ion cells and batteries as cargo on passenger aircraft; (2) require all lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and (3) restrict small lithium cell and battery shipments to one package per consignment or overpack.

1. Need for the Action

Lithium batteries pose unique challenges to safety when transported by air because, unlike other hazardous materials, they contain both a chemical and an electrical hazard. This combination of hazards, when involved in a fire encompassing significant quantities of lithium batteries, may exceed the fire suppression capability of an aircraft and lead to a catastrophic lithium battery event. Lithium batteries can overheat and ignite under certain conditions and, once ignited, can be especially difficult to extinguish. The presence of lithium batteries can also increase the severity of a fire originating from another source. In general, lithium batteries have a higher energy density (*i.e.,* high energy to size ratio) than other types of batteries and are susceptible to thermal runaway, which is a chain reaction leading to self-heating and uncontrolled release of the battery's stored energy. In addition, most lithium ion batteries manufactured today contain a flammable electrolyte.

Laboratory testing conducted at the FAA Technical Center has demonstrated that lithium batteries pose a greater risk in air transportation than other types of batteries (*e.g.,* alkaline, nickel-metal hydride, and nickel cadmium). This testing has also demonstrated that even a few lithium batteries can present a serious hazard. The current fire suppression systems installed on aircraft provide, at best, limited effectiveness in mitigating fires involving a consignment of lithium batteries, which confirms that lithium batteries pose unique transportation hazards of which the current requirements are not effective in mitigating.

Additionally, during the ICAO Dangerous Goods Panel Meeting (DGP–25; October 19–30, 2015), the DGP proposed two amendments to the ICAO Technical Instructions. These proposed amendments were based on recommendations developed at the Second and Third International Multidisciplinary Lithium Battery Transport Coordination Meetings, which took place in September 2014 and July 2015, respectively. By way of DGP–25, the DGP recommended that the ICAO Technical Instructions be amended to (1) require all lithium ion cells and batteries on cargo-only aircraft to be shipped at not more than a 30 percent state of charge and (2) restrict the number of packages that may be offered under current ICAO Technical Instructions provisions for small batteries (''Section II'' batteries) to not more than one package per consignment. The ICAO Council approved and published these amendments for incorporation into the 2015–2016 ICAO Technical Instructions in January 2016, with an effective date of April 1, 2016.

On February 22, 2016, in addition to the two safety enhancements discussed above, ICAO adopted an additional safety measure that prohibits, on an interim basis, all consignments of lithium ion batteries as cargo on passenger aircraft. This prohibition will

continue to be in force as separate work continues through ICAO on a new lithium battery packaging performance standard. This additional safety measure is also effective April 1, 2016.

Lastly, this rulemaking meets the congressional requirements in Section 333 of the FAA Reauthorization Act of 2018. The FAA Reauthorization Act of 2018 mandates that within 90 days of enactment, the Secretary shall issue regulations that adopt the requirements in the 2015–2016 ICAO Technical Instructions related to the air transportation of lithium cells and batteries, as well as the revised standards adopted by ICAO, which were effective on April 1, 2016, and any other provisions adopted by ICAO prior to the effective date of the FAA Reauthorization Act of 2018. The FAA Reauthorization Act of 2018 also directs the issuance of a limited exception to the restrictions on medical device lithium cells and batteries transported via aircraft, including an expedited review of applications for approvals and special permits related to the air transportation of lithium cells and batteries required for medically necessary care.

2. Alternatives Considered

In this rulemaking, PHMSA considered the following three alternatives:

Selected Alternative:

The Selected Alternative is the scenario, in which PHMSA adopts into the HMR the amendments presented in this rulemaking, including to:

- Prohibit the transport of lithium ion cells and batteries as cargo on passenger aircraft;
- Require all lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and
- Restrict small lithium cell and battery shipments to one package per consignment or overpack.

PHMSA's selected alternative is the ''full harmonization'' approach since it aligns with ICAO actions and amendments to the ICAO Technical Instructions described in this rulemaking. Full harmonization under this rulemaking includes all three amendments above. In addition, this alternative meets the FAA Reauthorization Act of 2018 mandate to harmonize with the 2015–2016 ICAO Technical Instructions for air transportation of lithium cells and batteries and adopt any further revisions adopted prior to the effective date of the FAA Reauthorization Act of 2018 within 90 days of enactment (*See* Section 333). This alternative also meets the FAA Reauthorization Act of 2018 mandate to issue a limited exception for lithium cells and batteries transported via aircraft for medically necessary care.

Alternative 1: No Action Alternative:

The No Action Alternative is the scenario in which PHMSA does not adopt any of the provisions that comprise the IFR. This alternative represents a baseline scenario in that it portrays the way the world would look absent of PHMSA action. The current regulatory standards would remain in effect. This alternative does not meet the FAA Reauthorization Act of 2018 congressional mandate to harmonize with the 2015–2016 ICAO Technical Instructions for air transportation of lithium cells and batteries, harmonize with any further revisions including those effective on April 1, 2016, and to add a limited exception and expedited review of special permit and approval applications for air transportation of lithium cells and batteries for medical device.

Alternative 2: Partial Harmonization Alternative:

Under the Partial Harmonization Alternative, PHMSA would:

- Partially adopt the planned regulation. In particular, this alternative would involve adoption of the prohibition provision described in this rulemaking as well as the 30 percent state of charge provision (see ''Section V. Summary of Changes'' for further detail on these provisions). While there may be some combination of factors that effectively mitigate the hazards posed by the transportation of lithium ion batteries on passenger aircraft, the variable effects of battery chemistry, cargo compartment characteristics including fire suppression capabilities, and loading configuration clearly demonstrates that there is no single factor that would preclude the possibility of a thermal runaway event for all types of lithium ion batteries. Therefore, since the information to date does not provide for a level of surety that the risk can be fully mitigated, a prohibition on the transport of lithium ion batteries as cargo on passenger aircraft is most suitable option. With respect to the prohibition provision, PHMSA expects that the prohibition on transporting lithium ion batteries on domestic passenger aircraft would result in minimal cost impacts on shippers of lithium ion batteries and air carriers. This is because most U.S. passenger air carriers have already voluntarily stopped carrying this cargo on their passenger aircraft.
- Adopt the 30 percent state of charge requirement. PHMSA maintains that the technical basis for this provision is widely agreed-upon; numerous laboratory tests support that thermal runaway is related to the battery's state of charge.
- Not adopt the provision to restrict excepted battery shipments to one package per consignment or overpack.
- As this alternative only partially addresses the transportation of lithium cells and batteries adopted by ICAO prior to the effective date of the FAA Reauthorization Act of 2018, this alternative would not meet congressional mandate in its entirety.

3. Environmental Impacts

Preferred Alternative:

In selecting the provisions as described in this IFR, PHMSA concluded that human safety and environmental risks would be reduced and an increase in protections to human health and environmental resources. As discussed in detail in ''Section III. Need for the Rule,'' FAA research has shown that air transportation of lithium ion batteries poses a human safety risk. This IFR includes the specific measures to reduce environmental and human safety risks to air cargo operators and the public. Specifically, the consignment and overpack restriction will lower the risk of inadvertent bulk loading batteries in a cargo compartment of a cargo-only aircraft without full hazard communication, and the state of charge provision will decrease both the likelihood and consequence of an incident involving lithium ion batteries. Additionally, the prohibition of lithium ion batteries as cargo on passenger aircraft will generate human safety benefits to air operators and public by eliminating the possibility of (1) an incident induced by lithium ion batteries and (2) a fire exacerbated by the presence of lithium ion batteries involving the cargo hold of a passenger aircraft.

Potential environmental impacts of each amendment in the IFR are discussed below:

(1) Prohibit the transport of lithium ion cells and batteries as cargo on passenger aircraft.

Prohibiting lithium ion batteries as cargo on passenger aircraft will generate human safety benefits to air operators and the public by virtually eliminating the possibility of (1) an incident induced by lithium ion batteries shipped as cargo in a passenger aircraft and (2) a fire exacerbated by the presence of lithium ion batteries involving the cargo compartment of a passenger aircraft.

Incident-related contaminated debris entering the air, water (possible when aircraft make transoceanic flights or a

cargo's manifest involves a segment of transportation aboard an ocean vessel), and soil media would be avoided or mitigated and thus benefit the natural environment under this provision. Additionally, fewer and mitigated incidents involving lithium batteries will result in less contaminated debris to be landfilled. PHMSA expects that the prohibition on transporting lithium ion batteries on domestic passenger aircraft will have an incremental benefit to human safety and the environment over the current state since most U.S. passenger air carriers have already voluntarily stopped carrying this cargo on their passenger aircraft.

PHMSA acknowledges that the medical device exception poses an increase in safety risk and environmental risk due to the dangers posed by lithium ion cells and batteries. The FAA Reauthorization Act of 2018 requires the implementation of a medical device exception but did not fully specify how the exception applies. By providing this exception, PHMSA has considered the needs of individuals who require the replacement of lithium ion cells or batteries for medically necessary purposes as required by the FAA Reauthorization Act of 2018.

PHMSA further concludes that this amendment, which will increase standardization and consistency of regulations, will result in greater protection of human health and the environment. Consistency between U.S. and international transportation requirements enhances the safety and environmental protection of international hazardous materials transportation through:

- Better understanding of the regulations;
- An increased level of industry awareness and hence, compliance;
- The smooth flow of hazardous materials from their points of origin to their points of destination; and
- Consistent emergency response in the event of a hazardous materials incident.

Protections for human safety and environmental protection will also be enhanced through more targeted and effective training. This amendment will eliminate inconsistent hazardous materials regulations, which hamper compliance training efforts. For ease of compliance with appropriate regulations, air carriers engaged in the transportation of hazardous materials generally elect to comply with the ICAO Technical Instructions, as appropriate. By maintaining consistency between these international regulations and the HMR, shippers and carriers are able to train their hazmat employees in a single set of requirements for classification, packaging, hazard communication, handling, stowage, etc., thereby minimizing the possibility of improperly preparing and transporting a consignment of hazardous materials because of differences between domestic and international regulations. Greenhouse gas emissions would remain the same under this amendment.

(2) Require all lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge on cargo-only aircraft.

Requiring all lithium ion cells and batteries on cargo-only aircraft to be shipped at not more than a 30 percent state of charge will provide safety benefits to air cargo operators and the public by reducing the available energy and limiting the propagation of heat and fire in the event of thermal runaway in lithium ion cells and batteries. The FAA Technical Center report, *Summary of FAA Studies Related to the Hazards Produced by Lithium Cells in Thermal Runaway in Aircraft Cargo Compartments,* FAA Report DOT/FAA/TC–16/37, June 2016, found that ''the volume of gases emitted by lithium ion cells in thermal runaway is dependent on the state of charge of the cell. Higher states of charge yield greater volumes of flammable gases. Reducing the state of charge of lithium ion 18650 LiCoO2 cells to thirty percent or less resulted in a less energetic thermal runaway event and greatly reduced the likelihood of thermal propagation from cell to cell.'' As such, the state of charge requirement in this rulemaking will serve to mitigate the likelihood of thermal propagation for lithium ion cells stored in cargo holds of cargo-only aircraft, particularly for lithium ion 18650 LiCoO2 cells, by preventing propagation of thermal runaway.

In addition to human safety benefits, incident-related contaminated debris entering the air, water (possible when aircraft make transoceanic flights or a cargo's manifest involves a segment of transportation aboard an ocean vessel), and soil media would be avoided or mitigated and thus benefit the natural environment under this provision. Additionally, fewer and mitigated incidents involving lithium batteries will result in less contaminated debris to be landfilled.

PHMSA acknowledges that the medical device exception poses an increase in safety risk and environmental risk due to the dangers posed by lithium ion cells and batteries. The FAA Reauthorization Act of 2018 requires the implementation of a medical device exception but did not fully specify how the exception applies. By providing this exception, PHMSA has considered the needs of individuals who require the replacement of lithium ion cells or batteries for medically necessary purposes as required by the FAA Reauthorization Act of 2018.

PHMSA further concludes that the amendment, which will increase standardization and consistency of regulations, will also result in greater protection of human health and the environment. Consistency between U.S. and international transportation requirements enhances the safety and environmental protection of international hazardous materials transportation through:

- Better understanding of the regulations;
- An increased level of industry awareness and hence, compliance;
- The smooth flow of hazardous materials from their points of origin to their points of destination; and
- Consistent emergency response in the event of a hazardous materials incident.

Enhanced environmental protection will also be achieved through more targeted and effective training. This amendment will eliminate inconsistent hazardous materials regulations, which hamper compliance training efforts. For ease of compliance with appropriate regulations, air carriers engaged in the transportation of hazardous materials generally elect to comply with the ICAO Technical Instructions, as appropriate. By maintaining consistency between these international regulations and the HMR, shippers and carriers are able to train their hazmat employees in a single set of requirements for classification, packaging, hazard communication, handling, stowage, etc., thereby minimizing the possibility of improperly preparing and transporting a consignment of hazardous materials because of differences between domestic and international regulations. Greenhouse gas emissions would remain the same under this amendment.

(3) Restrict the number of packages that may be offered under current provisions for small cells and batteries to one package per consignment or overpack.

Restricting each consignment and overpack to one package will provide human safety benefits to air cargo operators and the public by addressing the fire hazards associated with shipping large quantities of small lithium cells and batteries, which were previously being consolidated in overpack pallets, in single unit load devices and in single aircraft cargo compartments. Under this provision, air cargo operators will be able to more

accurately control the number of batteries loaded on an aircraft and thus prevent fires that could result in injuries and loss of life. The number of consignments and paperwork for air operators and offerors will increase with only one package allowed per consignment. However, the additional amount of administrative work is expected to be small and would be offset by the much greater savings in avoided and mitigated incidents.

In addition to human safety benefits, incident-related contaminated debris entering the air, water (possible when aircraft make transoceanic flights or a cargo's manifest involves a segment of transportation aboard an ocean vessel), and soil media would be avoided or mitigated and thus benefit the natural environment under this provision. Additionally, fewer and mitigated incidents involving lithium batteries will result in less contaminated debris to be landfilled.

PHMSA further concludes that the amendment, which will increase standardization and consistency of regulations, will also result in greater protection of human health and the environment. Consistency between U.S. and international transportation requirements enhances the safety and environmental protection of international hazardous materials transportation through:

- Better understanding of the regulations;
- An increased level of industry awareness and hence, compliance;
- The smooth flow of hazardous materials from their points of origin to their points of destination; and
- Consistent emergency response in the event of a hazardous materials incident.

Enhanced environmental protection will also be achieved through more targeted and effective training. This amendment will eliminate inconsistent hazardous materials regulations, which hamper compliance training efforts. For ease of compliance with appropriate regulations, air carriers engaged in the transportation of hazardous materials generally elect to comply with the ICAO Technical Instructions, as appropriate. By maintaining consistency between these international regulations and the HMR, shippers and carriers are able to train their hazmat employees in a single set of requirements for classification, packaging, hazard communication, handling, stowage, etc., thereby minimizing the possibility of improperly preparing and transporting a consignment of hazardous materials because of differences between domestic and international regulations.

Greenhouse gas emissions would remain the same under this amendment.

Alternative 1: No Action Alternative:

Under the No Action Alternative, current regulations would remain in place, and PHMSA would not add new provisions to the HMR. Not adopting the environmental and safety requirements in the IFR under the No Action Alternative would result in a lost opportunity for reducing the number of and mitigating the damage from environmental and safety-related incidents.

Additionally, efficiencies gained through harmonization in updates to transport standards would not be realized. Foregone efficiencies in the No Action Alternative include freeing up limited resources to concentrate on air transport hazard communication issues of potentially much greater environmental impact. Greenhouse gas emissions would remain the same under the No Action Alternative.

Alternative 2: Partial Harmonization Alternative:

Under the Partial Harmonization Alternative, PHMSA would adopt the passenger aircraft prohibition provision, as well as the 30 percent state of charge provision into the HMR. The Partial Harmonization Alternative does not, however, include the consignment and overpack provision. Improvements in human safety and reduction in potential for environmental impacts from an incident under this alternative would therefore lie somewhere between the No Action Alternative and those in the IFR. Referring to the regulation portion of the probable environmental impacts section above, the same increases in human safety and reduction in potential for environment impacts from an incident would occur for human safety and the environment as those discussed under provisions (1) and (2). Similarly, as discussed under provisions (1) and (2), PHMSA acknowledges that there are some safety and environmental risks to allowing the transportation of lithium cells and batteries for the purposes of medically necessary care, with the approval of the Associate Administrator, on passenger aircraft and at a state of charge greater than 30 percent, but that those risks are outweighed by the benefits to those individuals needing the replacement lithium cells and batteries for their medical devices. Those human safety and environmental benefits discussed under provision (3) would not be expected to occur.

The main difference between the Partial Harmonization Alternative and the regulation's environmental benefits is that the regulation will allow for better control of fires and consequent deaths, injuries, and environmental contamination through smaller, more controlled consignments, whereas the Partial Harmonization Alternative will not offer these protections.

4. Agencies Consulted

PHMSA has coordinated with the FAA in the development of this rulemaking.

5. Finding of No Significant Impact

The requirements in this IFR reduce the likelihood of lithium batteries causing or contributing to accidents on a cargo-only aircraft and virtually eliminate the likelihood on passenger aircraft. This rulemaking would reduce the possibility of an incident on passenger aircraft by prohibiting the transportation of lithium ion batteries as cargo on passenger flights. Secondly, reducing the charge of lithium ion batteries has been shown to reduce the likelihood of thermal runaway, thereby reducing the likelihood of a lithium battery fire on aircraft. Finally, the restriction of a consignment or overpack to one package is intended to ensure that consignments that currently meet the letter of, but not the spirit of, the alternative hazard communication provisions are shipped and labeled as Class 9 hazardous material.

In response to the hazard posed by the transport of lithium ion batteries by air, and recent developments in the international community, these amendments are intended to promote environmental protection, safety, international harmonization, and clarity. These regulatory revisions will offer more efficient and effective ways of achieving PHMSA's goal of safe and secure transportation, protecting both people and the environment from hazardous materials in commerce.

The IFR provides more protection to human health and the environment than the ''No Action'' and ''Partial Harmonization'' Alternatives discussed above. The IFR thus comprises the most environmentally preferable alternative. The provisions of this IFR build on current regulatory requirements to enhance the transportation safety and security of consignments of hazardous materials transported by aircraft, thereby reducing the risks of an accidental or intentional release of hazardous materials and consequent environmental damage. PHMSA therefore believes that the net environmental impact will be slightly positive. PHMSA finds that there are no significant environmental impacts associated with this IFR.

K. Privacy Act

Anyone may search the electronic form of written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). The DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

L. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the IFR to ensure that it does not cause unnecessary obstacles to foreign trade. In this case, the IFR will fully harmonize U.S. lithium battery provisions with the ICAO international standards. Further, the DOT engaged the public by highlighting the provisions of this IFR in a domestic public meeting prior to their adoption. DOT also requested comments from stakeholders on the effect of these provisions. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

List of Subjects

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, PHMSA amends 49 CFR chapter I as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.97.

■ 2. In § 172.101, the Hazardous Materials Table is amended by revising the entry for ''Lithium ion batteries including lithium ion polymer batteries'' to read as follows:

§ 172.101 Purpose and use of the hazardous materials table.

* * * * *

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification No.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*	*		*		*		*	*		
.....	Lithium ion batteries *including lithium ion polymer batteries.*	9	UN3480	.....	9	422, A54, A100.	185	185 ...	185 ...	Forbidden	35 kg	A	
	*		*	*		*		*		*	*		

■ 3. In § 172.102, in paragraph (c)(2), revise special provision A51 and add special provision A100 in appropriate alphanumerical order to read as follows:

§ 172.102 Special Provisions.

* * * * *

(c) * * *

(2) * * *

A51 For aircraft batteries, irrespective of the quantity limitations specified in Column (9A) of the § 172.101 Table or § 175.75(c), wet cell batteries, UN2794 or UN2795, up to a limit of 100 kg net mass per package may be transported aboard passenger aircraft. Transport in accordance with this special provision must be noted on the shipping paper.

* * * * *

A100 Lithium ion cells and batteries must be offered for transport at a state of charge not exceeding 30 percent of their rated capacity. Lithium ion cells and batteries at a state of charge greater than 30 percent of their rated capacity

may only be transported under conditions approved by the Associate Administrator in accordance with the requirements in 49 CFR part 107, subpart H. Guidance and methodology for determining the rated capacity can be found in sub-section 38.3.2.3 of the UN Manual of Tests and Criteria (IBR, *see* § 171.7 of this subchapter).

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 4. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.97.

■ 5. In § 173.185:
■ a. Revise the introductory text and paragraphs (c)(1)(iii) and (c)(4)(ii) through (vi);
■ b. Add paragraphs (c)(4)(vii) and (c)(5);
■ c. Redesignate paragraph (g) as paragraph (h); and
■ d. Add new paragraph (g).

The revisions and additions read as follows:

§ 173.185 Lithium cells and batteries.

As used in this section, c*onsignment* means one or more packages of hazardous materials accepted by an operator from one shipper at one time and at one address, receipted for in one lot and moving to one consignee at one destination address. *Equipment* means the device or apparatus for which the lithium cells or batteries will provide electrical power for its operation. *Lithium cell(s)* or *battery(ies)* includes both lithium metal and lithium ion chemistries. *Medical device* means an instrument, apparatus, implement, machine, contrivance, implant, or in vitro reagent, including any component, part, or accessory thereof, which is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, of a person.

* * * * *

(c) * * *

(1) * * *

(iii) Except when lithium cells or batteries are packed with or contained in equipment in quantities not exceeding 5 kg net weight, the outer package that contains lithium cells or batteries must be appropriately marked: ''PRIMARY LITHIUM BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'', ''LITHIUM METAL BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'', ''LITHIUM ION BATTERIES—FORBIDDEN FOR TRANSPORT ABOARD PASSENGER AIRCRAFT'' or labeled with a ''CARGO AIRCRAFT ONLY'' label specified in § 172.448 of this subchapter.

* * * * *

(4) * * *

(ii) Not more than one package prepared in accordance with this paragraph (c)(4) may be placed into an overpack. When a package displays the ''CARGO AIRCRAFT ONLY'' label, the paragraph (c)(1)(iii) mark, or the paragraph (c)(3)(i) lithium battery mark and is placed in an overpack, the appropriate label or mark must either be clearly visible through the overpack, or the label or mark must also be affixed on the outside of the overpack, and the overpack must be marked with the word ''OVERPACK''.

(iii) A shipper is not permitted to offer for transport more than one package prepared in accordance with the provisions of this paragraph in any single consignment.

(iv) Each shipment with packages required to display the paragraph (c)(3)(i) lithium battery mark must include an indication on the air waybill of compliance with this paragraph (c)(4) (or the applicable ICAO Technical Instructions Packing Instruction), when an air waybill is used.

(v) Packages and overpacks of lithium batteries prepared in accordance with this paragraph (c)(4) must be offered to the operator separately from cargo which is not subject to the requirements of this subchapter and must not be loaded into a unit load device before being offered to the operator.

(vi) For lithium batteries packed with, or contained in, equipment, the number of batteries in each package is limited to the minimum number required to power the piece of equipment, plus two spares, and the total net quantity (mass) of the lithium cells or batteries in the completed package must not exceed 5 kg.

(vii) Each person who prepares a package for transport containing lithium cells or batteries, including cells or batteries packed with, or contained in, equipment in accordance with the conditions and limitations of this paragraph (c)(4), must receive instruction on these conditions and limitations, corresponding to their functions.

(5) For transportation by aircraft, a package that exceeds the number or quantity (mass) limits in the table shown in paragraph (c)(4)(i) of this section, the overpack limit described in paragraph (c)(4)(ii) of this section, or the consignment limit described in paragraph (c)(4)(iii) of this section is subject to all applicable requirements of this subchapter, except that a package containing no more than 2.5 kg lithium metal cells or batteries or 10 kg lithium ion cells or batteries is not subject to the UN performance packaging requirements in paragraph (b)(3)(ii) of this section when the package displays both the lithium battery mark in paragraph (c)(3)(i) and the Class 9 label. This paragraph does not apply to batteries or cells packed with or contained in equipment.

* * * * *

(g) *Limited exceptions to restrictions on air transportation of medical device batteries.* Irrespective of the quantity limitations described in column 9A of the § 172.101 Hazardous Materials Table of this subchapter, up to two replacement lithium cells or batteries specifically used for a medical device as defined in this section may be transported as cargo on a passenger aircraft. Packages containing these cells or batteries are not subject to the marking requirement in paragraph (c)(1)(iii) of this section or the ''CARGO AIRCRAFT ONLY'' label required by § 172.402(c) of this subchapter and may be transported as cargo on a passenger aircraft when approved by the Associate Administrator and provided the following conditions are met:

(1) The intended destination of the cells or batteries is not serviced daily by cargo aircraft if a cell or battery is required for medically necessary care; and

(2) Lithium ion cells or batteries for medical devices are excepted from the state of charge limitations in § 172.102, special provision A100, of this subchapter, provided each cell or battery is:

(i) Individually packed in an inner packaging that completely encloses the cell or battery;

(ii) Placed in a rigid outer packaging; and

(iii) Protected to prevent short circuits.

* * * * *

Issued in Washington, DC on February 27, 2019, under authority delegated in 49 CFR part 1.97.

Howard R. Elliott,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2019–03812 Filed 3–5–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 380

[Docket No. FMCSA–2017–0371]

RIN 2126–AC05

Commercial Driver's License Upgrade from Class B to Class A

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends the entry-level driver training (ELDT) regulations published on December 8, 2016, titled ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators'' (ELDT final rule), by adopting a new Class A CDL theory instruction upgrade curriculum to reduce the training time and costs incurred by Class B commercial driver's license (CDL) holders upgrading to a Class A CDL. This final rule does not change the regulatory text proposed in the Notice of Proposed Rulemaking (NPRM). The Agency believes that this modest change in the Class A theory training requirements for Class B CDL holders upgrading to a Class A CDL maintains the same level of safety established by the ELDT final rule, and the regulatory burden reduction will result in annualized cost savings of $18 million.

DATES: This final rule is effective May 6, 2019. The compliance date for this final rule is February 7, 2020.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than April 5, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations (MC–PSD) Division, FMCSA, 1200 New Jersey Ave SE, Washington, DC 20590–0001, by telephone at 202–366–4325, or by email at *MCPSD@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

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I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2017–0371 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Executive Summary

The Moving Ahead for Progress in the 21st Century Act (MAP–21) required the issuance of final regulations establishing minimum ELDT requirements addressing the knowledge and skills necessary for the safe operation of a commercial motor vehicle (CMV) that must be acquired before obtaining a CDL for the first time or upgrading from one class of CDL to another (49 U.S.C. 31305(c)(1)). On December 8, 2016, FMCSA published a final rule establishing minimum ELDT requirements meeting the MAP–21 mandate (81 FR 88732) (''ELDT final rule''). Today, as part of the Agency's ongoing effort to review existing regulations to evaluate their continued necessity and effectiveness, FMCSA amends 49 CFR part 380 by adding a new theory instruction upgrade curriculum for Class B CDL holders upgrading to a Class A CDL. This final rule does not change the regulatory text proposed in the June 29, 2018, NPRM.

The ELDT final rule required the same level of *theory* training for individuals obtaining a CDL for the first time as for those who already hold a Class B CDL and are upgrading to a Class A CDL. FMCSA now concludes that, because Class B CDL holders have prior training or experience, they are not required to receive the same level of theory training as individuals who have never held a CDL. Accordingly, the Agency adds an optional theory instruction upgrade curriculum for Class B CDL holders upgrading to a Class A CDL, which removes eight instructional units involving ''Non-Driving Activities.'' However, Class B CDL holders upgrading to a Class A CDL remain free to choose to complete the Class A theory instruction standard curriculum, which includes the eight units of theory instruction not included in the upgrade curriculum established by this rule. This rule applies only to Class B CDL holders; therefore, individuals obtaining a Class A CDL who *do not* already hold a Class B CDL must complete the full Class A theory (standard) curriculum, as required by the ELDT final rule.

The theory instruction upgrade curriculum for Class B CDL holders does not require a minimum number of instruction hours, but the training provider is required to cover all topics in the curriculum and driver-trainees must receive an overall minimum score of 80 percent on the written theory assessment. This approach is consistent with the theory curricula requirements in the ELDT final rule. This final rule does not change the behind-the-wheel (BTW) (range and public road) training requirements set forth in the ELDT final rule. All driver-trainees, including those who hold a Class B CDL, must demonstrate proficiency in all elements of the BTW curriculum in a Group A vehicle.

Costs and Benefits

The Agency estimates that an annual average of approximately 11,340 driver-trainees are affected by the rule, with each experiencing a reduction of 27 hours in time spent completing their theory instruction. This results in a substantial time cost savings to these driver-trainees, who no longer must attend this training, as well as a cost savings to the motor carriers that employ these drivers. The rule does not

result in any *increase* in costs. As presented in Table 1, the Agency estimates that the rule results in a 10-year cost savings of $182 million on an undiscounted basis, $155 million discounted at 3%, $127 million discounted at 7%, and $18 million on an annualized basis at a 7% or a 3% discount rate, representing a decrease in cost or a cost savings. Most of this annualized cost savings ($17.10 million) is realized by driver-trainees, with the remainder of the annualized cost savings ($1.04 million) realized by motor carriers.

TABLE 1—SUMMARY OF THE TOTAL COST OF THE RULE

[In millions of 2014$]

Year	Undiscounted			Discounted	
	Driver-trainee costs	Motor carrier costs	Total Costs [a]	Discounted at 3%	Discounted at 7%
2020	[b] ($16.7)	($1.0)	($17.8)	($17.2)	($16.6)
2021	(16.8)	(1.0)	(17.8)	(16.8)	(15.6)
2022	(16.9)	(1.0)	(17.9)	(16.4)	(14.6)
2023	(17.0)	(1.0)	(18.0)	(16.0)	(13.8)
2024	(17.1)	(1.0)	(18.1)	(15.6)	(12.9)
2025	(17.2)	(1.0)	(18.2)	(15.3)	(12.2)
2026	(17.3)	(1.0)	(18.3)	(14.9)	(11.4)
2027	(17.4)	(1.1)	(18.4)	(14.5)	(10.7)
2028	(17.5)	(1.1)	(18.5)	(14.2)	(10.1)
2029	(17.6)	(1.1)	(18.6)	(13.9)	(9.5)
Total	(171)	(10)	(182)	(155)	(127)
Annualized			(18)	(18)	(18)

Notes:

(a) Total cost values may not equal the sum of the components due to rounding. (The totals shown in this column are the rounded sum of unrounded components.)

(b) Values shown in parentheses are negative values (*i.e.,* less than zero) and represent a decrease in cost or a cost savings.

In the regulatory evaluation for the ELDT final rule, FMCSA estimated that not only would driver-trainees and motor carriers incur costs, but that training providers, State Driver Licensing Agencies (SDLAs), and the Federal government would also incur costs, as a result of the ELDT final rule. For this rule, FMCSA does not anticipate any change in costs relative to the ELDT final rule for training providers, SDLAs, or the Federal government, because the regulatory obligations of these entities, as set forth in the ELDT final rule, are not affected.

The Agency believes that this rule does not result in changes to the benefits of the ELDT final rule. In the regulatory evaluation for the ELDT final rule, the Agency estimated quantified benefits for three categories of non-safety benefits, including savings from reductions in fuel consumption, reductions in CO_2 emissions related to those reductions in fuel consumption, and reductions in vehicle maintenance and repair costs. These estimated non-safety benefits were derived from the Speed Management and Space Management instructional units in the Class A theory instruction curriculum in the ELDT final rule. Because these two instructional units remain in the theory instruction upgrade curriculum, the Agency does not anticipate any change in these non-safety benefits from this rule.

The regulatory evaluation for the ELDT final rule addressed the potential safety benefits of ELDT. In considering the potential safety impacts from the June 29, 2018, NPRM, the Agency noted that Class B CDL holders have prior training or experience in operating CMVs, which serves as an adequate substitute for the eight non-driving instructional units not included in the optional theory instruction upgrade curriculum. The Agency therefore presumed that the NPRM would not impact safety, and specifically requested comment on whether the proposed optional Class A CDL theory curriculum would reduce safety benefits relative to the ELDT final rule. The Agency received no comments in response to that request. Therefore, the Agency does not anticipate that this rule will change potential safety benefits previously identified in connection with the ELDT final rule.

III. Abbreviations and Acronyms

ANPRM Advance Notice of Proposed Rulemaking
ATA American Trucking Associations, Inc.
BEA Bureau of Economic Analysis
BLS Bureau of Labor Statistics
BTW Behind the Wheel
CDL Commercial Driver's License
CFR Code of Federal Regulations
CLP Commercial Learner's Permit
CMV Commercial Motor Vehicle
CMVSA Commercial Motor Vehicle Safety Act
CVTA Commercial Vehicle Training Association
DOT U.S. Department of Transportation
ELDT Entry-Level Driver Training
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
HM Hazardous Materials
IT Information Technology
MAP–21 Moving Ahead for Progress in the 21st Century Act
NAICS North American Industry Classification System
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Drivers Association
OOS Out-of-Service
PIA Privacy Impact Assessment
PII Personally Identifiable Information
PRA Paperwork Reduction Act
PTDI Professional Truck Driver Institute
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RIN Regulation Identifier Number
SBA Small Business Administration
SDLA State Driver Licensing Agency
§ Section symbol
TPR Training Provider Registry
U.S.C. United States Code

IV. Legal Basis for the Rulemaking

As noted above, FMCSA's publication of the final rule, ''Minimum Training Requirements for Entry-Level Commercial Vehicle Operators'' (81 FR 88732 (Dec. 8, 2016)), satisfied the MAP–21 requirement that the Agency

issue ELDT regulations. This rule, which amends regulations established by the ELDT final rule, is based on the authority of the Motor Carrier Act of 1935 (the 1935 Act) and the Motor Carrier Act of 1984 (the 1984 Act), both as amended, and the Commercial Motor Vehicle Safety Act of 1986 (CMVSA).

The 1935 Act, codified at 49 U.S.C. 31502(b), provides that ''The Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.'' This rule addresses the qualifications of certain motor carrier employees, consistent with the safe operation of CMVs.

The 1984 Act, codified at 49 U.S.C. 31136(a), provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a)(1) grants the Secretary broad authority to issue regulations ''on commercial motor vehicle safety,'' including regulations to ensure that ''commercial motor vehicles are . . . operated safely''. The remaining statutory factors and requirements in section 31136(a), to the extent they are relevant, are also satisfied here. In accordance with section 31136(a)(2), the elimination of duplicative theory training does not impose any ''responsibilities . . . on operators of commercial motor vehicles [that would] impair their ability to operate the vehicles safely.'' This rule does not directly address medical standards for drivers (section 31136(a)(3)) or possible physical effects caused by driving CMVs (section 31136(a)(4)). However, to the extent that the various curricula in the 2016 final rule on ELDT address FMCSA's medical requirements for CMV drivers, section 31136(a)(3) was considered and addressed in that rulemaking. FMCSA does not anticipate that drivers will be coerced (section 31136(a)(5)) as a result of this rulemaking. However, the Agency notes that the ELDT theory training curricula for Class B CDLs, as well as the Class A theory instruction standard curriculum, includes a ''Whistleblower/Coercion'' unit, addressing the right of an employee to question the safety practices of an employer without incurring the risk of losing a job or being subject to reprisal simply for stating a safety concern. This unit also instructs driver-trainees in procedures for reporting to FMCSA incidents of coercion from motor carriers, shippers, receivers, or transportation intermediaries.

The CMVSA provides, among other things, that the Secretary shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a CMV (49 U.S.C. 31305(a)). This rule addresses the fitness of specified individuals (*i.e.,* Class B CDL holders upgrading to a Class A CDL) operating a CMV.

Finally, the Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. Chapters 311, 313, and 315, as they relate to commercial motor vehicle operators, programs and safety.

V. Background

On December 8, 2016, FMCSA published a final rule establishing minimum training standards for certain individuals applying for their CDL for the first time; an upgrade of their CDL (*e.g.,* a Class B CDL holder upgrading to a Class A CDL); or a hazardous materials (H), passenger (P), or school bus (S) endorsement for the first time. The final rule, which set forth ELDT requirements for BTW and theory (knowledge) instruction, fulfilled the Congressional mandate in section 32304 of MAP–21 and was based in part on consensus recommendations from the Agency's Entry-Level Driver Training Advisory Committee (ELDTAC). The ELDT final rule, effective on June 5, 2017 [1] (with a compliance date of February 7, 2020), is the culmination of previous efforts by FMCSA and its predecessor agency, the Federal Highway Administration, to address the issue of CMV driver training standards.[2]

The Department has longstanding processes to periodically review regulations and other agency actions and, if appropriate, revised to ensure that they continue to meet the needs for which they were originally designed, and that they remain cost-effective and cost-justified.[3] Consistent with these processes, the Agency revised the theory training requirements applicable to CMV drivers already holding a Class B CDL who wish to upgrade to a Class A CDL. The requirements pertaining to BTW (range and public road) instruction, as set forth in the ELDT final rule, remain unchanged for all driver-trainees, including Class B CDL holders upgrading to a Class A CDL.

VI. June 29, 2018, Proposed Rule

The ELDT final rule required the same level of theory training for individuals obtaining a CDL for the first time as those who already hold a Class B CDL and are upgrading to a Class A CDL. FMCSA subsequently concluded that this approach imposed an unnecessary regulatory burden because, due to prior training or experience in operating a CMV, Class B CDL holders do not require the same level of theory training as individuals who have never held a CDL. Accordingly, the Agency proposed the following change: Class B CDL holders upgrading to a Class A CDL would not be required to complete eight instructional units currently included in Section A.1.5, ''Non-Driving Activities,'' of the theory instruction portion of the Class A CDL training curriculum as set forth in Appendix A to 49 CFR part 380. Under this proposal, the theory instructional units that would no longer be required for Class B CDL holders upgrading to a Class A CDL are: Handling and Documenting Cargo, Environmental Compliance Issues, Post-Crash Procedures, External Communications, Whistleblower/Coercion, Trip Planning, Drugs/Alcohol, and Medical Requirements. These units would, however, remain required elements of the theory instruction standard curriculum for any individual obtaining a Class A CDL who does not already hold a Class B CDL. These units, which provide instruction in activities that do not involve actually operating a CMV, are identical, except for minor editorial differences in some of the topic

[1] The ELDT rule was initially effective on February 6, 2017. In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Freeze Pending Review,'' the effective date was temporarily delayed three times by final rules published on February 1, 2017 (82 FR 8903), March 21, 2017 (82 FR 14476), and May 23, 2017 (82 FR 23516).

[2] For a more extensive review of the legal and regulatory history of these efforts, see 81 FR 88732, 88739–40 (Dec. 8, 2016).

[3] *See* Exec. Order No. 13777, section 1, 82 FR 12285 (March 1, 2017) (''It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people or . . .''); Exec. Order No. 13610, 77 FR 28469 (May 14, 2012) (requiring agencies to conduct retrospective analyses of existing rules to determine whether they remain justified); Exec. Order No. 13563, section 6(b), 76 FR 2831, (Jan. 21, 2011) (requiring agencies to submit a plan ''under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives''); Exec. Order No. 12866, section 5, (Sept. 30, 1993) (requiring each agency to ''review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order'').

descriptions, to the above-specified instructional units included in Section B.1.5, ''Non-Driving Activities,'' of the Theory Instruction portion of the Class B CDL Curriculum as set forth in Appendix B to 49 CFR part 380.

The NPRM explained that driver-trainees affected by the proposal would fall into one of two categories: those who obtain a Class B CDL *after* the compliance date of February 7, 2020, and thus are subject to the training requirements set forth in the ELDT final rule, and those who obtain a Class B CDL *before* the compliance date of the final rule and thus are not subject to those requirements.[4] The first category, drivers who obtain a Class B CDL by completing ELDT training after February 7, 2020, will have already demonstrated proficiency in the eight non-driving theory topics, identified above, included in the Section B.1.5 of the Class B training curriculum, the content of which is virtually identical to the content of section A.1.5. The Agency noted that, accordingly, requiring Class B CDL holders who are upgrading to Class A to be re-trained in those topics, which they have already mastered by successfully completing the Class B theory instruction, imposes an unnecessary regulatory burden on those individuals.

The second category of driver-trainees affected by the NPRM would be drivers who obtained their Class B CDL prior to the February 7, 2020, compliance date of the final rule. These Class B CDL holders would already have experience operating a CMV and would have received some training, including, for example, the ELDT required in § 380.503 [5] and/or finishing training provided by motor carrier employers. Accordingly, FMCSA proposed that these drivers not be required to complete the entire Class A theory instruction curriculum as set forth in the ELDT final rule. Under the NPRM, any Class B holder could thus choose to complete the Class A CDL theory curriculum (upgrade or standard) best suiting their individual needs.

FMCSA also explained that, unlike the eight Class A theory instructional units not included in the proposed upgrade curriculum, instruction in two ''non-driving'' theory units—Hours of Service (HOS) Requirements and Fatigue and Wellness Awareness—would vary to some extent, depending on the vehicle group (Group A or Group B). Consequently, the Agency proposed that those instructional units be retained in the Class A theory upgrade curriculum.

FMCSA also noted that instruction would vary, depending on the underlying vehicle group, for the theory topics identified in Sections A.1.1 and B.1.1 (Basic Operation), A.1.2 and B.1.2 (Safe Operating Procedures), A.1.3 and B.1.3 (Advanced Operating Practices), and A.1.4 and B.1.4 (Vehicle Systems and Reporting Malfunctions)—all of which address, to varying degrees, operational characteristics of the two vehicle groups. FMCSA therefore proposed to retain those topics in the theory instruction upgrade curriculum.

In the proposed rule, FMCSA emphasized that the Class A BTW range and public road curriculum would remain unchanged for all driver-trainees, including those who hold a Class B CDL. The Agency also stated that, to the extent that Class B CDL holders already have previous training or experience in the CMV industry, they are not novice drivers. FMCSA therefore concluded that the proposed addition of an optional Class A theory instruction upgrade curriculum would not impact the level of safety established in the ELDT final rule, and invited comments addressing this issue. The proposal set forth *minimum* theory training requirements applicable to Class B CDL holders upgrading to a Class A CDL. Nothing in the NPRM precluded training providers from imposing more extensive theory training requirements for Class B CDL holders to whom they provide Class A theory training. Additionally, under the proposal, States remained free to impose theory training requirements more stringent than those proposed in the NPRM, just as they remain free to impose ELDT requirements more stringent than those set forth in the ELDT final rule.

VII. Discussion of Comments and Responses

The Agency received eight comments in response to the NPRM. As discussed further below, none of the comments warranted a change in the proposed regulatory text or in FMCSA's rationale for the proposal, as set forth in the preamble to the NPRM. The American Trucking Associations (ATA) supported the proposal, describing the NPRM as ''an important improvement to the ELDT regulations that will help keep these experienced drivers in the industry.'' Citing the difficulty of recruiting drivers capable of meeting DOT's driver qualification requirements, ATA also noted that ''[l]ooking for ways that provide flexibility in the hiring process but maintain a high level of safety is important to the growth and continued success of the trucking industry.'' Similarly, C.R. England, Inc. (C.R. England) appreciated the Agency's effort ''to reduce unnecessary requirements and 'red tape' for the benefit of drivers and carriers alike.'' Overall, the Owner-Operator Independent Drivers Association (OOIDA) favored the ''elimination of these duplicative requirements.''

The Commercial Vehicle Training Association (CVTA) opposed the NPRM, stating that the proposed removal of the eight topics from the Class A CDL theory curriculum ''is not warranted.'' Two anonymous individuals opposed the proposal, but neither commenter provided a substantive explanation for their position.

The remaining two comments were also submitted by individuals, but both were outside the scope of the NPRM.

1. Retention of Drugs/Alcohol and Trip Planning Units in the Class A CDL Theory Instruction Upgrade Curriculum

Comment: C.R. England suggested that drugs/alcohol and trip planning should be retained in the proposed Class A CDL Theory Instruction Upgrade Curriculum ''due to the ongoing importance of these two topics.''

FMCSA Response: The Agency notes that, as discussed in the NPRM, all Class B CDL holders who choose the Class A CDL theory instruction upgrade curriculum will already have received training in drug and alcohol testing. Class B holders who obtain their CDL before February 7, 2020, must receive detailed information from their employer concerning the drug and alcohol use and testing requirements and prohibitions set forth in 49 CFR parts 382 and 40, as required by § 382.601. These employer-provided materials must also include information concerning the impact of drug and alcohol use on an individual's health and ability to perform safety sensitive functions and require that each driver certify in writing that he or she received these materials. Class B holders who obtain their CDL after February 7, 2020, will have demonstrated their proficiency in the drugs/alcohol theory topic included in the Class B Theory Curriculum as Unit B1.5.9, in addition to being subject to the requirements of § 382.601.

Similarly, drivers who obtain their Class B CDL after February 7, 2020, will

[4] The latter category would also include drivers who obtain a Class B CLP before the compliance date of the ELDT final rule and obtain the Class B CDL after the compliance date, but before the CLP or renewed CLP expires. *See* 49 CFR 380.603(c)(1).

[5] The current ELDT requirements, set forth in subpart E of part 380, will be removed and reserved and replaced by new subparts F and G on the compliance date of the ELDT final rule. *See* 81 FR 88732, 88783.

have demonstrated proficiency in the trip planning topic included in the Class B Theory Curriculum as Unit B1.5.8. Drivers who obtain their Class B CDL before February 7, 2020, will have gained knowledge and experience as CMV operators and thus will be familiar with the core principles of trip planning.

FMCSA therefore continues to believe that inclusion of these non-driving topics in the Class A CDL theory instruction upgrade curriculum is not necessary. The Agency notes, however, that Class B holders who want further training in these topics when upgrading to a Class A CDL may choose the Class A theory instruction standard curriculum, which includes units on drugs/alcohol and trip planning.

2. Application of Class A CDL Theory Training Requirements to Drivers Obtaining a Class B CDL Prior to February 7, 2020

Comment: OOIDA, while supporting elimination of duplicative Class A CDL theory training requirements for drivers who obtain a Class B CDL after February 7, 2020, stated that ''commercial drivers with a Class B CDL prior to February 7, 2020, should not be exempt from the training requirements discussed in this rulemaking.''

FMCSA Response: FMCSA did not propose that drivers who obtain a Class B CDL before February 7, 2020, should be exempt from Class A CDL theory training requirements. Under the proposal and this final rule, *all* Class B CDL holders seeking to upgrade their license to a Class A CDL must successfully complete Class A theory training, regardless of when they obtained their Class B CDL. The Agency proposed providing Class B CDL holders with the option to fulfill the Class A CDL theory instruction training requirement by completing either the standard or the upgrade curriculum. As discussed in the NPRM, drivers who obtain their Class B CDL before February 7, 2020, will already have some degree of training, knowledge, and experience and, in that sense, are not new to the motor carrier industry. Accordingly, these Class B holders may choose the upgrade curriculum, which contains fewer non-driving instructional units than the standard curriculum. Drivers who obtain their Class B CDL after February 7, 2020, will have completed the Class B theory instruction curriculum set forth in the ELDT final rule, which includes the eight non-driving units not included in the Class A upgrade curriculum. Therefore, these Class B holders, who have already demonstrated proficiency in those eight non-driving instructional units, may choose the upgrade curriculum when seeking a Class A CDL. FMCSA reiterates that Class B holders upgrading to a Class A CDL may choose the theory instruction curriculum that best suits their needs, including the full standard curriculum.

3. The Proposed Class A CDL Theory Instruction Upgrade Curriculum

Comment: CVTA, while acknowledging FMCSA's effort to reduce redundancies for Class B CDL holders seeking to upgrade to a Class A CDL, nevertheless opposed the NPRM. First, CVTA argued that because most commercial truck driving schools are likely to offer a Class A curriculum that meets or exceeds the minimum requirements established by the ELDT final rule, ''[i]t is more efficient to subject Class B holders to a full Class A curriculum rather than dedicating resources'' to ''create a special program for a limited number of people.'' Second, CVTA argued that even if FMCSA allowed a training provider to offer the abbreviated upgrade curriculum, as proposed, ''students would still be required to take and pass an assessment, which will contain questions covering these eight subjects.'' Lastly, CVTA disputed FMCSA's assertion that Class B CDL holders ''will already have demonstrated proficiency in the eight non-driving theory topics'' not included in the Class A theory upgrade curriculum, concluding that ''the NPRM wrongly presumes all Class B holders have some experience handling freight.''

FMCSA Response: Under the ELDT final rule and this rule, training providers are free to continue or develop ELDT programs that exceed the Agency's requirements. The Agency did not propose to require that training providers offer the Class A theory instruction upgrade curriculum.

FMCSA also disagrees that students subject to the upgrade curriculum would be required to take and pass an assessment covering subjects that are not part of that curriculum. CVTA correctly noted that the ELDT final rule requires that driver-trainees must demonstrate proficiency in the knowledge objectives described in the theory curricula by achieving an overall score of 80% on a written assessment. However, FMCSA does not intend that driver-trainees who complete the Class A upgrade curriculum be tested on the eight non-driving theory instructional units *not included* in that curriculum. The introductory paragraph to ''Appendix A to part 380, Class A CDL training curriculum,'' as set forth in the ELDT final rule and this rule, notes that training providers must cover all theory subjects *set forth in the curriculum.* Additionally, in the ELDT final rule, § 380.715(a), ''Assessments,'' states that training providers must ''determine driver-trainees' proficiency in the knowledge objectives in the theory portion of each unit of instruction in appendices A through E of part 380, as applicable.'' Accordingly, driver-trainees would be tested only on the instructional units included in the Class A theory curriculum (*i.e.,* standard or upgrade curriculum) they choose to complete.

Finally, FMCSA's statement that certain Class B holders will already have demonstrated proficiency in the eight non-driving theory instructional units referred specifically to drivers who obtain their Class B CDL after February 7, 2020, and therefore are subject to the ELDT final rule. To obtain a Class B CDL, these drivers would be required to complete the Class B theory instruction curriculum (thereby demonstrating proficiency), which includes the eight non-driving units not included in the Class A upgrade curriculum. FMCSA emphasizes, however, that as proposed in the NPRM and as adopted in this final rule, these Class B CDL holders upgrading to a Class A CDL, as well as drivers who obtained their Class B CDL before February 7, 2020, can receive theory instruction in handling and documenting cargo (as well as the other seven non-driving units) by selecting the Class A standard curriculum rather than the upgrade curriculum. The Agency believes that this approach obviates CVTA's concern that Class B holders who operate commercial passenger vehicles, such as motor coaches and school buses, would not necessarily have experience in handling and documenting cargo.

4. Estimated Cost Savings Resulting From the NPRM

Comment: OOIDA suggested that the estimated cost savings of $182 million ''be reallocated towards other ELDT programs.''

FMCSA Response: This rule retains the estimated 10-year cost savings of $182 million on an undiscounted basis, as discussed in the NPRM. However, the cost savings attributable to this rule would not accrue to FMCSA or any other part of the Federal Government, and the Agency has no authority to ''reallocate'' the savings to other aspects of ELDT. The cost savings would be primarily experienced by driver-trainees able to complete their Class A theory instruction in fewer hours relative to the

baseline of the ELDT final rule, resulting in lower tuition costs and reducing the opportunity cost of time for these individuals. Motor carriers employing these drivers would also experience reduced opportunity cost, or cost savings, relative to the baseline of the ELDT final rule. The estimated cost savings resulting from this final rule are discussed further below in Section VIII.A, ''E.O. 12866, E.O. 13563, and DOT Regulatory Policies and Procedures.''

VIII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

IX. Section-by-Section Analysis

FMCSA made no changes to the proposed regulatory text in response to the comments it received.

As proposed, this final rule amends § 380.707(a) to add ''or Class A theory instruction upgrade curriculum applicants'' to the last sentence in the paragraph to account for the fact that training providers must verify that Class A CDL theory instruction upgrade curriculum training applicants possess a valid Class B CDL.

In Appendix A to part 380, Class A CDL Training Curriculum, as proposed, FMCSA adds a sentence to the introductory text that states, ''Class A CDL applicants who possess a valid Class B CDL may complete the Theory Instruction Upgrade Curriculum in lieu of the Theory Instruction Standard Curriculum.'' Additionally, the Agency renames the Class A ''Theory Instruction'' as ''Theory Instruction Standard Curriculum.'' Finally, the Agency adds a new section, ''Theory Instruction Upgrade Curriculum.''

X. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA performed an analysis of the impacts of the rule and determined it is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034 (Feb. 26, 1979)).

As discussed earlier, because Class B CDL holders have previous training or experience in the CMV industry, the rule establishes a new theory instruction upgrade curriculum that removes eight instructional units involving ''Non-Driving Activities'' for Class B CDL holders upgrading to a Class A CDL. The rule does not change the BTW training requirements set forth in the ELDT final rule. Consistent with the ELDT final rule, the Class A theory instruction upgrade curriculum does not have a required minimum number of instruction hours, but the training provider must cover all topics in the curriculum, and driver-trainees must receive an overall minimum score of 80 percent on the written theory assessment. FMCSA estimates that this new curriculum results in cost savings by taking less time to complete, without impacting the benefits of the ELDT final rule.

The Agency estimates that an annual average of approximately 11,340 driver-trainees are affected by the rule, with each experiencing a reduction of 27 hours to complete the theory instruction. This results in a substantial cost savings to these driver-trainees, as well as a cost savings to the motor carriers that ultimately employ these drivers. The rule does not result in any *increase* in costs. As presented in Table 3, the Agency estimates that the rule results in a 10-year cost savings of $182 million on an undiscounted basis, $155 million discounted at 3%, $127 million discounted at 7%, and $18 million on an annualized basis at a 7% or a 3% discount rate. Most of this annualized cost savings ($17.10 million) is realized by driver-trainees, with the remainder of the annualized cost savings ($1.04 million) realized by motor carriers.

Scope and Key Inputs to the Analysis

The rule revises regulations established in the ELDT final rule and, therefore, the ELDT final rule serves as the baseline against which the effects of the rule are evaluated. The compliance date of the regulations established by the ELDT final rule remains February 7, 2020; therefore, the same analysis period of 2020 to 2029, used in evaluating the effects of the ELDT final rule, is used in evaluating the effects of this rule. Furthermore, to ensure that meaningful relative comparisons can be made between the results of the regulatory analysis for this rule and the baseline represented by the ELDT final rule, all monetary values are expressed in 2014 dollars, the same base year used to express monetary values in the evaluation of the ELDT final rule.

Many of the key inputs to this analysis are based on the same data sources as those developed and used in the evaluation of the ELDT final rule. Therefore, a copy of the regulatory evaluation for the ELDT final rule is available in the docket,[6] and, where applicable, the Agency cites that document in the analysis below.

Number of Driver-Trainees Affected by the Rule

The Agency estimates that an annual average of 11,340 driver-trainees are affected by the rule, totaling approximately 113,000 driver-trainees affected over the 10-year analysis period. Annual estimates of the number of driver-trainees affected by the rule are presented below in Table 2.

TABLE 2—ESTIMATED NUMBER OF DRIVER-TRAINEES AFFECTED BY THE RULE

Year	Driver-trainees affected by the rule
2020	11,069
2021	11,129
2022	11,188
2023	11,248
2024	11,309
2025	11,369
2026	11,430
2027	11,491
2028	11,553
2029	11,615
Total	113,403

The estimated number of driver-trainees affected by the rule is a key input in determining the potential cost savings to driver-trainees and to the motor carriers that ultimately employ these drivers.

To derive the estimates presented above in Table 2, FMCSA first estimated the total annual number of Class B CDL holders upgrading to a Class A CDL. These estimates are based on a June 2015 information collection, performed as part of the regulatory evaluation for the ELDT final rule, requesting data from the 51 SDLAs, including

[6] U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA). ''Regulatory Evaluation of Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators. final rule. Regulatory Impact Analysis. Final Regulatory Flexibility Analysis. Unfunded Mandates Analysis.'' November 2016. Docket ID FMCSA–YEAR–2007–27748. Available at: *https://www.regulations.gov/document?D=FMCSA-2007-27748-1291* (accessed September 7, 2018).

information regarding the number of upgrades of Class B CDLs to Class A CDLs issued in 2014.[7] Seventeen SDLAs responded to this data collection, 13 of which provided data regarding the number of upgrades. For these 13 SDLAs, a total of 13,937 upgrades from Class B CDLs to Class A CDLs were issued in 2014. Accounting for the difference in the number of licensed drivers across states, FMCSA extrapolated this value to a national total that is representative of all 51 SDLAs. This adjustment results in a national estimate of 67,000 upgrades from Class B CDLs to Class A CDLs issued in 2014. Further details regarding the June 2015 information collection and the methods used to develop the national estimate of 67,000 upgrades from Class B CDLs to Class A CDLs issued in 2014 can be found in the regulatory evaluation for the ELDT final rule.[8]

This 2014 baseline value of 67,000 upgrades from Class B CDLs to Class A CDLs was then used to develop projections of the number of Class B CDL to Class A CDL upgrades issued annually for the 2020 to 2029 analysis period. These future projections were developed by increasing the current baseline 2014 value consistent with occupation-specific employment growth projections for several commercial vehicle-related occupations obtained from the Bureau of Labor Statistics (BLS) Employment Projections program.[9] FMCSA projected that the annual number of Class B CDL to Class A CDL upgrades for the 2020 to 2029 analysis period would range between 69,000 and 73,000. These projections and further details regarding their development can be found in the regulatory evaluation for the ELDT final rule.[10]

Finally, the resulting annual projections of the overall number of upgrades from Class B CDLs to Class A CDLs are then adjusted to account for the portion of these drivers who are not affected by the ELDT final rule because these drivers are already receiving training in the absence of that rule. These drivers are not affected by the rule. In the regulatory evaluation for the ELDT final rule, FMCSA estimated that 84% of driver-trainees obtaining a Class A CDL already receive training in the absence of that rule and therefore are not affected by the ELDT final rule.[11] The remaining portion (16%) of driver-trainees are those affected by the ELDT final rule, and therefore, by this rule. The annual projections of the overall number of upgrades from Class B CDLs to Class A CDLs developed earlier are adjusted accordingly, using this 16% value to estimate the number of Class B CDL holders upgrading to a Class A CDL who are affected by the rule. This results in the estimated number of driver-trainees affected annually by the rule, as presented earlier in Table 2.

Estimated Hours To Complete the Theory Instruction Upgrade Curriculum

The estimated number of hours necessary to complete the theory instruction upgrade curriculum, and the resulting time savings compared to the estimated time necessary to complete the Class A theory instruction curriculum that was set forth in the ELDT final rule, provide key inputs in determining the potential cost savings to driver-trainees and to the motor carriers that ultimately employ these drivers. Under both the ELDT final rule and this rule, there is no minimum number of hours that driver-trainees are required to spend on the theory portions of any of the training curricula. The training provider must, however, cover all topics in the theory instruction curriculum, and driver-trainees must receive an overall minimum score of at least 80 percent on the written theory assessment. The Agency estimated that, on average, driver-trainees need 60 hours to complete the Class A theory instruction curriculum set forth in the ELDT final rule,[12] which, in this rule, is renamed the ''Theory Instruction Standard Curriculum.'' For this rule, the Agency estimates that Class B CDL holders upgrading to a Class A CDL on average need 33 hours to complete the theory instruction upgrade curriculum. Accordingly, the Agency estimates the rule results in a time savings of 27 hours for each Class B CDL holder upgrading to a Class A CDL.

The Class A theory instruction curriculum set forth in the ELDT final rule included 30 instructional units, among them 10 instructional units related to non-driving activities. The theory instruction upgrade curriculum removes eight of these instructional units related to non-driving activities. In the regulatory evaluation for the ELDT final rule, the Agency did not develop separate estimates of the time necessary to complete each of the 30 instructional units comprising the Class A theory instruction curriculum. Accordingly, FMCSA cannot make a direct estimate of the time savings resulting from the elimination of eight instructional units related to non-driving activities. Although the number of instructional units is reduced by 27% (with eight out of 30 instructional units removed), the varying subject matter and content of each of the 30 instructional units means that the number of hours required to complete the training is not necessarily reduced by a proportional 27% (*i.e.,* a 16-hour reduction from the 60-hour estimate for the theory instruction standard curriculum discussed above).

Therefore, in order to develop an estimate of the number of hours necessary to complete the theory instruction upgrade curriculum and the resulting time savings compared to the estimated time necessary to complete the Class A theory instruction curriculum in the ELDT final rule, the Agency examined the theory instructional units of the curricula standards for driver-trainees as established by the Professional Truck Driver Institute (PTDI).[13] These PTDI curricula standards were reviewed previously during the development of the ELDT final rule. The theory instructional units of the PTDI curricula standards align closely with the 30 instructional units of the Class A theory instruction curriculum in the ELDT final rule. Furthermore, the PTDI curricula standards specify a minimum number of hours for six major categories into which each of the individual instructional units is assigned. These PTDI estimates help to provide a relative measure of the amount of time necessary to complete each of the individual instructional units in the rule. Based on the minimum number of training hours required under the PTDI standards for each of the individual

[7] U.S. Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA). ''Report by State Driver Licensing Agencies (SDLAs) on the Annual Number of Entry-Level Commercial Driver's License (CDL) Applicants and Related Data.'' OMB Control No: 2126–0059.

[8] DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation,'' pp. 19–20, 26.

[9] U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS). Employment Projections Program. ''Table 1.2: Employment by detailed occupation, 2014 and projected 2024.'' Available at: *http://www.bls.gov/emp/ind-occ-matrix/occupation.xlsx* (accessed July 29, 2016).

[10] DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation.'' Annual projections for 2020 to 2029 for ''Upgrade of Class B CDL to Class A CDL'' are presented in Table 11 on page 18, and discussed on pp. 27–30.

[11] DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation,'' pp. 52–62.

[12] DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation,'' pp. 70–74.

[13] Professional Truck Driver Institute, Inc. (PTDI). ''Curricula Standards and Guidelines for Entry-Level Commercial Motor Vehicle Driver Courses.'' February 15, 2017. Page 16. Available at: *http://www.ptdi.org/resources/Documents/Standards/CURRICULUM%20STANDARDS%20ENTRY%20LEVEL%20021517.pdf* (accessed October 2, 2017).

theory instructional units, the elimination of the eight instructional units related to non-driving activities reduces the total hours of Class A theory instruction by approximately 44.2%. Applying this 44.2% reduction to the estimated 60 hours needed to complete the Class A theory instruction curriculum in the ELDT final rule results in a 27-hour reduction in the time needed for Class B CDL holders upgrading to a Class A CDL to complete theory training by taking the theory instruction upgrade curriculum. Accordingly, the Agency estimates that Class B CDL holders upgrading to a Class A CDL, on average, now only require 33 hours to complete the theory instruction upgrade curriculum. Accordingly, the Agency estimates the rule results in a time savings of 27 hours for each Class B CDL holder upgrading to a Class A CDL.

Other Inputs to the Analysis

The reduction of 27 hours in theory training for each of the driver-trainees affected by the rule results in a change in the costs incurred by these driver-trainees, relative to the baseline of the ELDT final rule. This change in cost is comprised of two components, a reduction in tuition costs incurred by these driver-trainees, and a reduction in the opportunity cost of time for these driver-trainees.

FMCSA evaluated tuition costs using an average hourly cost of training of $26 per hour, based on a review of nearly nine hundred CDL driver training programs as discussed in the regulatory evaluation for the ELDT final rule.[14]

The Agency evaluated changes in the opportunity cost of time for driver-trainees using the driver wage rate to represent the value of driver-trainee time that, in the absence of the rule, was spent in training but now is available to driver-trainees for other uses, such as productive employment. FMCSA uses a driver wage rate of $30 per hour, representing the median hourly base wage rate for truck drivers plus fringe benefits, as discussed in the regulatory evaluation of the ELDT final rule.[15]

Finally, the reduction of 27 hours in theory training for each of the driver-trainees affected by the rule also reduces the opportunity costs incurred by motor carriers that ultimately employ these driver-trainees. The opportunity cost to motor carriers from a regulatory action represents the value of the best alternative to the firm that must be forgone by, or is now made available to, the firm as a result of that regulatory action.[16] Under the rule, an input of production (driver labor) that was previously unavailable to carriers in the absence of the rule is now available to carriers, for a time equivalent to the 27-hour reduction in theory training for each of the affected driver-trainees. The value of this time to the motor carrier is measured by estimating the change in profit to the firm, and is a function of the estimated 27-hour reduction in theory training for each of the affected driver-trainees, the marginal cost of operating a CMV, and an estimate of a typical average motor carrier profit margin. As discussed in the regulatory evaluation for the ELDT final rule, the Agency estimates that the marginal cost of operating a CMV is $68 per hour, and that the average profit margin for motor carriers is 5%.[17]

Costs

The rule does not result in any increase in costs. In the regulatory evaluation for the ELDT final rule, the Agency estimated that not only would driver-trainees and motor carriers incur costs, but that training providers, SDLAs, and the Federal government would also incur costs as a result of the ELDT final rule. For this rule, the Agency does not anticipate any change in costs relative to the ELDT final rule for training providers, SDLAs, or the Federal government because it does not affect the regulatory obligations of these entities as set forth in the ELDT final rule.

Costs to training providers resulting from the ELDT final rule included costs for submitting a Training Provider Registration Form (TPRF) for each training location to the Training Provider Registry (TPR), costs for electronically submitting training certification information to the TPR for driver-trainees who have completed training, and costs for preparing for and being subject to compliance audits.[18] Under the rule, training providers still need to register with the TPR, and for those driver-trainees affected by the rule, training providers still need to transmit training completion information electronically to the TPR. Accordingly, FMCSA does not anticipate any change in costs to training providers resulting from the rule.

Costs to SDLAs resulting from the ELDT final rule included costs for updates to SDLA information technology (IT) systems to be able to receive driver training completion information from CDLIS and store this information in the driver history record. Under the rule, SDLAs continue to receive and store the same information. Therefore, FMCSA does not anticipate any change in costs to SDLAs resulting from the rule.

Finally, costs to the Federal Government resulting from the ELDT final rule included costs for FMCSA to create and manage the TPR and to enforce the regulations established by the final rule. Under the rule, the TPR must be developed and maintained in the same manner as under the ELDT final rule. In addition, training program enforcement activities, such as compliance audits performed on training providers, remain unchanged under the rule as compared to the ELDT final rule, and FMCSA's review of training provider registration forms also remains unchanged. Accordingly, FMCSA does not anticipate any change in costs to the Federal government resulting from the rule.

As discussed above, FMCSA estimates a reduction in costs incurred by driver-trainees and motor carriers affected by the rule. Because there is an estimated reduction of 27 hours of training for each driver-trainee affected by the rule, the Agency estimates that both driver-trainees and motor carriers experience negative costs, that is, a decrease in costs or a cost savings. The rule does not result in any *increase* in costs for driver-trainees or motor carriers. The rule reduces tuition costs, as well as the opportunity cost of time for these driver-trainees, relative to the baseline of the ELDT final rule.

For each year of the 10-year analysis period, FMCSA multiplied the estimated number of driver-trainees annually that are affected by the rule, as presented in Table 2, by the estimated reduction of 27 hours in theory training for each of these driver-trainees. FMCSA then multiplied the resulting total aggregate reduction in theory training hours by $26 per hour (the estimated average hourly cost of training),[19] yielding an estimate of the overall change in tuition costs experienced by

[14] DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation,'' pp. 68–69.

[15] DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation,'' pp. 11–14.

[16] DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation,'' pp. 76–79.

[17] DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation,'' pp. 76–79.

[18] DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation,'' pp. 79–81.

[19] The tuition costs noted above are derived from observed tuition charged for the CDL training programs identified by FMCSA, and are proxies for tuition costs that might be charged for a curriculum that meets the requirements of the rule. More details can be found in section 3.2.1 of the regulatory evaluation for the ELDT final rule. DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation,'' pp. 68–69.

driver-trainees for each year of the analysis period. Additionally, the Agency multiplied the total aggregate reduction in theory training hours by the estimated driver wage rate of $30 per hour, yielding an estimate of the change in the opportunity cost of time experienced by driver-trainees for each year of the analysis period. As presented in Table 3, the Agency estimates that the rule results in a 10-year tuition cost savings to driver-trainees of $80 million on an undiscounted basis. The Agency estimates that the rule also results in a 10-year opportunity cost of time savings to driver-trainees of $92 million on an undiscounted basis. In total, the Agency estimates that the rule results in a 10-year cost savings to driver-trainees of $171 million on an undiscounted basis, and $17.10 million on an annualized basis at a 7% discount rate.

The development of the key inputs necessary to estimate the change in cost to motor-carriers, described earlier, includes the marginal cost of operating a CMV, an estimate of a typical average motor carrier profit margin, and the estimated 27-hour reduction in theory training for each of the driver-trainees affected by the rule. For each year of the 10-year analysis period, the estimated number of driver-trainees who are affected by the rule as presented earlier in Table 2 is multiplied by the estimated reduction of 27 hours in theory training for each of these driver-trainees. The resulting total reduction in theory training hours is then multiplied by the estimated marginal cost of operating a CMV of $68 per hour, and the estimated profit margin of 5% for motor carriers. As presented in Table 3, the Agency estimates that the rule results in a 10-year opportunity cost savings to motor carriers of $10 million on an undiscounted basis, and $1.04 million on an annualized basis at a 7% discount rate, representing a decrease in opportunity cost, or an opportunity cost savings to motor carriers.

As presented in Table 3, the Agency estimates that the rule results in a 10-year cost savings of $182 million on an undiscounted basis, $155 million discounted at 3%, $127 million discounted at 7%, and $18 million on an annualized basis at a 7% discount rate, representing a decrease in cost or a cost savings. Most of this annualized cost savings ($17.10 million) is realized by driver-trainees, with the remainder of the annualized cost savings ($1.04 million) realized by motor carriers.

TABLE 3—TOTAL COST OF THE RULE

[in millions of 2014$]

Year	Driver-trainees affected by the rule	Undiscounted				Discounted	
		Driver-trainee tuition costs	Driver-trainee opportunity costs	Motor carrier opportunity costs	Total costs [a]	Discounted at 3%	Discounted at 7%
	[A]	[B] = [A] × [−27 hours] × [$26 per hour]	[C] = [A] × [−27 hours] × [$30 per hour]	[D] = [A] × [−27 hours] × [$68 per hour] × [0.05]	[E] = [B] + [C] + [D]		
2020	11,069	[b] ($7.8)	($9.0)	($1.0)	($17.8)	($17.2)	($16.6)
2021	11,129	(7.8)	(9.0)	(1.0)	(17.8)	(16.8)	(15.6)
2022	11,188	(7.9)	(9.1)	(1.0)	(17.9)	(16.4)	(14.6)
2023	11,248	(7.9)	(9.1)	(1.0)	(18.0)	(16.0)	(13.8)
2024	11,309	(7.9)	(9.2)	(1.0)	(18.1)	(15.6)	(12.9)
2025	11,369	(8.0)	(9.2)	(1.0)	(18.2)	(15.3)	(12.2)
2026	11,430	(8.0)	(9.3)	(1.0)	(18.3)	(14.9)	(11.4)
2027	11,491	(8.1)	(9.3)	(1.1)	(18.4)	(14.5)	(10.7)
2028	11,553	(8.1)	(9.4)	(1.1)	(18.5)	(14.2)	(10.1)
2029	11,615	(8.2)	(9.4)	(1.1)	(18.6)	(13.9)	(9.5)
Total	113,403	(80)	(92)	(10)	(182)	(155)	(127)
Annualized					(18)	(18)	(18)

Notes:

[a] Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).

[b] Values shown in parentheses are negative values (*i.e.,* less than zero), and represent a decrease in cost or a cost savings.

Benefits

The Agency anticipates no change in the benefits of the ELDT final rule as a result of this rule. In the regulatory evaluation for the ELDT final rule, the Agency estimated quantified benefits for three categories of non-safety benefits, including savings from reductions in fuel consumption, reductions in CO_2 emissions related to these reductions in fuel consumption, and reductions in vehicle maintenance and repair costs. These estimated non-safety benefits were derived from the Speed Management and Space Management instructional units in the Class A theory instruction curriculum set forth in the ELDT final rule.[20] Because these two instructional units remain in the theory instruction upgrade curriculum, the Agency does not anticipate any change in these non-safety benefits from this rule.

The regulatory evaluation for the ELDT final rule addressed the potential safety benefits of entry-level driver training. In considering the potential impacts on safety from this rule, the Agency notes that Class B holders have previous training or experience in the CMV industry, which serves as an adequate substitute for the eight non-driving instructional units that are not included in the theory instruction upgrade curriculum. Therefore, the Agency anticipates that there is no change in potential safety benefits associated with this rule.

[20] DOT FMCSA, ''ELDT Final Rule Regulatory Evaluation,'' pp. 87–122.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 (82 FR 9339, Feb. 3, 2017). E.O. 13771 requires that for every one new regulation issued by an Agency, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.[21] Final implementation guidance addressing the requirements of E.O. 13771 was issued by the Office of Management and Budget (OMB) on April 5, 2017.[22] The OMB guidance defines what is an E.O. 13771 regulatory action and what is an E.O. 13771 deregulatory action, provides procedures for how agencies should account for the costs and cost savings of such actions, and outlines various other details regarding implementation of E.O. 13771.

This final rule has total costs less than zero, and is therefore an E.O. 13771 deregulatory action.[23] The present value of the cost savings of this rule, measured on an infinite time horizon at a 7% discount rate, expressed in 2016 dollars, and discounted to 2020 (the year the rule goes into effect and cost savings would first be realized), is $278 million. On an annualized basis, these cost savings are $19.5 million.

For the purpose of E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016.[24] In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7% discount rate, expressed in 2016 dollars, and discounted to 2016, is $212 million. On an annualized basis, these cost savings are $15 million.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the impact of their regulatory actions on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.[25] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule affects a subset of driver-trainees and motor carriers. Driver-trainees are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, driver-trainees are considered neither a small business under Section 601(3) of the RFA, nor are they considered a small organization under Section 601(4) of the RFA.

Motor carriers affected by this rule are most likely those that hire Class A CDL drivers. Passenger motor carriers generally rely on CMVs that do not require a Class A CDL to operate (*i.e.,* Group B vehicles), and thus are not be affected by this rule. In the regulatory evaluation for the ELDT final rule, FMCSA estimated that there were approximately 1.1 million inter- and intrastate freight motor carriers, of which a subset operate Group A vehicles, and thus are affected by this rule. FMCSA estimates that this rule affects between 11,000 and 12,000 CMV driver-trainees per year, resulting in fewer than 12,000 motor carriers affected per year, which is approximately 0.9% of the total number of inter- and intrastate freight motor carriers. FMCSA does not know how many of these motor carriers would be considered ''small.''

The U.S. Small Business Administration (SBA) defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS).[26] This rule could affect many different industry sectors; for example, the transportation sector (*e.g.,* General freight trucking industry group (4841) and the Specialized freight trucking industry group (4842)), the agricultural sector, and the construction sector. Industry groups within these sectors have size standards for qualifying as small based on the number of employees (*e.g.,* 500 employees), or on the amount of annual revenue (*e.g.,* $27.5 million in revenue). FMCSA does not have specific information about the number of employees or revenue for each of the motor carriers. However, FMCSA is aware that the motor carrier industry largely consists of smaller firms. Of the 1.1 million freight motor carriers, roughly 1 million have between 1 and 6 power units. If all of the approximately 1 million freight motor carriers with 6 or fewer power units are considered small based on the applicable size standard, then a maximum of 1.2% (12,000 ÷ 1 million) of small entities are affected by this rule. Therefore, FMCSA estimates that this rule does not impact a substantial number of small entities.

As discussed earlier in the Regulatory Analyses section, FMCSA estimates the impact to the affected motor carriers as a reduction in opportunity cost, or a cost savings, relative to the baseline of the ELDT final rule. This rule removes some of the training requirements accounted for in the regulatory evaluation for the ELDT final rule, allowing those drivers who are upgrading from a Class B CDL to a Class A CDL to begin working and earning a profit for the motor carrier earlier than under the current training procedures. Therefore, this rule provides affected motor carriers with increased access to labor hours, and consequently profit, resulting in an opportunity cost savings to the motor carrier. FMCSA estimated the opportunity cost to the motor carrier as a function of the number of hours previously spent in training that are now available for labor, an estimate of the profit margin, and the marginal hourly operational costs of the CMV. As discussed earlier in the Regulatory Analyses section, the Agency estimates that the rule results in a cost savings to all motor carriers of $1.04 million on an annualized basis at a 7% discount rate. On a per driver basis for those drivers affected by the rule, the cost savings

[21] Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs.* 82 FR 9339. Feb. 3, 2017. Section 1 (Purpose).

[22] Executive Office of the President. Office of Management and Budget. *Memorandum M–17–21. Guidance Implementing Executive Order 13771.* April 5, 2017.

[23] Executive Office of the President. Office of Management and Budget. *Memorandum M–17–21. Guidance Implementing Executive Order 13771.* April 5, 2017. Q4 on page 4.

[24] Executive Office of the President. Office of Management and Budget. *Memorandum M–17–21. Guidance Implementing Executive Order 13771.* April 5, 2017. Q25 on page 11.

[25] Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (codified at 5 U.S.C. 601, *et seq.*).

[26] Executive Office of the President, Office of Management and Budget (OMB). ''North American Industry Classification System.'' 2017. Available at: *https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf* (accessed December 1, 2017).

realized by the motor carriers is approximately $92 (27 hours × 0.05 profit margin × $68 marginal operating costs).

The RFA does not define a threshold for determining whether a specific regulation results in a significant impact. However, the SBA, in guidance to government agencies, provides some objective measures of significance that the agencies can consider using.[27] One measure that could be used to illustrate a significant impact is labor costs, specifically, if the cost of the regulation exceeds 5% of the labor costs of the entities in the sector. The American Transportation Research Institute (ATRI) performed an annual survey of motor carriers and published its findings in the ''Analysis of the Operational Costs of Trucking: 2017 Update.'' ATRI found that driver wages and benefits represent approximately 33% of average marginal costs to a carrier.[28] ATRI further estimated that average marginal hourly driver costs, including wages and benefits, were $27.09 in 2016. FMCSA hours of service regulations allow drivers 60 hours of on-duty time in a 7-day period. This equates to approximately $84,500 in driver labor costs per year ($27.09 × 60 hours per week × 52 weeks). The impact of this rule is approximately 0.11% of labor costs ($92 impact ÷ $84,500 labor costs)—well below the 5% threshold identified in the SBA guide. Therefore, this rule does not have a significant impact on the entities affected.

Accordingly, I hereby certify that the action does not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking initiative. If the rule affects your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Mr. Richard Clemente, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's 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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247). The DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.[29]

E. Unfunded Mandates Reform Act of 1995

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 requires agencies to prepare a comprehensive written statement for any proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $161 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any one year. Because this rule does not result in such an expenditure, a written statement is not required. However, the Agency does discuss the costs and benefits of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires Agencies to provide estimates of the information-collection (IC) burden of its regulations. This rule does not alter the Agency's estimates of the paperwork burden outlined in the final ELDT rule at 81 FR 88788 (Dec. 8, 2016). Since publication of the ELDT final rule, the OMB, on April 19, 2017, approved the Agency's estimate of 66,250 hours for the IC collection titled ''Training Certification for Entry-Level Commercial Motor Vehicle Drivers'' (2126–0028). The approval expires on April 30, 2020.

G. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has ''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.'' In assessing the federalism implications of the ELDT final rule, FMCSA stated that, because the CDL program is voluntary, it does not have preemptive effect on the States. The Agency therefore concluded that the ELDT final rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States.[30] This final rule does not change that conclusion.

H. E.O. 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it does not effect a taking of private property or otherwise have taking implications.

K. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a Privacy Impact Assessment

[27] U.S. Small Business Administration, Office of Advocacy. ''A Guide for Government Agencies. How to Comply with the Regulatory Flexibility Act.'' 2017. Available at: *https://www.sba.gov/sites/default/files/advocacy/How-to-Comply-with-the-RFA-WEB.pdf* (accessed on September 7, 2018).

[28] American Transportation Research Institute. ''An Analysis of the Operational Costs of Trucking: 2017 Update. Available at: *http://atri-online.org/wp-content/uploads/2017/10/ATRI-Operational-Costs-of-Trucking-2017-10-2017.pdf* (Accessed on: September 7, 2018).

[29] U.S. Department of Transportation (DOT). ''The Rights of Small Entities To Enforcement Fairness and Policy Against Retaliation.'' Available at: *https://www.transportation.gov/sites/dot.gov/files/docs/SBREFAnotice2.pdf* (accessed December 1, 2017).

[30] *See* 81 FR 88732, 88788 (Dec. 8, 2016).

(PIA) of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information (PII), as well as protections and alternative information handling processes to mitigate potential privacy risks. FMCSA determined that, while this rule does require the collection of individual PII, it does not result in a change in collection, process, or the data elements previously identified in the ELDT final rule.

The privacy analysis of the ELDT final rule, which conforms to the DOT standard Privacy Impact Assessment (PIA), is published on the DOT website (*www.transportation.gov/privacy*). It addresses business processes identified in the ELDT final rule and new or existing information collection systems to be implemented in support of those processes. The FMCSA Privacy Office determined that this final rule does not alter the privacy impact detailed in the PIA for the ELDT final rule.

The Agency submitted a Privacy Threshold Assessment (PTA) analyzing the new rulemaking and the specific process for collection of personal information to the Department of Transportation's Privacy Office. As required by the Privacy Act, FMCSA and the Department will be publishing, with request for comment, a system of records notice (SORN) addressing the collection of information affected by this rule and the ELDT final rule. This SORN will be published in the **Federal Register** not less than 30 days before the Agency is authorized to collect or use PII retrieved by unique identifier.

L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 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.

O. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

P. Environment (NEPA)

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (6)(z). The Categorical Exclusion (CE) in paragraph (6)(z) covers (1) the minimum qualifications for persons who drive commercial motor vehicles as, for, or on behalf of motor carriers; and (2) the minimum duties of motor carriers with respect to the qualifications of their drivers. The requirements in this rule are covered by this CE and the action does not have the potential to significantly affect the quality of the environment. The CE determination is available for inspection or copying in the *regulations.gov* website listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 380

Administrative practice and procedure, Highway safety, Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR chapter 3, part 380, to read as follows:

PART 380—SPECIAL TRAINING REQUIREMENTS

■ 1. The authority citation for part 380 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31305, 31307, 31308, and 31502; sec. 4007(a) and (b) of Pub. L. 102–240 (105 Stat. 2151–2152); sec. 32304 of Pub. L.112–141; and 49 CFR 1.87.

§ 380.707 [Amended]

■ 2. In § 380.707, amend paragraph (a) by adding the words ''or Class A theory instruction upgrade curriculum applicants'' to the end of the final sentence.

■ 3. Amend Appendix A to part 380 by:

■ a. Revising the introductory text;

■ b. Revising the undesignated heading ''Theory Instruction'' to read ''Theory Instruction Standard Curriculum;'' and

■ c. Adding a section entitled ''Theory Instruction Upgrade Curriculum'' to the end of the appendix.

The revision and addition to read as follows:

Appendix A to Part 380—Class A—CDL training curriculum.

Class A CDL applicants must complete the Class A CDL curriculum outlined in this Appendix. The curriculum for Class A applicants pertains to combination vehicles (Group A) as defined in 49 CFR 383.91(a)(1). Class A CDL applicants who possess a valid Class B CDL may complete the Theory Instruction Upgrade Curriculum in lieu of the Theory Instruction Standard Curriculum. There is no required minimum number of instruction hours for theory training, but the training instructor must cover all topics set forth in the curriculum. There is no required minimum number of instruction hours for BTW (range and public road) training, but the training instructor must cover all topics set forth in the BTW curriculum. BTW training must be conducted in a CMV for which a Class A CDL is required. The instructor must determine and document that each driver-trainee has demonstrated proficiency in all elements of the BTW curriculum, unless otherwise noted. Consistent with the definitions of BTW range training and BTW public road training in § 380.605, a simulation device cannot be used to conduct such training or to demonstrate proficiency. Training instructors must document the total number of clock

hours each driver-trainee spends to complete the BTW curriculum. The Class A curriculum must, at a minimum, include the following:

* * * * *

Theory Instruction Upgrade Curriculum

Section BA1.1 Basic Operation

This section must cover the interaction between driver-trainees and the CMV. Driver-trainees will receive instruction in the Federal Motor Carrier Safety Regulations (FMCSRs) and will be introduced to the basic CMV instruments and controls. Training providers will teach driver-trainees the basic operating characteristics of a CMV. This section must also teach driver-trainees how to properly perform vehicle inspections, control the motion of CMVs under various road and traffic conditions, employ shifting and backing techniques, and properly couple and uncouple combination vehicles. Driver-trainees must familiarize themselves with the basic operating characteristics of a CMV.

Unit BA1.1.1 Orientation

This unit must introduce driver-trainees to the combination vehicle driver training curriculum and the components of a combination vehicle. The training providers must teach the safety fundamentals, essential regulatory requirements (*e.g.,* overview of FMCSRs and Hazardous Materials Regulations), and driver-trainees' responsibilities not directly related to CMV driving, such as proper cargo securement. This unit must also cover the ramifications, including driver disqualification provisions and fines, for non-compliance with parts 380, 382, 383, and 390 through 399 of the FMCSRs. This unit must also include an overview of the applicability of State and local laws relating to the safe operation of the CMV, stopping at weigh stations/scales, hazard awareness of vehicle size and weight limitations, low clearance areas (*e.g.,* CMV height restrictions), and bridge formulas.

Unit BA1.1.2 Control Systems/ Dashboard

This unit must introduce driver-trainees to vehicle instruments, controls, and safety components. The training providers must teach driver-trainees to read gauges and instruments correctly and the proper use of vehicle safety components, including safety belts and mirrors. The training providers must teach driver-trainees to identify, locate, and explain the function of each of the primary and secondary controls including those required for steering, accelerating, shifting, braking systems (*e.g.,* ABS, hydraulic, air), as applicable, and parking.

Unit BA1.1.3 Pre- and Post-Trip Inspections

This unit must teach the driver-trainees to conduct pre-trip and post-trip inspections as specified in §§ 392.7 and 396.11, including appropriate inspection locations. Instruction must also be provided on en route vehicle inspections.

Unit BA1.1.4 Basic Control

This unit must introduce basic vehicular control and handling as it applies to combination vehicles. This unit must include instruction addressing basic combination vehicle controls in areas such as executing sharp left and right turns, centering the vehicle, maneuvering in restricted areas, and entering and exiting the interstate or controlled access highway.

Unit BA1.1.5 Shifting/Operating Transmissions

This unit must introduce shifting patterns and procedures to driver-trainees to prepare them to safely and competently perform basic shifting maneuvers. This unit must include training driver-trainees to execute up and down shifting techniques on multi-speed dual range transmissions, if appropriate. The training providers must teach the importance of increased vehicle control and improved fuel economy achieved by utilizing proper shifting techniques.

Unit BA1.1.6 Backing and Docking

This unit must teach driver-trainees to back and dock the combination vehicle safely. This unit must cover ''Get Out and Look'' (GOAL), evaluation of backing/loading facilities, knowledge of backing set ups, as well as instruction in how to back with the use of spotters.

Unit BA1.1.7 Coupling and Uncoupling

This unit must provide instruction for driver-trainees to develop the skills necessary to conduct the procedures for safe coupling and uncoupling of combination vehicle units, as applicable.

Section BA1.2 Safe Operating Procedures

This section must teach the practices required for safe operation of the combination vehicle on the highway under various road, weather, and traffic conditions. The training providers must teach driver-trainees the Federal rules governing the proper use of seat belt assemblies (§ 392.16).

Unit BA1.2.1 Visual Search

This unit must teach driver-trainees to visually search the road for potential hazards and critical objects, including instruction on recognizing distracted pedestrians or distracted drivers.

Unit BA1.2.2 Communication

This unit must instruct driver-trainees on how to communicate their intentions to other road users. Driver-trainees must be instructed in techniques for different types of communication on the road, including proper use of headlights, turn signals, four-way flashers, and horns. This unit must cover instruction in proper utilization of eye contact techniques with other drivers, bicyclists, and pedestrians.

Unit BA1.2.3 Distracted Driving

This unit must instruct driver-trainees in FMCSRs related to distracted driving and other key driver distraction driving issues, including improper cell phone use, texting, and use of in-cab technology (*e.g.,* §§ 392.80 and 392.82). This instruction will include training in the following aspects: visual attention (keeping eyes on the road); manual control (keeping hands on the wheel); and cognitive awareness (keeping mind on the task and safe operation of the CMV).

Unit BA1.2.4 Speed Management

This unit must teach driver-trainees how to manage speed effectively in response to various road, weather, and traffic conditions. The instruction must include methods for calibrating safe following distances taking into account CMV braking distances under an array of conditions including traffic, weather, and CMV weight and length.

Unit BA1.2.5 Space Management

This unit must teach driver-trainees about the importance of managing the space surrounding the vehicle under various traffic and road conditions.

Unit BA1.2.6 Night Operation

This unit must instruct driver-trainees in the factors affecting the safe operation of CMVs at night and in darkness. Additionally, driver-trainees must be instructed in changes in vision, communications, speed space management, and proper use of lights, as needed, to deal with the special problems night driving presents.

Unit BA1.2.7 Extreme Driving Conditions

This unit must teach driver-trainees about the specific problems presented by extreme driving conditions. The training provider will emphasize the factors affecting the operation of CMVs in cold, hot, and inclement weather and on steep grades and sharp curves. The training provider must teach proper tire chaining procedures.

Section BA1.3 Advanced Operating Practices

This section must introduce higher-level skills that can be acquired only after the more fundamental skills and knowledge taught in the prior two sections have been mastered. The training providers must teach driver-trainees about the advanced skills necessary to recognize potential hazards and must teach the driver-trainees the procedures needed to handle a CMV when faced with a hazard.

Unit BA1.3.1 Hazard Perception

The unit must teach driver-trainees to recognize potential hazards in the driving environment in order to reduce the severity of the hazard and neutralize possible emergency situations. The training providers must teach driver-trainees to identify road conditions and other road users that are a potential threat to the safety of the combination vehicle and suggest appropriate adjustments. The instruction must emphasize hazard recognition, visual search, adequate surveillance, and response to possible emergency-producing situations encountered by CMV drivers in various traffic situations. The training providers must teach driver-trainees to recognize potential dangers and the safety procedures that must be utilized while driving in construction/work zones.

Unit BA1.3.2 Skid Control/Recovery, Jackknifing, and Other Emergencies

This unit must teach the causes of skidding and jackknifing and techniques for avoiding and recovering from them. The training providers must teach the importance of maintaining directional control and bringing the CMV to a stop in the shortest possible distance while operating over a slippery surface. This unit must provide instruction in appropriate responses when faced with CMV emergencies. This instruction must include evasive steering, emergency braking, and off-road recovery, as well as the proper response to brake failures, tire blowouts, hydroplaning, and rollovers. The instruction must include a review of unsafe acts and the role the acts play in producing or worsening hazardous situations.

Unit BA1.3.3 Railroad-Highway Grade Crossings

This unit must teach driver-trainees to recognize potential dangers and the appropriate safety procedures to utilize at railroad (RR)-highway grade crossings. This instruction must include an overview of various Federal/State RR grade crossing regulations, RR grade crossing environments, obstructed view conditions, clearance around the tracks, and rail signs and signals. The training providers must instruct driver-trainees that railroads have personnel available (''Emergency Notification Systems'') to receive notification of any information relating to an unsafe condition at the RR-highway grade crossing or a disabled vehicle or other obstruction blocking a railroad track at the RR-highway grade crossing.

Section BA1.4 Vehicle Systems and Reporting Malfunctions

This section must provide entry-level driver-trainees with sufficient knowledge of the combination vehicle and its systems and subsystems to ensure that they understand and respect their role in vehicle inspection, operation, and maintenance and the impact of those factors upon highway safety and operational efficiency.

Unit BA1.4.1 Identification and Diagnosis of Malfunctions

This unit must teach driver-trainees to identify major combination vehicle systems. The goal is to explain their function and how to check all key vehicle systems, (*e.g.,* engine, engine exhaust auxiliary systems, brakes, drive train, coupling systems, and suspension) to ensure their safe operation. Driver-trainees must be provided with a detailed description of each system, its importance to safe and efficient operation, and what is needed to keep the system in good operating condition.

Unit BA1.4.2 Roadside Inspections

This unit must instruct driver-trainees on what to expect during a standard roadside inspection conducted by authorized personnel. The training providers must teach driver-trainees on what vehicle and driver violations are classified as out-of-service (OOS), including the ramifications and penalties for operating a CMV when subject to an OOS order as defined in section 390.5.

Unit BA1.4.3 Maintenance

This unit must introduce driver-trainees to the basic servicing and checking procedures for various engine and vehicle components and to help develop their ability to perform preventive maintenance and simple emergency repairs.

Section BA1.5 Non-Driving Activities

This section must teach driver-trainees the activities that do not involve actually operating the CMV.

Unit BA1.5.1 Hours of Service Requirements

This unit must teach driver-trainees to understand that there are different hours-of-service (HOS) requirements applicable to different industries. The training providers must teach driver-trainees all applicable HOS regulatory requirements. The training providers must teach driver-trainees to complete a Driver's Daily Log (electronic and paper), timesheet, and logbook recap, as appropriate. The training providers must teach driver-trainees the consequences (safety, legal, and personal) of violating the HOS regulations, including the fines and penalties imposed for these types of violations.

Unit BA1.5.2 Fatigue and Wellness Awareness

This unit must teach driver-trainees about the issues and consequences of chronic and acute driver fatigue and the importance of staying alert. The training providers must teach driver-trainees wellness and basic health maintenance information that affect a driver's ability to safely operate a CMV.

Issued under authority delegated in 49 CFR 1.87 on February 14, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–04044 Filed 3–5–19; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 84, No. 44
Wednesday, March 6, 2019

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN78

Prevailing Rate Systems; North American Industry Classification System Based Federal Wage System Wage Surveys

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to update the 2012 North American Industry Classification System (NAICS) codes currently used in Federal Wage System (FWS) wage survey industry regulations with the 2017 NAICS revisions published by the Office of Management and Budget (OMB).

DATES: We must receive comments on or before April 5, 2019.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2838, or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On September 23, 2013, OPM issued a final rule (78 FR 58153) to update the 2007 NAICS codes used in FWS wage survey industry regulations with the 2012 NAICS revisions published by OMB. OPM's current regulations use 2012 NAICS codes. OMB has now published the NAICS revisions for 2017, which result in certain changes in industry coverage for FWS wage surveys.

The following sections of title 5, Code of Federal Regulations, list the industries included in the FWS wage surveys by 2012 NAICS codes:

Section 532.213—Industries included in regular appropriated fund wage surveys.

Section 532.221—Industries included in regular nonappropriated fund surveys.

Section 532.267—Special wage schedules for aircraft, electronic, and optical instrument overhaul and repair positions in Puerto Rico.

Section 532.285—Special wage schedules for supervisors of negotiated rate Bureau of Reclamation employees.

Section 532.313—Private sector industries.

OPM has reviewed these regulations in light of OMB's NAICS revisions for 2017 and is proposing the following changes:

• Delete NAICS codes 4521 (Department stores) and 45299 (All other general merchandise stores) from the list of required NAICS codes in 5 CFR 532.221 and add NAICS codes 4522 (Department stores) and 4523 (General merchandise stores, including warehouse clubs and supercenters);

• Delete NAICS codes 5171 (Wired telecommunications carriers) and 5172 (Wireless telecommunications carriers (except satellite)) from the list of required NAICS codes in the Artillery and combat vehicle specialized industry and in the Communications specialized industry in 5 CFR 532.313 and add NAICS codes 5173 (Wired and wireless telecommunications carriers);

• Delete NAICS codes 541712 (Research and development in the physical, engineering, and life sciences (except biotechnology)—nanotechnology research and experimental development laboratories) from the list of required NAICS codes in the Aircraft specialized industry and in the Guided missiles specialized industry in 5 CFR 532.313 and add NAICS codes 541713 (Research and development in nanotechnology) and 541715 (Research and development in the physical, engineering, and life sciences (except nanotechnology and biotechnology));

• Revise the title of NAICS code 334613 (Magnetic and optical recording media manufacturing) to read ''Blank magnetic and optical recording media manufacturing'' in the list of required NAICS codes in the Electronics specialized industry, Guided missiles specialized industry, and Sighting and fire control equipment specialized industry in 5 CFR 532.313; and

• Revise the title of NAICS code 4921 (Couriers) to read ''Couriers and express delivery services'' in the list of required NAICS codes in the Aircraft specialized industry in 5 CFR 532.313.

None of the other sections are affected by 2017 changes in NAICS codes. OPM is also proposing to replace the year ''2012'' with ''2017'' in the table titles of all applicable sections.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we adopt these changes.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any 1 year. This rule has been designated as a ''significant regulatory action,'' under Executive Order 12866, but it is not ''economically significant'' as measured by the $100 million threshold.

Reducing Regulation and Controlling Regulatory Costs

This rule is not an Executive Order 13771 regulatory action because this rule is related to agency organization, management, or personnel.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on

a substantial number of small entities because they will affect only Federal agencies and employees.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

§ 532.213 [Amended]

■ 2. In § 532.213, amend the table in paragraph (a) by removing ''2012'' from the column headings and adding in its place ''2017.''

■ 3. In § 532.221, amend the table in paragraph (a) by revising the column headings, removing the entries for NAICS codes ''4521'' and ''45299'' and adding in numerical order entries for NAICS codes ''4522'' and ''4523''.

The revisions and additions to read as follows:

§ 532.221 Industries included in regular nonappropriated fund surveys.

(a) * * *

2017 NAICS codes	2017 NAICS industry titles
*	* * * *
4522	Department stores
4523	All other general merchandise stores
*	* * * *

* * * * *

§ 532.267 [Amended]

■ 4. In § 532.267, amend the table in paragraph (c)(1) by removing ''2012'' from the column headings and adding in its place ''2017.''

§ 532.285 [Amended]

■ 5. In § 532.285, amend the table in paragraph (c)(1) by removing ''2012'' from the column headings and adding in its place ''2017.''

■ 6. In § 532.313, amend the table in paragraph (a) by:

■ a. Revising the column headings;

■ b. Under the heading Aircraft Specialized Industry:

■ i. Revise the entry for NAICS Code 4921;

■ ii. Remove the entry for NAICS Code 541712; and

■ iii. Add entries for NAICS Codes 541713 and 541715;

■ c. Under the heading Artillery and Combat Vehicles Specialized Industry:

■ i. Remove the entries for NAICS Codes 5171 and 5172; and

■ ii. Add an entry for NAICS Code 5173;

■ d. Under the heading Communications Specialized Industry:

■ i. Remove the entries for NAICS Codes 5171 and 5172; and

■ ii. Add an entry for NAICS Code 5173;

■ e. Under the heading Electronic Specialized Industry:

■ i. Revise the entry for NAICS Code 334613;

■ f. Under the heading Guided Missiles Specialized Industry:

■ i. Revise the entry for NAICS Code 334613;

■ ii. Remove the entry for NAICS Code 541712; and

■ iii. Add entries for NAICS Codes 541713 and 541715;

■ g. Under the heading Sighting and Fire Control Equipment Specialized Industry:

■ i. Revise the entry for NAICS Code 334613.

The revisions and additions to read as follows:

§ 532.313 Private sector industries.

(a) * * *

2017 NAICS codes	2017 NAICS industry titles
Aircraft Specialized Industry	
*	* * * * * *
4921	Couriers and express delivery services.

2017 NAICS codes	2017 NAICS industry titles
541713	Research and development in nanotechnology.
541715	Research and development in the physical, engineering, and life sciences (except nanotechnology and biotechnology.
* * * * * * *	
Artillery and Combat Vehicles Specialized Industry	
* * * * * * *	
5173	Wired and wireless telecommunications carriers.
* * * * * * **	
Communications Specialized Industry	
* * * * * * *	
5173	Wired and wireless telecommunications carriers.
* * * * * * *	
Electronic Specialized Industry	
* * * * * * *	
334613	Blank magnetic and optical recording media manufacturing.
* * * * * * *	
Guided Missiles Specialized Industry	
* * * * * * *	
334613	Blank magnetic and optical recording media manufacturing.
* * * * * * *	
541713	Research and development in nonotechnology.
541715	Research and development in the physical, engineering, and life sciences (except nonotechnology and biotechnology).
* * * * * * *	
Sighting and Fire Control Equipment Specialized Industry	
* * * * * * *	
334613	Blank magnetic and optical recording media manufacturing.
* * * * * * *	

* * * * *

[FR Doc. 2019–00798 Filed 3–5–19; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL TRADE COMMISSION

16 CFR Part 24

Guides for Select Leather and Imitation Leather Products

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests public comments on its Guides for Select Leather and Imitation Leather Products (''Leather Guides'' or ''Guides''). The Commission is soliciting the comments as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Comments must be received by April 22, 2019.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Leather Guides Review, P188014'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions of that website. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 610, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: James R. Golder (214–979–9376), *jgolder@ftc.gov,* Attorney, Southwest Region, Federal Trade Commission, 1999 Bryan Street, Suite 2150, Dallas, Texas 75201.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's Leather Guides address misrepresentations about the composition and characteristics of specific leather and imitation leather products.[1] The Guides apply to the manufacture, sale, distribution, marketing, or advertising of all kinds of leather or simulated leather purses, luggage, wallets, footwear, and other similar products. Importantly, the Leather Guides state that disclosure of non-leather content should be made for material that has the appearance of leather but is not leather.

The Commission adopted the Leather Guides in 1996, as part of its periodic review of its rules and guides.[2] On May 23, 2007, the Commission published a **Federal Register** notice seeking public comment on the Guides.[3] On June 18, 2008, the Commission published its conclusion that there was a continuing need for the Guides, and it approved retention of the Guides in their current form.[4]

II. Regulatory Review Program

The Commission periodically reviews all Commission rules and guides. These reviews seek information about the costs and benefits of the Commission's rules and guides and their economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comment on, among other things, the economic impact of and the continuing need for its Leather Guides; possible conflict between the Guides and state, local, federal, or international laws; and the effect of any technological, economic, environmental, or other industry changes on the Guides.

III. Request for Comment

The Commission is particularly interested in comments and supporting data on the following questions. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted. In their replies to each of these questions, commenters should provide any available evidence and data, such as empirical data, consumer perception studies, or consumer complaints, that support the commenter's asserted position.

(1) Is there a continuing need for the Leather Guides as currently promulgated?

(2) Are any specific provisions of the Leather Guides no longer necessary?

(3) Are the deceptive or unfair practices addressed by the Leather Guides prevalent in the marketplace? Are the Guides effective in addressing those practices?

(4) Are there deceptive or unfair practices in the selling of leather or imitation leather products in other industries that are not covered by the Leather Guides, such as automotive and furniture upholstery products? If so, what is the extent of misrepresentations in those industries? How do consumers interpret or perceive the appearance of leather or simulated leather in those industries? Should the Commission expand the Guides to cover these or other products? What compliance costs would be imposed on these industries if the Commission were to expand the Guides? Are there any special considerations for those industries? Are there alternatives, such as individual enforcement actions under the FTC Act, that would be more effective or equally effective in addressing those practices?

(5) Have covered businesses adopted the Leather Guides as part of their routine business practice? Have uncovered businesses adopted the Leather Guides as part of their routine business practice? What is the degree of compliance with the Guides? How, and what effect, if any, does this have on the continuing need for the Guides? Do covered or uncovered businesses self-regulate or have voluntary standards or guidance, such as through trade associations, which overlap with the Guides?

(6) What benefits, if any, have the Leather Guides provided to consumers of the products affected by the Guides? Do the Guides impose any significant costs on consumers?

(7) What impact, if any, have the Leather Guides had on the flow of truthful or deceptive information to consumers?

(8) What changes, if any, should be made to the Leather Guides to increase their benefits to consumers? How would these changes affect consumer benefits or business costs?

(9) What burdens or costs, including costs of compliance, have the Leather Guides imposed on covered businesses? What burdens or costs have the Guides imposed on small businesses in particular? Have the Guides provided benefits to businesses? If so, what benefits?

(10) What changes, if any, should be made to the Leather Guides to reduce the burdens or costs imposed on businesses? How would these changes affect consumer benefits or business costs?

(11) Do the Leather Guides overlap or conflict with federal, state, or local laws or regulations? Do the Guides overlap or conflict with any international laws or regulations?

(12) Have consumer perceptions changed since the Leather Guides were issued and, if so, do these changes warrant revising the Guides?

(13) Since the Leather Guides were issued, what effects, if any, have changes in relevant technological, economic, or environmental conditions had on the need for or usefulness of the Guides?

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 22, 2019. Write ''Leather Guides Review, P188014'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding at *https://wwwregulations.gov.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To ensure the Commission considers your online comment, you must file it at *http://www.regulations.gov* by following the instructions of that website.

If you file your comment on paper, write ''Leather Guides Review, P188014'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on a publicly accessible website at *https://www.regulations.gov,* you are

[1] The Leather Guides ''are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry.'' 16 CFR 1.5. Conduct inconsistent with the Guides may result in corrective action by the Commission under Section 5 of the FTC Act (15 U.S.C. 45).

[2] 61 FR 51577 (October 3, 1996). When adopted, the Leather Guides consolidated portions of the Guides for the Luggage and Related Products Industry, the Guides for Shoe Content Labeling and Advertising, and the Guides for the Ladies' Handbag Industry. The Leather Guides also included provisions previously contained in the Commission's Trade Regulation Rule Concerning Misbranding and Deception as to Leather Content of Waist Belts. *See* 72 FR 28907 (May 23, 2007).

[3] 72 FR 28906 (May 23, 2007).

[4] 73 FR 34630 (June 18, 2008).

solely responsible for making sure that your comment does not include any sensitive personal information, such as your or anyone's Social Security number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for ensuring your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential''—as provided in Section (f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the *www.regulations.gov* website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 22, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

April Tabor,

Acting Secretary.

[FR Doc. 2019–03970 Filed 3–5–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. FDA–2018–N–4394]

Medical Devices; Exemption From Premarket Notification: Class II Devices; Flow Cytometer Instruments; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing its intention to exempt certain flow cytometer instruments from premarket notification requirements, subject to conditions and limitations. The Agency has determined based on established factors that these devices, which are currently regulated by FDA under product code OYE, no longer require premarket notification to provide reasonable assurance of safety and effectiveness. All other class II devices classified under FDA's automated differential cell counter regulation would continue to be subject to premarket notification requirements. FDA is publishing this proposed order to obtain comments regarding this proposed exemption, in accordance with the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Submit either electronic or written comments on the notice by May 6, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before May 6, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of May 6, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–4394 for ''Medical Devices; Exemptions from Premarket Notification: Class II Devices; Flow Cytometer Instruments; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS

CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ryan Lubert, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4545, Silver Spring, MD 20993, 240–402–6357, email: *Ryan.Lubert@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and the implementing regulations, 21 CFR part 807 subpart E, require persons who intend to market a new device to submit and obtain clearance of a premarket notification (510(k)) containing information that allows FDA to determine whether the new device is ''substantially equivalent'' within the meaning of section 513(i) of the FD&C (21 U.S.C. 360c(i)) to a legally marketed device that does not require premarket approval.

The 21st Century Cures Act (Pub. L. 114–255) (Cures Act) was signed into law on December 13, 2016. Section 3054 of the Cures Act amended section 510(m) of the FD&C Act. As amended, section 510(m)(2) of the FD&C Act provides that, 1 calendar day after the date of publication of the final list under paragraph (1)(B), FDA may exempt a class II device from the requirement to submit a report under section 510(k) of the FD&C Act upon its own initiative or a petition of an interested person, if FDA determines that a report under section 510(k) is not necessary to assure the safety and effectiveness of the device. To do so, FDA must publish in the **Federal Register** notice of its intent to exempt the device, or the petition, and provide a 60-calendar day period for public comment. Within 120 days after the issuance of this notice, FDA must publish an order in the **Federal Register** that sets forth its final determination regarding the exemption of the device that was the subject of the notice.

II. Factors FDA May Consider for Exemption

There are a number of factors FDA may consider to determine whether a report under section 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the January 21, 1998, **Federal Register** notice (63 FR 3142) and subsequently in the guidance the Agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff'' (Class II 510(k) Exemption Guidance) (Ref. 1). As discussed in these documents, FDA generally considers the following factors to determine whether a report under section 510(k) is necessary for class II devices: (1) The device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device; (2) characteristics of the device necessary for its safe and effective performance are well established; (3) changes in the device that could affect safety and effectiveness will either (a) be readily detectable by users by visual examination or other means such as routine testing, before causing harm or (b) not materially increase the risk of injury, incorrect diagnosis, or ineffective treatment; and (4) any changes to the device would not be likely to result in a change in the device's classification. FDA may also consider that, even when exempting devices, these devices would still be subject to the general limitations on exemptions.

III. Proposed Class II Device Exemption

FDA, on its own initiative, is proposing to exempt flow cytometer instruments from 510(k) review, subject to the conditions and limitations described in this section. These devices are currently class II devices under § 864.5220 (21 CFR 864.5220) *Automated differential cell counter* and assigned the product code OYE. A flow cytometer instrument is used to count or characterize human cells in suspension by flowing single cells through one or more lasers and collecting signals using one or more fluorescence or light-scatter detection channels and are intended for use with FDA cleared or FDA approved in vitro diagnostic (IVD) reagents that employ fluorescent antibodies or ligands that are indicated for use with the instrument.

We are now announcing our intent to exempt a subset of flow cytometer instruments currently regulated under product code OYE from 510(k) review. FDA has assessed the need for 510(k) review against the criteria laid out in the Class II 510(k) Exemption Guidance and determined that these devices no longer require a report under section 510(k) to provide reasonable assurance of safety and effectiveness. This determination is based, in part, on the Agency's knowledge of the device, including experience reviewing these devices over the past 34 years, the ability to review the relevant functionality of these devices when they are used clinically with an IVD reagent that is subject to review, and relevant reports or studies on device performance and the Agency's ability to limit an exemption. In addition, FDA believes that, for these devices, the identified risks in the FDA document entitled ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells'' can be mitigated using an alternative approach that provides equivalent assurance of safety and effectiveness in which a manufacturer's design verification and validation includes documenting the appropriate performance of each of the performance aspect mitigations identified in that document in sections 7 through 15 to address the risks of the device and documenting such performance in the design history file rather than providing that information in a report under section 510(k). This exemption is limited in scope and FDA's determination for the proposed exemption only applies to those flow cytometer instruments under the conditions listed below.

IV. Proposed Conditions and Limitations of Exemption

FDA's proposal to grant an exemption from the 510(k) requirements for certain flow cytometer instruments applies under the following conditions: (1) The instrument must not include an indication for sorting and collecting

cells for IVD use or other clinical purposes; (2) the instrument must not be or include an automated hematology analyzer or include an indication for performing an automated differential cell count; (3) design verification and validation for the instrument must include documenting the appropriate performance of each of the performance aspect mitigations identified in sections 7 through 15 of the FDA document entitled ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells''; and (4) design verification and validation for the instrument must include documentation of analysis and non-clinical testing that appropriately demonstrates: (i) The linearity of all fluorescent detectors covers at least four orders of magnitude with less than 10 percent deviation from expected values across the linear range. Performance must be demonstrated with either fluorescent beads that have been FDA-cleared, -approved, or exempted from the 510(k) requirements, or with fluorescent detection reagents that have been FDA-cleared, approved, or exempted from the 510(k) requirements, coupled with fresh, fixed, or stabilized cells, or some combination of such cells. Manufacturers may consult FDA-recognized consensus standards for information on how such study design and data analysis may be performed; and (ii) the total imprecision of the measured fluorescence intensity for each detection channel is less than 10 percent Coefficient of Variation across the linear range of the detectors. Performance must be demonstrated with either fluorescent beads that have been FDA-cleared, -approved, or exempted from the 510(k) requirements, or with fluorescent detection reagents that have been FDA-cleared, approved, or exempted from the 510(k) requirements, coupled with fresh, fixed, or stabilized cells, or some combination of such cells. Manufacturers may consult FDA-recognized consensus standards for information on how such study design and data analysis may be performed.

FDA believes that flow cytometer instruments must meet these conditions for the device to be exempt from 510(k) requirements. FDA may partially limit the exemption from 510(k) requirements to specific devices within a listed device type. As such, this proposed exemption would only apply to flow cytometer instruments eligible for classification by FDA under product code OYE. If finalized, this exemption would not affect any other subset of flow cytometers or automated differential cell counters classified under § 864.5220. In addition to being subject to the general limitations to the exemptions found in 21 CFR 864.9 and the conditions of exemption identified in this document, these devices will also remain subject to current good manufacturing practices and other general controls under the statute. An exemption from the requirements of 510(k) does not mean that the device type is exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation.

Upon issuance of a final order exempting flow cytometry instruments from the requirements of 510(k), firms will need to either comply with the conditions for exemption from 510(k) requirements or submit and receive 510(k) clearance prior to marketing a flow cytometer instrument. This exemption, if finalized, will decrease regulatory burdens on the medical device industry and will eliminate private costs and expenditures required to comply with Federal regulations. Specifically, regulated industry will no longer have to invest time and resources in complying with 510(k) requirements, including preparation of documents and data for submission to FDA, payment of user fees associated with 510(k) submissions, and responding to questions and requests for additional information from FDA during 510(k) review for devices in the proposed exempted device type, subject to the conditions and limitations of the exemption.

V. Paperwork Reduction Act of 1995

This proposed order refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, regarding premarket notification, have been approved under OMB control number 0910–0120 and the collections of information in 21 CFR part 820 (*Quality System Regulation*), regarding the design history file, have been approved under OMB control number 0910–0073.

VI. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA Guidance, ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff,'' February 19, 1998, available at *https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM080199.pdf.*
2. FDA Special Controls Guidance Document, ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells—Final Guidance for Industry and FDA'' December 4, 2001, available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm092780.htm.*

List of Subjects in 21 CFR Part 864

Blood, Medical Devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.,* as amended) and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is proposed to be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 1. The authority citation for part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. In § 864.5220, revise paragraph (b) to read as follows:

§ 864.5220 Automated differential cell counter.

* * * * *

(b) *Classification.* Class II (Special Controls). The special control for this device is the Food and Drug Administration (FDA) document entitled ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells; Final Guidance for Industry and FDA.'' A flow cytometer instrument that is used to count or characterize human cells in suspension by flowing single cells through one or more lasers and collecting signals using one or more fluorescence or light-scatter detection channels and intended for use with FDA-cleared or FDA-approved IVD reagents that employ fluorescent antibodies or ligands that are indicated for use with the instrument is exempt from the premarket notification procedures in subpart E of part 807 of

this chapter subject to § 864.9, and the following conditions for exemption:

(i) The instrument must not include an indication for sorting and collecting cells for IVD use or other clinical purposes;

(ii) The instrument must not be or include an automated hematology analyzer or include an indication for performing an automated differential cell count;

(iii) Design verification and validation for the instrument must include documenting the appropriate performance of each of the performance aspect mitigations identified in sections 7 through 15 of the FDA document entitled ''Class II Special Controls Guidance Document: Premarket Notifications for Automated Differential Cell Counters for Immature or Abnormal Blood Cells,'' and

(iv) Design verification and validation must include documentation of analysis and non-clinical testing demonstrating performance with either fluorescent beads that have been FDA-cleared, approved, or exempted from the premarket notification requirement, or with fluorescent detection reagents that have been FDA-cleared, approved, or exempted from the premarket notification requirement, coupled with fresh, fixed, or stabilized cells, or some combination of such cells. Documentation shall appropriately demonstrate:

(A) The linearity of all fluorescent detectors covers at least four orders of magnitude with less than 10 percent deviation from expected values across the linear range; and

(B) The total imprecision of the measured fluorescence intensity for each detection channel is less than 10 percent Coefficient of Variation across the linear range of the detectors.

Dated: February 28, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–03967 Filed 3–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105600–18]

RIN 1545–BO62

Guidance Related to the Foreign Tax Credit, Including Guidance Implementing Changes Made by the Tax Cuts and Job Act; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking that was published in the **Federal Register** on Friday, December 7, 2018. The proposed regulations relate to the determination of the foreign tax credit under the Internal Revenue Code.

DATES: Written or electronic comments and requests for a public hearing were due by February 5, 2019.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–105600–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–105600–18), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under §§ 1.861–8 through 1.861–13, 1.861–17, and 1.904(b)–3, Jeffrey P. Cowan, (202) 317–4924; concerning the proposed regulations under §§ 1.901(j)–1, 1.904–1 through 1.904–6, 1.904(f)–12, and 1.954–1, Jeffrey L. Parry, (202) 317–4916, and Larry R. Pounders, (202) 317–5465; concerning §§ 1.78–1 and 1.960–1 through 1.960–7, Suzanne M. Walsh, (202) 317–4908; concerning §§ 1.965–5 and 1.965–7, Karen J. Cate, (202) 317–4667.

SUPPLEMENTARY INFORMATION:

Background

This correction to the notice of proposed rulemaking (REG–105600–18) addresses provisions issued under sections 861, 904, and 965 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–105600–18) contains errors that may prove to be misleading and are in need of clarification.

Correction to Publication

Accordingly, the notice of proposed rulemaking (REG–105600–18), that was the subject of FR Doc. 2018–26322, published December 7, 2018 at 83 FR 63200, is corrected as follows:

§ 1.861–9 [Corrected]

1. On page 63230, second column, the sixth line of amendatory instruction 6, the language ''percent foreign owned corporations'' is corrected to read ''percent owned foreign corporations''.

§ 1.904–5 [Corrected]

2. On page 63251, second column, paragraph (i)(2), the sixth line, the language ''together with other any person that'' is corrected to read ''together with any other person that''.

§ 1.904(f)–12 [Corrected]

3. On page 63254, second column, paragraph (j)(1)(ii), the sixth line, the language ''beginning after December 31, 2018.'' is corrected to read ''beginning after December 31, 2017.''.

§ 1.965–7 [Corrected]

4. On page 63266, second column, paragraph (e)(1)(iv)(B)(*1*), the eighteenth line, the language ''If the amount of the net operating loss carryover or carryback to the taxable year is reduced by reason of the section 965(n) election to an amount less than the U.S. source loss component of the net operating loss, the potential carryovers (or carrybacks) of the separate limitation losses that are part of the net operating loss are proportionately reduced as provided in § 1.904(g)–3(b)(3)(ii).'' is corrected to read ''Therefore, if the amount of the net operating loss carryover or carryback to the taxable year (as reduced by reason of the section 965(n) election) exceeds the U.S. source loss component of the net operating loss that is carried over under § 1.904(g)–3(b)(3)(i), but such excess is less than the potential carryovers (or carrybacks) of the separate limitation losses that are part of the net operating loss, the potential carryovers (or carrybacks) are proportionately reduced as provided in § 1.904(g)–3(b)(3)(ii) or (iii), as applicable.''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2019–03942 Filed 3–5–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104259–18]

RIN 1545–BO56

Base Erosion and Anti-Abuse Tax; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; notice of hearing.

SUMMARY: This document provides a notice of public hearing on proposed regulations to provide guidance regarding the tax on base erosion payments of taxpayers with substantial gross receipts and reporting requirements thereunder.

DATES: The public hearing is being held on Monday, March 25, 2019, at 1:00 p.m. The IRS must receive speakers' outlines of the topics to be discussed at the public hearing by Friday, March 15, 2019.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW, Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present a valid photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–104259–18), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–104390–18), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–104259–18).

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.59A–1 through 1.59A–10 of the proposed regulations, Sheila Ramaswamy or Karen Walny at (202) 317–6938; concerning the services cost method exception, L. Ulysses Chatman at (202) 317–6939; concerning §§ 1.383–1, 1.1502–2, 1.1502–4, 1.1502–43, 1.1502–47, 1.1502–59A, 1.1502–100, and 1.6655–5 of the proposed regulations, Julie Wang at (202) 317–6975 or John P. Stemwedel at (202) 317–5024; concerning §§ 1.6038A–1, 1.6038A–2, and 1.6038A–4 of the proposed regulations, Brad McCormack or Anand Desai at (202) 317–6939. Concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers), or email her at *fdms.database@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–104259–18) that was published in the **Federal Register** on Friday, December 31, 2018 (83 FR 65956).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by February 19, 2019, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Friday, March 15, 2019.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317–6901(not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2019–04043 Filed 3–5–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0970]

RIN 1625–AA11

Regulated Navigation Area; Thea Foss and Wheeler-Osgood Waterways EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal of two previous notices of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the Thea Foss and Wheeler-Osgood Regulated Navigation Area (RNA) for Commencement Bay to include portions of the Middle Waterway in Tacoma, Washington. This proposed amendment would protect sediment cap areas in the U.S. Environmental Protection Agency's Commencement Bay Nearshore-Tideflats Superfund Cleanup Site within the Middle Waterway Problem Area that are not geographically encompassed by the existing Thea Foss and Wheeler-Osgood RNA. The modified RNA would prohibit certain activities that could disrupt the integrity of the engineered sediment caps that have been placed within the Middle Waterway Problem Area. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 5, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0970 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Branch, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CB–NT Commencement Bay Nearshore-Tideflats
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
RNA Regulated navigation area
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Middle Waterway is part of the Commencement Bay Nearshore-Tideflats Environmental Protection Agency Superfund Cleanup Site, and is located between the Thea Foss Waterway and the St. Paul Waterway in Commencement Bay, Washington. The Coast Guard has engaged in preliminary discussions with the Middle Waterway Action Committee to establish a RNA for certain portions of the Middle

Waterway of Commencement Bay, Tacoma, WA, to protect five engineered sediment caps from activities that could disrupt the integrity of the caps within the CB–NT Superfund Cleanup Site. While the Thea Foss and Wheeler-Osgood Waterways EPA Superfund Cleanup Site, 33 CFR 165.1329, protects certain sites outside the Middle Waterway, sediment caps within the Middle Waterway are not currently protected.

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1. Coast Guard District Commanders are granted authority under 33 CFR 165.11 to regulate vessel traffic in areas with hazardous conditions.

This proposed rule is necessary to prevent disturbance of the sediment caps established in the Middle Waterway Problem Area of the Superfund Cleanup Site that are not geographically encompassed by the Thea Foss and Wheeler-Osgood Waterways RNA. Disruption of the integrity of the caps in this area may result in a hazardous condition and harm to the marine environment and the public. Therefore, this proposed RNA expansion is necessary to protect the integrity of the caps and will do so by prohibiting maritime activities that could disturb or damage them. Enforcement of this amended RNA would be managed by Coast Guard assets including Vessel Traffic Service Puget Sound through vessel Automated Identification System monitoring. The Captain of the Port Puget Sound might also be assisted by other state, local, or government agencies in the enforcement of this proposed rule.

In 2006 and 2015, the Coast Guard issued NPRMs related to this issue. As reflected in their identical titles, ''Regulated Navigation Area; Middle Waterway EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA,'' both were focused on the Middle Waterway site. No comments were submitted in response to either NPRM (71 FR 12654, March 13, 2006, and 80 FR 42440, July 17, 2015) nor did we publish any other documents in either of those rulemakings. We are withdrawing those NPRMs because we have decided to start with this new NPRM to address this issue by expanding the Thea Foss and Wheeler-Osgood Waterways EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA RNA, which was established in 2010, to encompass the Middle Waterway sediment caps.

III. Discussion of Proposed Rule

The Coast Guard proposes to amend an existing RNA, the Thea Foss and Wheeler-Osgood Waterways EPA Superfund Cleanup Site, 33 CFR 165.1329, to include the Middle Waterway. Within this designated area, vessels would be prohibited from conducting certain activities, including anchoring, trawling, spudding, or other activities that involve disturbing the integrity of the sediment caps. Activities that involve remediation efforts of the CB–NT Superfund Cleanup Site would not be prohibited. In addition, we propose to amend the title of the section to include the Middle Waterway. The amended portion of this RNA encompasses approximately 0.074 additional square miles of the waterway. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the small geographic area encompassed by the RNA, and the limited amount of commercial and recreational traffic passing through the area. Additionally, prohibited activities are not routine in the designated area.

B. Impact on Small Entities

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

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

In preparation for this rulemaking, we identified the area encompassed by the proposed rule overlaps with the usual and accustomed fishing grounds for the Puyallup and Muckleshoot tribes. We

informed both tribes of the proposed rulemaking, but only received a response from the Muckleshoot tribe. We conducted a meeting with the Muckleshoot tribe's Fish Commission on September 12, 2018. During this meeting, the Muckleshoot Fish Commission and the Coast Guard discussed potential impacts of the proposed rulemaking on the Muckleshoot tribe. Following the meeting, the Coast Guard concluded that this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, as it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves amending a regulated navigation area that would prohibit activities that could disturb the engineered sediment caps on the seabed. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

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

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

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.1329, revise the section heading, add paragraph (a)(4), and revise paragraphs (b)(1) and (2) to read as follows:

§ 165.1329 Regulated Navigation Area; Thea Foss, Middle Waterway, and Wheeler-Osgood Waterways EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA.

(a) * * *

(4) All waters of the Middle Waterway south of a line connecting a point of the shore at 47°15′51″ N, 122°25′53″ W; thence southwest to 47°15′48.6858″ N, 122°26′02.2374″ W; thence south to 47°15′46.7316″ N, 122°26′1.1214″ W [Datum: NAD 1983].

(b) * * * (1) All vessels and persons are prohibited from activities that would disturb the seabed, such as anchoring, dragging, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and others in the Thea Foss, Middle Waterway, and Wheeler-Osgood Waterways EPA superfund cleanup site. Vessels may otherwise transit or navigate within this area without reservation.

(2) The prohibition described in paragraph (b)(1) of this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the Thea Foss, Middle Waterway, or Wheeler-Osgood Waterways superfund sites, provided that the Captain of the Port, Puget Sound (COTP), is given advance notice of those activities by the EPA.

* * * * *

Dated: March 1, 2019.

David G. Throop,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2019–04070 Filed 3–5–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2019–OSERS–0001]

Proposed Priority and Requirements—Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Part B Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority and requirements.

SUMMARY: The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation. As such, the Department of Education (Department) proposes a priority and requirements under the Technical Assistance on State Data Collection program. The Department may use this priority and these requirements for competitions in fiscal year (FY) 2019 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements under Part B of the Individuals with Disabilities Education Act (IDEA). This Center would support States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for each child with a disability and would customize its TA to meet each State's specific needs.

DATES: We must receive your comments on or before May 20, 2019.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use *Regulations.gov*'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority and requirements, address them to Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 5172, Potomac Center Plaza, Washington, DC 20202–5108.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 5172, Potomac Center Plaza, Washington, DC 20202–5108. Telephone: (202) 245–7401. Email: *Richelle.Davis@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:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the notice of final priority and requirements, we urge you to identify clearly the specific section of the proposed priority or requirement that each comment addresses.

We are particularly interested in comments about whether the proposed priority or any of the proposed requirements would be challenging for new applicants to meet and, if so, how the proposed priority or requirements could be revised to address potential challenges.

Directed Question: For the proposed priority, the Department is also considering a specific requirement that would limit the reimbursement of indirect costs under this grant competition in order to maximize the funding available to provide TA to States to meet data collection and reporting requirements and improve data collection, coordination, quality, and use under Part B of IDEA.

We are considering this requirement based on 2 CFR 200.414(c)(1), which allows a Federal awarding agency to use an indirect cost rate different from the negotiated rate when required by Federal statute or regulation or when approved by a Federal awarding agency head or delegate based on documented justification when the Federal awarding agency implements, and makes publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates. Federal discretionary grantees have historically been reimbursed for indirect costs at the rate that the grantee has negotiated with its Federal cognizant agency, and we believe that use of the negotiated rate is appropriate for most grants in most circumstances. However, because funding for this program comes from funds reserved by the Department that would otherwise be allocated to States under Part B (which applies a restricted indirect cost rate to State grantees), we are considering limiting indirect costs to maximize the availability of funds for the primary purposes of this priority.

We analyzed historical grantee data for grants previously awarded under CFDA number 84.373 and found a wide range of indirect cost rate agreements in place. We are considering setting a reasonable cap in an amount, for example, between 25 percent to 40 percent for those administrative costs that are indirect costs for grantees, including subrecipients, or potentially implementing an approach to allow programs to seek and justify deviations from negotiated rates. The Secretary invites comments on the practical implications of this proposed indirect cost limitation for grantees and subrecipients, and specific comments on the maximum indirect cost rate, including what a reasonable cap would be and the rationale for the proposed amount, and thoughts on allowing programs to seek and justify deviations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from this proposed priority and these proposed requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing *Regulations.gov.* You may also inspect the comments in person in Room 5172, 550 12th Street SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve up to ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of section 616 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, Division H of the Consolidated Appropriations Act of 2018 gives the Secretary authority to use funds reserved under section 611(c) to ''carry out services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.'' Consolidated Appropriations Act, 2018; Div. H, Title III of Public Law 115–141; 132 Stat. 745 (2018).

To help ensure this program meets State needs, we invited the public to provide input on the Technical Assistance on State Data Collection program from April 24, 2018, through May 24, 2018, on the *ED.gov* OSERS Blog.[1] In response to this invitation, we received 63 relevant responses, all of which we considered in our development of this document. Sixty-two supported our continuing to fund TA centers; only one supported one of the other options we presented, specifically, to invite State educational agencies and State lead agencies to directly apply for funds reserved under section 611(c) to purchase TA to improve their capacity to meet their IDEA Part B and Part C data collection requirements. A few commenters noted some concerns regarding overlap between centers and a need for cross-State collaboration. We addressed these concerns in the proposed priority by: (1) Including a requirement for the center to offer cross-State collaboration TA opportunities; and (2) clarifying the scope of this center and the National IDEA Technical Assistance Center on Early Childhood Data Systems, CFDA number 84.373Z, the proposed priority for which is published elsewhere in this issue of the **Federal Register**.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1442, and the Department of Education Appropriations Act, 2018; Div. H, Title III of Public Law 115–141, Consolidated Appropriations Act, 2018; 132 Stat. 745 (2018).

Applicable Program Regulations: 34 CFR 300.702.

Proposed Priority

The Assistant Secretary proposes the following priority for this program. We may apply this proposed priority in any year in which this program is in effect.

National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

Background

The Department has reviewed the data collection and analysis capacity of States to ensure that IDEA data are being collected and accurately reported to the Department and the public. Specifically, the Office of Special Education Programs (OSEP) has reviewed and analyzed information from multiple sources, including Data Quality Reviews conducted by OSEP to evaluate the accuracy of section 618 data, written and oral communication with States through the data quality process, and State-initiated requests for TA. The Department's assessment is that States have varying needs for TA to improve their data collection capacity and their ability to ensure data are accurate and can be reported to the Department and the public. States also need TA to help them improve their capacity to analyze and use data so they can provide more accurate information about their efforts to improve implementation of IDEA and more accurately target future improvement activities in their State Systemic Improvement Plans (SSIPs) submitted as part of their State Performance Plans/Annual Performance Reports (SPPs/APRs).

To meet the array of complex challenges regarding the collection, reporting, analysis, and use of data by States, OSEP proposes a priority to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

This proposed priority aligns with two priorities from the Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096): Priority 2: Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Student Outcomes, and Providing Increased Value to Students and Taxpayers; and Priority 5: Meeting the Unique Needs of Children With Disabilities and/or Those With Unique Gifts and Talents.

Proposed Priority

The purpose of this proposed priority is to fund a cooperative agreement to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Data Center).

The Data Center will provide TA to help States better meet current and future IDEA Part B data collection and reporting requirements, improve data quality, and analyze and use section 616, section 618, and other IDEA data (*e.g.,* State Supplemental Survey-IDEA) to identify and address programmatic strengths and areas for improvement. This Data Center will focus on providing TA on collecting, reporting, analyzing, and using Part B data on children with disabilities ages 3 through 21 required under sections 616 and 618 of IDEA. However, the Data Center will not provide TA on Part B data required under section 616 of IDEA for those indicators solely associated with children with disabilities ages 3 through 5, such as Indicators B6 (Preschool Least Restrictive Environment), B7 (Preschool Outcomes), and B12 (Early Childhood Transition), and Part B data on children with disabilities ages 3 through 5 required under section 618 of IDEA for the Part B Child Count and Educational Environments data collection. TA on collecting, reporting, analyzing, and using Part B data required under sections 616 and 618 solely associated with children with disabilities ages 3

[1] See *https://sites.ed.gov/osers/2018/04/use-of-part-b-program-funds-for-technical-assistance-to-states-on-idea-data-collection/.*

through 5 would be provided by the National IDEA Technical Assistance Center on Early Childhood Data Systems, CFDA number 84.373Z.

The Data Center must be designed to achieve, at a minimum, the following expected outcomes:

(a) Improved State data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant State offices, including State educational agencies (SEAs), local educational agencies (LEAs), and schools to improve the quality of IDEA data required under sections 616 and 618 of IDEA;

(b) Increased capacity of States to submit accurate and timely data, to enhance current State validation procedures, and to prevent future errors in State-reported IDEA Part B data;

(c) Improved capacity of States to meet the data collection and reporting requirements under sections 616 and 618 of IDEA by addressing personnel training needs, developing effective tools (*e.g.,* training modules) and resources (*e.g.,* documentation of State data processes), and providing in-person and virtual opportunities for cross-State collaboration about data collection and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(d) Improved capacity of SEAs and LEAs to collect, analyze, and use both SEA and LEA IDEA data to identify programmatic strengths and areas for improvement, address root causes of poor performance towards outcomes, and evaluate progress towards outcomes;

(e) Improved IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools that can be used by States to lead to improvements in the validity and reliability of data required by IDEA and enable States to communicate accurate data to local consumers (*e.g.,* parents, school boards, the general public); and

(f) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B data.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

In addition to the programmatic requirements contained in the proposed priority, we propose that, to be considered for funding, applicants must meet the following requirements.

Proposed Requirements

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these proposed requirements in any year in which this program is in effect.

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and to increase their capacity to analyze and use section 616 and section 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of current educational issues and policy initiatives about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement; and

(iii) Describe how SEAs and LEAs are currently meeting IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based practices (EBPs).[2] To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs and LEAs to report and use data, specifically section 616 and section 618 data, as both a means of improving data quality and identifying strengths and areas for improvement; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and

[2] For purposes of these requirements, ''evidence-based practices'' (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and SEA and LEA analysis and use of sections 616 and 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement;

(ii) Its proposed approach to universal, general TA,[3] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[4] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,[5] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of SEA and LEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the SEA and LEA levels;

(C) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems related to the IDEA Part B data collection and reporting requirements that include professional development based on adult learning principles and coaching;

(D) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs and LEAs to meet Part B data collection and reporting requirements under sections 616 and 618 of the IDEA; and

(E) Its proposed plan for collaborating and coordinating with Department-funded TA investments and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this priority;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[6] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the APR and at the end of Year 2 for the review process; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits, and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

[3] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[4] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[5] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[6] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget at least 50 percent of the grant award for providing intensive, sustained TA.

Final Priority and Requirements

We will announce the final priority and requirements in a document in the **Federal Register**. We will determine the final priority and requirements after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities or requirements subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use this proposed priority and one or more of these requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to ''transfer rules'' that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priority and requirements would be utilized in connection with a discretionary grant program, Executive Order 13771 does not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of

Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed priority and requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We have also determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits of this proposed priority and these proposed requirements would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority and requirements would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority and requirements would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.373Y.]

Dated: March 1, 2019.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2019–04035 Filed 3–5–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2018–OSERS–0075]

Proposed Priority and Requirements—Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority and requirements.

SUMMARY: The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation. As such, the Department of Education (Department) proposes a funding priority and requirements under the Technical Assistance on State Data Collection program. The Department may use this priority for competitions in fiscal year (FY) 2019 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data

collection requirements under Parts C and B of the Individuals with Disabilities Education Act (IDEA). This Center would support States in collecting, reporting, and determining how to best analyze and use their data to establish and meet high expectations for each child with a disability and would customize its TA to meet each State's specific needs.

DATES: We must receive your comments on or before May 20, 2019.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to use *Regulations.gov*'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority and requirements, address them to Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5141, Potomac Center Plaza, Washington, DC 20202–5108.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW, Room 5141, Potomac Center Plaza, Washington, DC 20202–5108. Telephone: (202) 245–6028. Email: *Meredith.Miceli@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:

Invitation to Comment: We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the notice of final priority and requirements we urge you to clearly identify the specific topic that each comment addresses.

We are particularly interested in comments about whether the proposed priority or any of the proposed requirements would be challenging for new applicants to meet and, if so, how the proposed priority or requirements could be revised to address potential challenges.

Directed Question: For the proposed priority, the Department is also considering a specific requirement that would limit the reimbursement of indirect costs under this grant competition in order to maximize the funding available to provide TA to States to meet data collection and reporting requirements and improve data collection, coordination, quality, and use under Parts B and C of IDEA.

We are considering this requirement based on 2 CFR 200.414(c)(1), which allows a Federal awarding agency to use an indirect cost rate different from the negotiated rate when required by Federal statute or regulation or when approved by a Federal awarding agency head or delegate based on documented justification when the Federal awarding agency implements, and makes publicly available, the policies, procedures, and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates. Federal discretionary grantees have historically been reimbursed for indirect costs at the rate that the grantee has negotiated with its Federal cognizant agency, and we believe that use of the negotiated rate is appropriate for most grants in most circumstances. However, because funding for this program comes from funds reserved by the Department that would otherwise be allocated to States under Part B (which applies a restricted indirect cost rate to State grantees), we are considering limiting indirect costs to maximize the availability of funds for the primary purposes of this priority.

We analyzed historical grantee data for grants previously awarded under CFDA number 84.373 and found a wide range of indirect cost rate agreements in place. We are considering setting a reasonable cap in an amount, for example, between 25 percent to 40 percent for those administrative costs that are indirect costs for grantees, including subrecipients, or potentially implementing an approach to allow programs to seek and justify deviations from negotiated rates. The Secretary invites comments on the practical implications of this proposed indirect cost limitation for grantees and subrecipients, specific comments on the maximum indirect cost rate, including what a reasonable cap would be and the rationale for the proposed amount, and thoughts on allowing programs to seek and justify deviations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from this proposed priority and these proposed requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing *Regulations.gov.* You may also inspect the comments in person in Room 5141, 550 12th Street SW, Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary the authority to reserve up to ½ of 1 percent of the amounts appropriated under Part B for each fiscal year to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for the implementation of section 616 of IDEA are collected, analyzed, and

accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. Additionally, Division H of the Consolidated Appropriations Act of 2018 gives the Secretary the authority to use funds reserved under section 611(c) to ''carry out other services and activities to improve data collection, coordination, quality, and use under parts B and C of the IDEA.'' Consolidated Appropriations Act, 2018; Div. H, Title III of Public Law 115–141; 132 Stat. 745 (2018).

To help ensure this program meets State needs, we invited the public to provide input on the Technical Assistance on State Data Collection program from April 24, 2018, through May 24, 2018, on the *ED.gov* OSERS Blog.[1] In response to this invitation, we received 63 relevant responses, all of which we considered in our development of this document. Sixty-two supported our continuing to fund TA centers; only one supported one of the other options we presented, specifically, to invite State educational agencies and State lead agencies to directly apply for funds reserved under section 616(i) (Part B) to purchase TA to improve their capacity to meet their IDEA Part B and Part C data collection requirements. A few commenters noted some concerns regarding overlap between centers and a need for cross-State collaboration opportunities. We addressed these concerns in the proposed priority by: (1) Including a requirement for the center to offer cross-State collaboration TA opportunities; and (2) clarifying the scope of this center and the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, CFDA number 84.373Y, the proposed priority for which is published elsewhere in this issue of the **Federal Register**.

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), and 1442; and Department of Education Appropriations Act, 2018; Div. H, Title III of Pub. Law 115–141, Consolidated Appropriations Act, 2018; 132 Stat. 745 (2018).

Applicable Program Regulations: 34 CFR 300.702.

[1] See *https://sites.ed.gov/osers/2018/04/use-of-part-b-program-funds-for-technical-assistance-to-states-on-idea-data-collection/.*

Proposed Priority

The Assistant Secretary proposes the following priority for this program. We may apply this proposed priority in any year in which this program is in effect.

National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and use Accurate Early Childhood IDEA Data.

Background

The purpose of this proposed priority is to establish a TA center to provide TA to (1) improve States' capacity to collect, report, analyze, and use high-quality IDEA Part C early intervention data (including IDEA section 618 Part C data and section 616 Part C data) and IDEA Part B preschool special education data[2] (limited to particular Part B preschool data elements required under IDEA sections 616 and 618[3]); and (2) enhance, streamline, and integrate statewide, child-level early childhood data systems (including Part C and Part B preschool special education data systems) to address critical policy questions that will facilitate program improvement, and improve compliance accountability for, and outcomes or results for children served under, Part C early intervention and Part B preschool special education programs.

Through their State Systemic Improvement Plans (SSIPs), States identify data-related needs to improve outcomes of infants, toddlers, and young children with disabilities. In 2017, 78 percent of Part C State programs reported concerns or limitations with the quality or availability of the data used to report progress or results for the SSIP.[4] Additionally, States identified limits on data system capacity as a barrier to implementing (1) improvement plans, (2) activities to improve practices, and (3) evaluation plans. In the SSIPs submitted to OSEP in 2017, States reported a need for TA related to SSIP evaluation in the following areas: Data collection procedures, data analysis, local data use, State-identified measurable result (SIMR) data quality, and State data use.

In addition, States need to establish and implement effective early childhood data management and, where appropriate, data system integration policies and procedures to support program improvement, compliance accountability, and Federal and public reporting. Improved policies and procedures will allow States, where appropriate, to link or integrate child-level data in Part C data systems, Part B preschool special education data systems, other early learning program data systems, and statewide longitudinal data systems for school-aged children. Building robust early childhood integrated data systems (ECIDS) that include Part C early intervention data and Part B preschool special education data that can be used to respond to critical policy questions will facilitate program improvement and improve compliance accountability for Part C early intervention and Part B preschool special education programs. This level of integration will support States' efforts to implement data-driven decision-making for program improvement and compliance accountability and will help ensure that States report high-quality IDEA data to the Department and the public.

ECIDS could allow States to identify what works best to improve outcomes for young children in their State. For instance, ECIDS could allow States to determine which characteristics of services are related to better outcomes for children and families or the relationship between early childhood setting and early childhood outcomes. An ECIDS that includes data from across various early care and education programs could also provide data that would better inform efforts to improve child find activities in the State by identifying strong referral sources and those where more outreach may be needed. An ECIDS could also help States determine the other early care and education programs that young children with disabilities and their families are participating in, allowing States to maximize efficiency in the operation of the early intervention or early childhood special education program while maintaining or improving outcomes. For more information on the Department's vision of integrated early childhood data, see The Integration of Early Childhood Data: State Profiles and a Report from the U.S. Department of Health and Human

[2] Throughout this document, ''IDEA Part B preschool special education data'' refers to data required under section 616 of IDEA for those indicators solely associated with children with disabilities ages 3 through 5 (*e.g.,* Indicators B6, B7, and B12) as well as data on children with disabilities ages 3 through 5 required under section 618 of IDEA for the Part B Child Count and Educational Environments data collection.

[3] TA on the other Part B data required under sections 616 and 618 of IDEA would be provided through the proposed priority in the notice of proposed priority and requirements for the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data [CFDA number: 84.373Y].

[4] U.S. Department of Education. (2017). 2017 Part C FFY 2015 State Performance Plan/Annual Performance Report Indicator Analysis. Retrieved from *https://osep.grads360.org/services/PDCService.svc/GetPDCDocumentFile?fileId=28033.*

Services and the U.S. Department of Education (2016) available at *https://www2.ed.gov/rschstat/eval/early-childhood-data/integration-early-childhood-data.pdf.*

However, there are challenges in integrating data systems. These challenges include protecting the personally identifiable information and privacy interests of children with disabilities and their families under applicable Federal and State laws, determining the appropriate policy questions that need answering, and identifying resources for developing interoperable systems. These challenges would benefit from the technical assistance of experts. In addition, stakeholders, including parents of children with disabilities, need to be part of the discussion to determine the appropriate extent of integration.

This Center will provide TA to improve the capacity of States to meet both their identified needs and data collection requirements by (1) improving early childhood data management and data system integration policies and procedures; (2) enhancing Part C section 616 and 618 data and Part B preschool special education data (*e.g.,* preschool outcome indicators) collection processes to meet IDEA data reporting requirements; and (3) building and using robust ECIDS that include Part C early intervention data and Part B preschool special education data to respond to critical State-determined policy questions associated with program improvement and compliance accountability. This proposed priority is designed to promote innovation and efficiency by funding a data center that will enhance, streamline, and integrate statewide, child-level early childhood data systems.

TA on collecting, reporting, analyzing, and using the other Part B data required under sections 616 and 618 of IDEA would be provided by the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data competition, CFDA number 84.373Y, the proposed priority for which is published elsewhere in this issue of the **Federal Register**.

This proposed priority aligns with two priorities from the Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on March 2, 2018 (83 FR 9096): Priority 2: Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Student Outcomes, and Providing Increased Value to Students and Taxpayers; and Priority 5: Meeting the Unique Needs of Students and Children With Disabilities and/or Those With Unique Gifts and Talents.

Proposed Priority

The purpose of this proposed priority is to fund a cooperative agreement to establish and operate a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data (Center). The Center will focus on providing TA on collecting, reporting, analyzing, and using Part C data required under sections 616 and 618 of IDEA, Part B data required under section 616 of IDEA for those indicators solely associated with children with disabilities ages 3 through 5 (*e.g.,* Indicators B6, B7, and B12), and Part B data on children with disabilities ages 3 through 5 required under section 618 of IDEA for the Part B Child Count and Educational Environments data collection. The Center will provide TA to (1) improve States' capacity to collect, report, analyze, and use high-quality IDEA Part C data (including IDEA section 618 Part C data and IDEA section 616 Part C data) and IDEA Part B preschool special education data; and (2) enhance, streamline, and integrate statewide, child-level early childhood data systems (including Part C and Part B preschool special education data systems) to address critical policy questions that will facilitate program improvement, improve compliance accountability, and improve outcomes or results for children served under Part C and Part B preschool special education programs. These Part C early intervention and Part B preschool special education data systems must allow the States to: (1) Effectively and efficiently respond to all IDEA-related data submission requirements (*e.g.,* Part C section 616 and 618 data and Part B preschool special education data); (2) respond to critical policy questions that will facilitate program improvement and compliance accountability; and (3) comply with applicable privacy requirements, including the confidentiality requirements under Parts B and C of IDEA, the Privacy Rule under the Health Insurance Portability and Accountability Act (HIPAA) (45 CFR part 160 and subparts A and E of part 164), and the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g) and its regulations at 34 CFR part 99.

The Center must be designed to achieve, at a minimum, the following outcomes:

(a) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data);

(b) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B preschool special education data;

(c) Increased number of States that use their Part C early intervention and Part B preschool special education data system to answer critical State-determined policy questions to drive program improvement, improve results for children with disabilities, and compliance accountability;

(d) Increased number of States with integrated or linked Part C early intervention and Part B preschool special education data;

(e) Increased number of States that use linked or integrated early childhood data to improve program compliance and accountability;

(f) Increased number of States with data system integration plans that allow for the linking of Part C and Part B preschool special education data as well as linking to other statewide longitudinal and early learning data systems and that comply with all applicable privacy laws;

(g) Increased capacity of States to implement and document Part C and Part B preschool special education data management policies and procedures and data system integration activities and to develop a sustainability plan to continue this data management and data system integration work in the future; and

(h) Increased capacity of States to address personnel training needs to meet the Part C and Part B preschool special education data collection and reporting requirements under sections 616 and 618 of IDEA through development of effective tools (*e.g.,* training modules) and resources (*e.g.,* new Part C Data Managers resources), as well as providing opportunities for in-person and virtual cross-State collaboration about Part C data (required under sections 616 and 618 of IDEA) and Part B preschool special education data collection and reporting requirements that States can use to train personnel in local programs and agencies.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications

that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements: In addition to the programmatic requirements contained in the proposed priority, we propose that, to be considered for funding, applicants must meet the following requirements.

Proposed Requirements: The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these proposed requirements in any year in which this program is in effect.

Applicants must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address State challenges associated with early childhood data management and data system integration, including implementing early childhood data system integration and improvements; enhancing and streamlining Part C early intervention and Part B preschool special education data systems to respond to critical policy questions; using ECIDS for program improvement and compliance accountability for Part C early intervention and Part B preschool special education programs; and reporting high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data to the Department and the public. To meet this requirement the applicant must—

(i) Present applicable national, State, or local data demonstrating the challenges of States to implement effective early childhood data management policies and procedures and data system integration activities, including integrating early childhood data systems across IDEA programs, other early learning programs, and other educational programs for school-aged students; linking Part C and Part B preschool special education program data; and using their Part C and Part B preschool special education data systems to respond to critical State-determined policy questions for program improvement and compliance accountability;

(ii) Demonstrate knowledge of current educational and technical issues and policy initiatives relating to early childhood data management and data system integration, data use, data privacy, Part C IDEA sections 616 and 618 data, Part B preschool special education data, and Part C and Part B preschool special education data systems; and

(iii) Present information about the current level of implementation of integrating or linking Part C and Part B preschool special education data systems; integrating or linking Part C and/or Part B preschool special education data systems with other early learning data systems; using Part C and Part B preschool special education data systems to respond to critical State-determined policy questions; and collecting, reporting, analyzing, and using high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data; and

(2) Improve early childhood data management policies and procedures and data system integration activities used to collect, report, and analyze high-quality Part C and Part B preschool special education data; to integrate or link Part C and Part B preschool special education data systems as well as integrate or link these data with data on children participating in other early learning programs and data on school-aged children; and to develop and use robust early childhood data systems to answer critical State-determined policy questions and indicate the likely magnitude or importance of the improvements.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based practices (EBPs).[5] To meet this requirement, the applicant must describe—

(i) The current research on early childhood data management and data system integration, and related EBPs; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base on early childhood data management and data system integration;

(ii) Its proposed approach to universal, general TA,[6] which must

[5] For the purposes of these requirements, ''evidence-based practices'' (EBPs) means, at a minimum, demonstrates a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

[6] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[7] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the State and local levels; and

(C) The process by which the proposed project will collaborate with OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State;

(iv) Its proposed approach to intensive, sustained TA [8] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to addressing States' challenges associated with limited resources to engage in early childhood data system integration and enhancement activities that streamline the established Part C and Part B preschool special education data systems to respond to critical policy questions and to report high-quality IDEA data to the Department and the public, which should, at a minimum, include providing on-site consultants to the State lead agency (LA) or State educational agency (SEA) to—

(*1*) Model and document data management and data system integration policies, procedures, processes, and activities within the State;

(*2*) Develop and adapt tools and provide technical solutions to meet State-specific data needs; and

(*3*) Develop a sustainability plan for the State to continue the data management and data system integration work in the future;

(C) Its proposed approach to measure the readiness of the State LAs and SEAs to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local program and district levels;

(D) Its proposed plan for assisting State LAs and SEAs to build or enhance training systems that include professional development based on adult learning principles and coaching;

(E) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, districts, local programs, families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data as well as early childhood data management and data system integration; and

(F) The process by which the proposed project will collaborate with OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when they are involved in a State;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[9] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the Annual Performance Report (APR); and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

[7] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[8] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

[9] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements:

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(ii) A two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate; and

(6) Budget at least 50 percent of the grant award for providing intensive, sustained TA.

Final Priority and Requirements

We will announce the final priority and requirements in a document in the **Federal Register**. We will determine the final priority and requirements after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities or requirements, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use this proposed priority and one or more of these proposed requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new rule must be fully offset by the elimination of existing costs through deregulatory actions. However, Executive Order 13771 does not apply to ''transfer rules'' that cause only income transfers between taxpayers and program beneficiaries, such as those regarding discretionary grant programs. Because the proposed priority and requirements would be utilized in connection with a discretionary grant program, Executive Order 13771 does not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of

Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed priority and requirements only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are SEAs; LEAs, including charter schools that operate as LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on an applicant by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits of this proposed priority and these proposed requirements would outweigh any costs incurred by the applicant.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority and requirements would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priority and requirements would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

[Catalog of Federal Domestic Assistance (CFDA) Number: 84.373Z.]

Dated: March 1, 2019.

Johnny W. Collett,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2019–04034 Filed 3–5–19; 8:45 am]

BILLING CODE 4000–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2018–1; Order No. 5004]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing rules that require the Postal Service to provide information about cost and service issues affecting flat-shaped mail (flats). The Commission intends to analyze this information over time to identify trends and measurable goals that will lead to the development of a plan to improve these cost and service issues. The Commission invites public comment on the proposed rules. For additional information, Order No. 5004 can be accessed electronically through the Commission's website at *https://www.prc.gov.*

DATES: *Comments are due:* April 5, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Background

The Commission initiated this proceeding to explore potential enhancements to the Postal Service's data systems and to facilitate the development of consistent reporting requirements to measure, track, and report cost and service performance issues related to flats. To better understand the data collected by the Postal Service related to flats and to determine if the data can estimate cost and service impacts, the Commission issued two information requests and a notice of inquiry.

II. Basis and Purpose of Proposed Rules

Based on the information received from the Postal Service and the public, the Commission proposes specific reporting requirements to facilitate measuring and tracking cost and service issues related to flats. The Postal Service will be required to annually file data at the national, and facility level (when specified). These reporting requirements are designed to provide sufficient information to improve transparency into the cost and service issues associated with flats. In addition, the proposed requirements will increase the accountability of the Postal Service related to operational initiatives related to flats.

The proposed reporting requirements seek information readily available and previously provided or proposed by the Postal Service, based on filings by the Postal Service in the Fiscal Year (FY) 2015 Annual Compliance Determination (ACD), the FY 2016 ACD, the FY 2017 ACD, and Docket No. RM2018–1. The proposed requirements simply require the information to be provided in a more organized way and at regular intervals. The information falls into four categories: (1) Analysis of consolidated cost and service data; (2) analysis of costs by operationally relevant groupings; (3) analysis of data related to individual pinch points; and (4) analysis to estimate the impact of operational changes.

The Commission is not proposing any specific enhancements to the Postal Service's underlying data systems at this time, but as the Commission becomes more familiar with these data reports, it may do so. However, to ensure transparency on data enhancements implemented internally by the Postal Service, the Commission proposes that the Postal Service provide an annual narrative discussing any planned data enhancements.

III. Proposed Rules

The Commission proposes to place the reporting requirements for flat-shaped mail in a new section in 39 CFR part 3050.

List of Subjects for 39 CFR Part 3050

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3050—PERIODIC REPORTING

■ 1. The authority citation for part 3050 continues to read as follows:

Authority: 39 U.S.C. 503, 3651, 3652, 3653.

■ 2. Add § 3050.50 to read as follows:

§ 3050.50 Information pertaining to cost and service for flat-shaped mail

(a) The reports in paragraphs (b) through (f) of this section shall be filed with the Commission at the times indicated.

(b) Within 90 days after the end of each fiscal year, the Postal Service shall file a financial report that analyzes data from the fiscal year for all mail products that consist of more than 80 percent flat-shaped mail. At a minimum, the report shall include:

(1) Volume and shape workpapers that identify products that contain more than 80 percent flat-shaped mail (flat-shaped products).

(2) Unit attributable cost estimate workpapers for each flat-shaped product that is disaggregated into the following cost categories: mail processing unit cost, delivery unit cost, vehicle service driver unit cost, purchased transportation unit cost, window service unit cost, and other unit cost.

(3) A narrative that explains the methodology used to calculate the unit attributable cost categories described in paragraph (b)(2) of this section.

(4) A narrative supported by workpapers that identifies any flat-shaped product where unit attributable cost increases were greater than the change in unit market dominant attributable cost for the same fiscal year. The narrative must include identification of cost categories driving above average change in unit attributable cost for flat-shaped product and a specific plan to reduce unit attributable cost for identified flat-shaped product.

(5) An analysis of volume trends, and mail mix for flat-shaped products, which includes, at a minimum, a comparison of:

(i) the aggregate unit attributable costs for flat-shaped products for the current fiscal year, and

(ii) the calculated estimate of aggregate unit attributable costs for flat-shaped products for the current fiscal year, using the previous fiscal year's volume distribution. In addition, a narrative that identifies drivers of changes in volume trends and mail mix.

(6) An analysis of the Flat Sequencing System (FSS), which includes, at a minimum, the percent of flat-shaped mail destinating in a FSS zone that were not finalized on FSS equipment, the cost of processing flat-shaped mail on the FSS, the delivery point sequence (DPS) percentage of FSS mail. In addition, a narrative that identifies drivers of changes in the analysis between fiscal years.

(7) A manual processing analysis, which includes, at a minimum, the cost of manually processing flat-shaped mail, the percent of flat-shaped mail that were manually processed, and the percent of flat-shaped mail that were entered at automation prices. In addition, a narrative that identifies drivers of changes in the analysis between fiscal years.

(8) An estimate, with supporting workpapers, of the cost impact of bundle processing on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the cost impact of bundle processing on flat-shaped products.

(9) An estimate, with supporting workpapers, of the cost impact of low productivity on automated equipment on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the cost impact of low productivity on automated equipment on flat-shaped products.

(10) An estimate, with supporting workpapers, of the cost impact of manual processing on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the cost impact of manual processing on flat-shaped products.

(11) An estimate, with supporting workpapers, of the cost impact of allied operations on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the cost impact of allied operations on flat-shaped products.

(12) An estimate, with supporting workpapers, of the cost impact of transportation on flat-shaped products

for the fiscal year. If no estimate available, provide a timeline to estimate the cost impact of transportation on flat-shaped products.

(13) An estimate, with supporting workpapers, of the cost impact of last mile/delivery on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the cost impact of last mile/delivery on flat-shaped products.

(c) Within 90 days after the end of each fiscal year, the Postal Service shall file a service report that analyzes data from the fiscal year for all mail products that consist of more than 80 percent flat-shaped mail. At a minimum, the analysis must include:

(1) Service performance scores for all flat-shaped products.

(2) An estimate, with supporting workpapers, of the service impact of bundle processing on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the service impact of bundle processing on flat-shaped products.

(3) An estimate, with supporting workpapers, of the service impact of low productivity on automated equipment on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the service impact of low productivity on automated equipment on flat-shaped products.

(4) An estimate, with supporting workpapers, of the service impact of manual processing on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the service impact of manual processing on flat-shaped products.

(5) An estimate, with supporting workpapers, of the service impact of allied operations on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the service impact of allied operations on flat-shaped products.

(6) An estimate, with supporting workpapers, of the service impact of transportation on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the service impact of transportation on flat-shaped products.

(7) An estimate, with supporting workpapers, of the service impact of last mile/delivery on flat-shaped products for the fiscal year. If no estimate available, provide a timeline to estimate the service impact of last mile/delivery on flat-shaped products.

(d) Within 90 days after the end of each fiscal year, the Postal Service shall file an analysis of costs by operationally relevant grouping from FY 2013 to present.

(1) The report shall utilize fiscal year data filed in accordance with § 3050.22, and § 3050.28(c) and (d) and any other data necessary to complete the analysis.

(2) The report shall also include a narrative that explains the methodology used to calculate costs by operationally relevant grouping.

(e) Within 90 days after the end of each fiscal year, the Postal Service shall file the following reports that include data by both quarter and fiscal year, as well as at the national level and at the facility level unless otherwise specified. The reports shall include, at a minimum, five years of quarterly historical fiscal year data including the current fiscal year.

(1) Bundle Breakage Visibility Reports which include, at a minimum, number of bundles processed, number of bundles processed by class, product, facility, and machine type, number of broken bundles; and number of broken bundles by class, product, facility, and machine type.

(2) Mail Processing Variance Reports, which include, at a minimum, for each machine type that process flat-shaped mail: category, plant/facility, volume, actual workhours, earned workhours (target hours), productivity, variance, and percent achieved, and target productivities, including narrative that explains methodology used to develop target.

(3) eFlash Report, which includes, at a minimum manual letter and flats volume, manual letter and flats workhours, manual letter and flats cost analysis, manual letter and flats handling time, and manual letter and flats handling cost per piece.

(4) Work in Process metrics, which include, at a minimum, measurement of: unload scan to bundle sorter scan, unload scan to tray mechanization scan, bundle sorter scan to mail processing equipment piece scan, tray mechanization scan to next automation scan, and unload scan to first automation scan.

(5) First-Class Mail Root Cause Point Impact Report, which includes, at a minimum, root cause, shape, service standard, point impact, rank, results attributed to air transit Automated Area Distribution Center (AADC)/Area Distribution Center (ADC) processing delays, and results attributed to surface transit AADC/ADC processing delays.

(6) SVWeb Report, which includes, at a minimum, on-time departure percentage, on-time arrival percentage, space utilization type by container type, average load percentage, total number of late containers, misrouted containers based on unload scans at unexpected site, National Performance Assessment (NPA) goals, goal achievement, the total score for six required scans, trips on time, space utilization targets, and comparison of fiscal year space utilization to targets.

(7) Last Mile Impact Report, which includes, at a minimum, overall on-time score, on-time score at last processing, and last mile impact for all flat-shaped products at each service standard.

(8) For each report listed in paragraphs (e)(1) through (e)(7) of this section, the Postal Service shall provide a narrative that describes any changes made to underlying data systems during the fiscal year that impact the methodology used to produce the report.

(9) For each report listed in paragraphs (e)(1) through (e)(7) of this section, the Postal Service shall provide a narrative that discusses trends, changes, and reasons for any changes in data within the report.

(f) Within 90 days after the end of each fiscal year, the Postal Service shall file a report that identifies all national operational changes and/or initiatives that occurred during the fiscal year related to flat-shaped mail and all planned national operational changes and/or initiatives for the next fiscal year related to flat-shaped mail. The operational changes and/or initiatives should be designed to improve operations related to flat-shaped mail, reduce the cost of flat-shaped mail, and/or improve the service of flat-shaped mail.

(1) The report shall identify data from paragraphs (b), (c), (d), and/or (e) of this section that will be impacted by each operational change/initiative.

(2) The report shall also include an estimate, with supporting workpapers, of the impact of each operational change/initiative on the data selected in paragraph (f)(1) of this section.

(g) Within 90 days after the end of each fiscal year, the Postal Service shall file a report that identifies all data enhancements that occurred during the fiscal year related to data systems that affect flat-shaped mail. The data enhancements should be designed to improve measuring, tracking, and/or reporting on flat-shaped mail cost and service issues.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–04017 Filed 3–5–19; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2018–0417; FRL–9990–35–OAR]

RIN 2060–AT74

National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and extension of public comment period.

SUMMARY: On February 4, 2019, the Environmental Protection Agency (EPA) published a document in the **Federal Register** to announce its proposed National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production Residual Risk and Technology Review. The document also requested public comment on the proposed action. The EPA is announcing that it will hold a public hearing to provide interested parties the opportunity to present data, views, or arguments concerning the proposed action. In addition, the EPA will extend the public comment period.

DATES: *Public Hearing:* The EPA will hold a public hearing on March 27, 2019, in Washington, DC. The deadline for accepting written comments is being extended by 36 days, to April 26, 2019. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: The hearing will be held at the EPA WJC East Building, 1201 Constitution Avenue NW, Room 1153, Washington, DC 20004. The hearing will convene at 9:00 a.m. (local time) and will conclude at 5:00 p.m. If there are no additional registered speakers, the EPA will end the hearing 2 hours after the last registered speaker has concluded their comments. The EPA's website for this rulemaking, which includes the proposal and information about the hearing, can be found at: *https://www.epa.gov/stationary-sources-air-pollution/hydrochloric-acid-production-national-emission-standards-hazardous.* Written comments on the proposed rule may be submitted to the EPA electronically, by mail, facsimile, or through hand delivery/courier. Please refer to the proposal (84 FR 1570) for the addresses and detailed instructions.

Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. For purposes of the REAL ID Act, the EPA will accept government-issued IDs, including driver's licenses from the District of Columbia and all states and territories. Acceptable alternative forms of identification include: Federal employee badges, passports, enhanced driver's licenses, and military identification cards. Additional information on the REAL ID Act is available at: *https://www.dhs.gov/real-id.*

Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: The EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/hydrochloric-acid-production-national-emission-standards-hazardous* or contact Nancy Perry at (919) 541–5628 or at *perry.nancy@epa.gov.* The last day to pre-register to speak at the hearing will be March 25, 2019. On March 26, 2019, the EPA will post at *https://www.epa.gov/stationary-sources-air-pollution/hydrochloric-acid-production-national-emission-standards-hazardous* a general agenda for the hearing that will list pre-registered speakers in approximate order. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

SUPPLEMENTARY INFORMATION: Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters should notify Nancy Perry if they will need specific equipment or if there are other special needs related to providing comments at the hearings. Verbatim transcripts of the hearings and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/hydrochloric-acid-production-national-emission-standards-hazardous.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Nancy Perry at (919) 541–5628 or *perry.nancy@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

The EPA will not provide audiovisual equipment. Commenters should notify Nancy Perry when they pre-register to speak that they will require the service of a translator or special accommodations such as audio description. The EPA may not be able to arrange accommodations without advanced notice.

Dated: February 28, 2019.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019–04002 Filed 3–5–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 422

[CMS–4185–N2]

Medicare Program; Release of Data Underlying Risk Adjustment Data Validation Provisions

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule; supplement.

SUMMARY: This document announces the release of data underlying the proposed policies regarding the use of extrapolation in Medicare Advantage (MA) Risk Adjustment Data Validation (RADV) audits and the Fee-for-Service (FFS) Adjuster.

DATES: The data announced in this supplement is available on March 1, 2019.

ADDRESSES: The LDS DUA request forms and instructions are available via the CMS website at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/LimitedDataSets/.* Additional documentation and data related to the RADV FFS Adjuster Study is posted on the Private Plans Team website at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-Risk-Adjustment-Data-Validation-Program/Resources.html.*

FOR FURTHER INFORMATION CONTACT: Jonathan Smith, (410) 786–4671 or Joanne Davis, (410) 786–5127.

SUPPLEMENTARY INFORMATION:

I. Background

In the November 1, 2018 **Federal Register** (83 FR 54982), we published a proposed rule titled ''Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage (MA), Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021''. The proposed rule included preamble language and regulatory provisions regarding the proposed MA Risk Adjustment Data Validation (RADV) audit methodology, and the proposal not to apply a Fee-For-Service (FFS) Adjuster (83 FR 55037 through 55041 and 55077). Prior to the release of the proposed rule, we posted a FFS Adjuster Study on October 26, 2018.

In the December 27, 2018 **Federal Register** (83 FR 66661), we published a document stating that we planned on releasing data underlying the FFS Adjuster Study and extending the comment period for the RADV provisions to April 30, 2019, in order to maximize the opportunity for the public to provide meaningful input to CMS.

II. Provisions of the Supplement

This document announces that data, underlying our proposal not to apply a RADV FFS Adjuster, is available to the public through the Office of Enterprise Data Analytics (OEDA). Persons or entities requesting the data must complete and submit a Limited Data Set (LDS) Data Use Agreement (DUA) along with the required fee to CMS. The LDS DUA request forms and instructions are available via the CMS website at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/LimitedDataSets/.* Lastly, additional documentation and data related to the RADV FFS Adjuster Study is posted on the Private Plans Team website at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-Risk-Adjustment-Data-Validation-Program/Resources.html.*

We are releasing these data so the public can both provide meaningful comments regarding the proposed RADV provisions in the November 2018 proposed rule (83 FR 55037 through 55041 and 55077) and generate information that will be useful to the agency's decision makers. Our ability to meaningfully evaluate and respond to comments may depend on the extent to which commenters disclose any methodologies, statistical analyses, audit findings, and other factors underlying the comments.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: February 28, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–04052 Filed 3–4–19; 11:15 am]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 84, No. 44

Wednesday, March 6, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 28, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by April 5, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: The Whole Enchilada Trail: Conditions, User Experience and Comment Survey and Recreational Carrying Capacity Study.

OMB Control Number: 0596–NEW.

Summary of Collection: In order to better manage Forest Service lands and provide more enjoyable user experiences, the Manti-La Sal National Forest, Moab Ranger District, is seeking Office of Management and Budget approval to conduct data collection through means of a survey to gather information about stakeholders' perceptions about current conditions, user experience and acceptable means of management on a very popular mountain bike trail—The Whole Enchilada. The primary authorities for this collection are the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, which authorizes USDA agricultural research, education, and extension programs, and the Forest and Rangeland Renewable Resources Research Act of 1978, which authorizes USDA Forest Service ''investigations, experiments, tests, and other activities . . . to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas'' (Pub. L. 95–307 Sec. 3).

Need and Use of the Information: Information collected through this research contribute to USDA Strategic Goals, including ensuring USDA programs are delivered efficiently, effectively, and with integrity, and facilitating rural prosperity and economic development. It also contributes to Forest Service Strategic Goals of sustaining our nation's forests and delivering benefits to the public.

Description of Respondents: Individuals; Private Sector, business or other for-profits, farms.

Number of Respondents: 1,500.

Frequency of Responses: Reporting.

Total Burden Hours: 242.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–03962 Filed 3–5–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection, Correction

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 seek reinstatement of the 2019 Organic Survey. Response to this survey will be mandatory.

DATES: Comments on this notice must be received by May 6, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0249, 2019 Organic Survey, 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.

Correction

In the **Federal Register** of February 28, 2019, FR Doc. No. 40, pages 6765–6766, on page one, line 3, should read as follows:

Notice of Intent to Seek Approval to Reinstate an Information Collection

Dated: February 28, 2019.

Yvette Anderson,

Federal Register Liaison Officer for ARS, ERS, NASS.

[FR Doc. 2019–04020 Filed 3–5–19; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Information Collection Activity; Comment Request

AGENCY: Rural Housing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Department of Agriculture (USDA) Rural Housing Service (RHS) invites comments on this information collection for Single Family Housing Direct Loans and Grants programs, for which the Agency intends to request approval from the Office of Management and Budget (OMB) will be requested. The collection involves the use of Form 410–8 ''Application Reference Letter.'' The form will be used to obtain information about an applicant's credit history that might not appear on a credit report and to provide clarification on the promptness of applicant's payments on debts which enables Rural Housing Service to make better creditworthiness decisions.

DATES: Comments on this notice must be received by May 6, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 4233, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RHS is submitting to OMB for revision.

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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by any of the following methods:

- *Mail:* Thomas P. Dickson, Rural Development Innovation Center, 1400 Independence Avenue SW, STOP 1522, Room 4233, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email: *Thomas.Dickson@wdc.usda.gov.*
- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.

Title: Form RD 410–8, ''Applicant Reference Letter''.

OMB Control Number: 0575–0091.

Expiration Date of Approval: October 31, 2019.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) must, by law, make available to the applicant, upon request, the source of information used to make an adverse decision. Individual references may be solicited with the clear understanding that, if the information is used to deny credit, the information will be made available to the applicant upon request. Without this information, the Agency is unable to determine if a customer would qualify for services.

The burden imposed by this form will be accounted for within the individual RD program collection packages. Therefore, RD is requesting approval for one respondent and a one hour place holder in order for OMB to issue a control number for this form.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Individuals and businesses already extending credit/financing to Section 502 and 504 applicants.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.

Copies of this information collection can be obtained from Robin M. Jones, Innovation Center, at (202) 772–1172, Email: *robin.m.jones@wdc.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 27, 2019.

Richard A. Davis,

Acting Administrator, Rural Housing Service.

[FR Doc. 2019–04022 Filed 3–5–19; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by May 6, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Regulatory Division Team 2, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250. Phone: 202–690–4492. *Thomas.Dickson@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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, including through the use of appropriate automated, electronic, mechanical, or

other technological collection techniques or other forms of information technology. Comments may be sent to: Thomas P. Dickson, Regulatory Division Team 2, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250. Phone: 202–690–4492. *Thomas.Dickson@usda.gov.*

Title: Preloan Procedures and Requirements for Telecommunications Program.

OMB Control Number: 0572–0079.

Type of Request: Extension of a currently approved information collection.

Abstract: The burden required by this collection consists of information that will allow the Agency to determine an applicant's eligibility to borrow from the Agency under the terms of the Rural Electrification Act (RE Act) of 1936 as amended (U.S.C. 912). This information is also used by the Agency to determine that the Government's security for loans made by the Agency is reasonably adequate and that the loans will be repaid within the time agreed.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 259.95 hours per response.

Respondents: Business or other for-profit; not-for-profit organizations.

Estimated Number of Respondents: 37.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9,618 hours.

Copies of this information collection can be obtained from MaryPat Daskal, Regulatory Team 2, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250. Telephone: (202) 720–7853. Email: MaryPat *Daskal@usda.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 26, 2019.

Bette B. Brand,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2019–04021 Filed 3–5–19; 8:45 am]

BILLING CODE P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meetings

TIME AND DATE: March 12, 2019, 11:00 a.m. EDT.

PLACE: U.S. Chemical Safety and Hazard Investigation Board, 1750 Pennsylvania Ave. NW, Suite 910, Washington, DC 20006.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on Tuesday, March 12, 2019, at 11 a.m. EDT in Washington, DC, at the CSB offices located at 1750 Pennsylvania Avenue NW, Suite 910. The Board will discuss open investigations, the status of audits from the Office of the Inspector General, financial and organizational updates.

Additional Information

The meeting is free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the ''Contact Person for Further Information,'' at least three business days prior to the meeting.

A dial in number will be provided for those who cannot attend in person. Please register below:

Please register for the CSB Public Business Meeting on Mar 12, 2019 at 11:00 a.m. EDT at: *https://attendee.gotowebinar.com/register/8470058534866137357.*

After registering, you will receive a confirmation email containing information about joining the webinar.

The CSB is an independent federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Comment

The time provided for public statements will depend upon the number of people who wish to speak. Speakers should assume that their presentations will be limited to three minutes or less, but commenters may submit written statements for the record.

CONTACT PERSON FOR FURTHER INFORMATION: Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB website at: *www.csb.gov.*

Dated: March 4, 2019.

Raymond C. Porfiri,

Deputy General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2019–04167 Filed 3–4–19; 4:15 pm]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Idaho Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Idaho Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Mountain Time) Friday, March 15, 2019. The purpose of the meeting is to plan the implementation of the Committee's project on Native American voting rights.

DATES: The meeting will be held on Friday, March 15, 2019, at 12:00 p.m. Mountain Time.

FOR FURTHER INFORMATION CONTACT: Alejandro Ventura at *aventura@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION:

Public Call Information: Dial: 877–260–1479; Conference ID: 9482288.

This meeting is available to the public through the number listed above. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed

to the Commission at (213) 894–0508, or emailed Alejandro Ventura at *aventura@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.* Please click on the ''Committee Details'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Call to Order and Roll Call
II. Interim Appointments and Applications
III. Discussion of Implementation Plan for Project on Native American Voting Rights
  a. Update on Preliminary Briefings on Voting Rights Issues and/or Idaho's Native American Communities
  b. Update on Outreach to Idaho's Tribes and Native Communities
  c. Planning for Community Forums
IV. Public Comment
V. Discussion of Next Steps
VI. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: February 28, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–03978 Filed 3–5–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee Public Meeting

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Scientific Advisory Committee (CSAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. The CSAC will meet in a plenary session on March 28–29, 2019. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees website for the most current meeting agenda at: *https://www.census.gov/about/cac/sac.html.* The meeting will be available via webcast at: *https://www.census.gov/newsroom/census-live.html.* Topics of discussion will include the following items:

- 2020 Census Program Update
- 2018 End-to-End Test Update
- 2020 Census Data Products Plan
- Current Population Survey Annual Social and Economic Supplement

DATES: March 28–29, 2019. On Thursday, March 28, the meeting will begin at 8:30 a.m. and end at approximately 5:00 p.m. EDT. On Friday, March 29, the meeting will begin at 8:30 a.m. and end at approximately 2:00 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Tara Dunlop Jackson, Branch Chief for Advisory Committees Management Branch, Office of Program, Performance and Stakeholder Integrations, *census.scientific.advisory.committee@census.gov,* Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–5222. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The members of the CSAC are appointed by the Director, Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on March 29. However, individuals with extensive questions or statements must submit them in writing to: *census.scientific.advisory.committee@census.gov* (subject line ''March 2019 CSAC Meeting Public Comment''), or by letter submission to Tara Dunlop Jackson, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233.

If you plan to attend the meeting, please register by Monday, March 18, 2019. You may access the online registration from the following link: *https://csacspringmeeting2019.eventbrite.com.*

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: February 27, 2019.

Steven D. Dillingham,

Director, Bureau of the Census.

[FR Doc. 2019–04013 Filed 3–5–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; National Security and Critical Technology Assessments of the U.S. Industrial Base

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 6, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093, *mark.crace@bis.doc.gov.*

The link below clarifies the policies and procedures of the Bureau of Industry and Security (BIS) for conducting surveys to obtain information in order to perform industry studies assessing the U.S. industrial base to support the national defense pursuant to the Defense Production Act of 1950, as amended.

https://www.federalregister.gov/articles/2015/07/15/2015-17388/us-industrial-base-surveys-pursuant-to-the-defense-production-act-of-1950.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department of Commerce, in coordination with the Department of Defense and other Federal agencies, conducts survey assessments of U.S. industrial base sectors deemed critical to U.S. national security. The information gathered is necessary to determine the health and competitiveness as well as the needs of these critical market segments in order to maintain a strong U.S. industrial base.

II. Method of Collection

Electronically.

III. Data

OMB Control Number: 0694–0119.
Form Number(s): N/A.
Type of Review: Regular submission extension.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 28,000.
Estimated Time per Response: 8 to 14 hours per response.
Estimated Total Annual Burden Hours: 308,000 hours.
Estimated Total Annual Cost to Public: $0.
Respondent's Obligation: Mandatory.
Legal Authority: Section 705 of the Defense Production Act of 1950, as amended, Executive Orders 12656 and 13603.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–04023 Filed 3–5–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–078]

Large Diameter Welded Pipe 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 large diameter welded carbon and alloy steel structural pipe from the People's Republic of China (China).

DATES: Applicable March 6, 2019.

FOR FURTHER INFORMATION CONTACT: Justin Neuman at (202) 482–0486 or Benito Ballesteros at (202) 482–7425, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2018, Commerce published its affirmative final determination in the countervailing duty investigation of large diameter welded pipe from China.[1] The scope of the investigation in Commerce's final determination covered large diameter welded carbon and alloy steel line pipe (welded line pipe), large diameter welded carbon and alloy steel structural pipe (welded structural pipe), and stainless steel large diameter welded pipe (stainless steel pipe) from China.[2] As discussed below, the ITC subsequently found three domestic like products covered by the scope of the investigation (welded line pipe, welded structural pipe, and stainless steel pipe) and accordingly made a separate injury determination with respect to each domestic like product. On January 30, 2019, the ITC notified Commerce of its final determination, pursuant to section 705(d) of the Tariff Act of 1930, as amended (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 welded structural pipe from China.[3] Additionally, the ITC made a negligibility determination with respect to welded line pipe and a negative determination of material injury or threat of material injury with respect to stainless steel pipe.[4] On February 13, 2019, Commerce released draft revised scope language for comment by parties. American Cast Iron Pipe Company, Berg Steel Pipe Corp., Berg Spiral Pipe Corp., Dura-Bond Industries, Stupp Corporation, Greens Bayou Pipe Mill, LP, JSW Steel (USA) Inc., Skyline Steel, Trinity Products LLC, and Welspun Corp., Ltd. (collectively, the petitioners) provided comments, which we have incorporated into the final scope of the order.[5]

Scope of the Order

The product covered by this order is welded structural pipe from China. For a complete description of the scope of this order, see the Appendix to this notice.

Countervailing Duty Order

On January 30, 2019, in accordance with section 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that imports of welded structural pipe are materially injuring a U.S. industry.[6] As a result, and in accordance with section 705(c)(2) and 706 of the Act, we are publishing this countervailing duty

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[1] *See Countervailing Duty Investigation of Large Diameter Welded Pipe from the People's Republic of China: Final Affirmative Determination,* 83 FR 56804 (November 14, 2018).

[2] *Id.*

[3] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation Nos. 701–TA–593–594, 731–TA–1402, and 731–TA–1404 (January 30, 2019) (ITC Notification). *See also Large Diameter Welded Pipe from China and India; Determinations,* 84 FR 1785 (February 5, 2019) (*ITC Final Determination*) and Large Diameter Welded Pipe from China and India, Investigation Nos. 701–TA–593–594, 731–TA–1402 and 731–TA–1404 (Final), Publication 4859, January 2019 (Final ITC Report).

[4] *Id.*

[5] *See* Petitioners' Letter, ''Large Diameter Welded Pipe from India and the People's Republic of China: Comments on the Scopes of the Orders,'' dated February 15, 2019.

[6] *See* ITC Notification; *ITC Final Determination,* 84 FR 1785.

order. As noted above, in its determination, the ITC found three domestic like products covered by the scope of the investigation: welded line pipe, welded structural pipe, and stainless steel pipe. The ITC made a negative determination with respect to stainless steel pipe from China, and found that imports of welded line pipe from China are negligible. The ITC made an affirmative determination with respect to welded structural pipe from China. Because the ITC made distinct and 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 welded structural pipe (subject merchandise) from China, and not on entries of welded line pipe and stainless steel pipe (excluded merchandise) from China.

Welded Line Pipe

The Final ITC Report describes welded line pipe as a tubular product produced from carbon and alloy steel, produced to American Petroleum Institute (API) 5L specifications, and designed for conveying liquids and gases.[7] Because the ITC determined that subsidized imports of welded line pipe from China are negligible, Commerce will direct CBP to terminate the suspension of liquidation for entries of welded line pipe from China entered, or withdrawn from warehouse, and to refund all cash deposits with respect to these entries pursuant to section 705(c)(2) of the Act.

Welded Structural Pipe

The Final ITC Report describes welded structural pipe as a tubular product produced from carbon and alloy steel, produced to American Society for Testing and Materials (ASTM) specifications, and designed for support in construction projects and piling.[8] Because the ITC found that subsidized imports of welded structural pipe from China are materially injuring a U.S. industry,[9] Commerce will direct CBP that all unliquidated entries of subject merchandise from China, entered or withdrawn from warehouse, are subject to the assessment of countervailing duties pursuant to section 706 of the Act, as described below.

As a result of the *ITC Final Determination,* in accordance with section 706(a) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of welded structural pipe from China. Countervailing duties will be assessed on unliquidated entries of welded structural pipe from China entered, or withdrawn from warehouse, for consumption on or after June 29, 2018, the date of publication of the *Preliminary Determination,*[10] but will not be assessed on entries occurring after the expiration of the provisional measures period (October 27, 2018), in accordance with section 703(d) of the Act, until the date of publication of the *ITC Final Determination* in the **Federal Register**.

Stainless Steel Pipe

The Final ITC Report describes stainless steel pipe as being produced from stainless steel for its high-chrome chemistry and corrosion-resistant properties.[11] Because the ITC made a negative determination of material injury or threat of material injury by reason of subsidized imports of stainless steel pipe from China,[12] Commerce will direct CBP to terminate the suspension of liquidation for entries of stainless steel pipe from China entered, or withdrawn from warehouse, and to refund all cash deposits with respect to these entries pursuant to section 705(c)(2) of the Act.

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will direct CBP to reinstitute the suspension of liquidation on all relevant entries of subject merchandise (*i.e.,* welded structural pipe) from China, effective the date of publication of the *ITC 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. We intend to instruct CBP to require, at the same time as importers would normally deposit estimated import 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 other producers or exporters not specifically listed.

Exporter or producer	Subsidy rate (percent)
Hefei Zijin Steel Tube Manufacturing Co	198.49
Hefei Ziking Steel Pipe	198.49
Panyu Chu Kong Steel Pipe Co. Ltd	198.49
All-Others	198.49

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to welded structural pipe from China pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is published in accordance with sections 705(c) and 706(a) of the Act and 19 CFR 351.211(b).

Dated: February 28, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Order

The merchandise covered by this order is welded carbon and alloy steel structural pipe (other than stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded structural pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded structural pipe may be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded structural pipe may be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded structural pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All structural pipe meeting the physical description set forth above, including any dual- or multiple-certified/stenciled pipe with an ASTM (or comparable) welded structural pipe certification/stencil, is covered by the scope of this order.

Subject merchandise also includes large diameter welded structural pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of

[7] *See* Final ITC Report at 11–12.

[8] *Id.*

[9] *Id.* at 1 and 3.

[10] *See Large Diameter Welded Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination,* 83 FR 30695 (June 29, 2018) (*Preliminary Determination*).

[11] *Id.* at 10.

[12] *Id.* at 1 and 3.

the in-scope large diameter welded structural pipe.

Excluded from the scope of this order is line pipe which is suitable for transporting oil, gas, slurry, steam, or other fluids, liquids, or gases, and is normally produced to American Petroleum Institute (API) specification 5L or equivalent foreign specifications grades and/or standards or to proprietary specifications, grades and/or standards.

The large diameter welded structural pipe that is subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.31.4000, 7305.31.6090, 7305.39.1000 and 7305.39.5000. Merchandise currently classifiable under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, and 7305.19.5000 and that otherwise meets the above scope language is also covered. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[FR Doc. 2019–04049 Filed 3–5–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony With Final Results of Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 19, 2019, the United States Court of International Trade (CIT or Court) issued its final judgment, sustaining the Department of Commerce's (Commerce's) final remand results pertaining to the tenth administrative review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam (Vietnam) covering the period of review (POR) of February 1, 2014, through January 31, 2015. Commerce is notifying the public that the final judgment in this case is not in harmony with the final results of the tenth administrative review, and that Commerce is amending the final results with respect to the surrogate value used to value frozen shrimp in the administrative review, which results in amended antidumping duties.

DATES: Applicable March 1, 2019.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, 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) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2015, Commerce initiated an administrative review of 195 producers and exporters of certain frozen warmwater shrimp from Vietnam for the period February 1, 2014, through January 31, 2015.[1] Commerce individually examined Soc Trang Seafood Joint Stock Company, also known as Stapimex.[2] We issued the *Final Results* on September 12, 2016.[3]

Because Vietnam continues to be a non-market economy (NME) country,[4] pursuant to section 773(c)(1) of the Act, we based normal value on the NME producer's factors of production (FOPs), valued in a surrogate market economy country considered to be appropriate.[5] Upon evaluating the surrogate country selection criteria, including the availability of surrogate value data on the record,[6] we selected Bangladesh over other countries primarily due to data availability considerations.[7] No interested parties challenged Commerce's surrogate country selection.

In the *Final Results,* among other issues, we addressed arguments regarding the frozen shrimp surrogate value and our denial of byproduct offsets for packing materials claimed as byproducts. We made no changes in the *Final Results* regarding these two issues.[8] With respect to the frozen shrimp surrogate value, we explained that ''{b}ecause our strong preference is to value all inputs from a single surrogate country, we valued frozen shrimp using the Bangladeshi UN Comtrade data.'' [9] We further explained that ''{a}lthough the Indian GTA {data} are contemporaneous, whereas Bangladeshi UN Comtrade data are not, this consideration does not outweigh our preference to remain within the primary surrogate country.'' [10]

After the conclusion of the administrative review, several interested parties challenged various determinations made in the *Final Results.* The Court affirmed all the challenged determinations, but remanded two issues for further explanation or reconsideration.[11] Specifically, in the *Remand Opinion and Order,* the Court ordered Commerce to reconsider or further explain: (1) its reliance on Bangladeshi UN Comtrade data to value purchased frozen shrimp using Harmonized Tariff Schedule (HTS) 0306.13 from among the other frozen shrimp surrogate value data on the record, namely the India Global Trade Atlas (GTA) surrogate value data under HTS 0306.17; and (2) its denial of a byproduct offset for the claimed byproduct related to ''packaging.'' [12]

In the Remand Redetermination, and consistent with the *Remand Opinion and Order,* Commerce reconsidered the surrogate value used to value frozen shrimp and recalculated the sole mandatory respondent's dumping margin accordingly.[13] Further, as directed by the Court, we explained our denial of the mandatory respondent's request for an offset of packing materials claimed as byproducts to the cost of manufacturing in determining normal

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 18202 (April 3, 2015) (*Initiation Notice*). While there were 195 individual names upon which we initiated an administrative review, the number of actual companies initiated upon is 99, due to variations of names requested by multiple interested parties and the groupings of companies that we have previously collapsed.

[2] *See* Memorandum, ''Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents for Individual Examination,'' dated April 29, 2015.

[3] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014–2015,* 81 FR 62717 (September 12, 2016) (*Final Results*) and accompanying Issues and Decision Memorandum.

[4] *See* section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act).

[5] *See* sections 773(c)(1) and (4) of the Act.

[6] *See Final Results* at Comment 2, citing to *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review; 2014–2015,* 81 FR 12702 (March 10, 2016) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum at 14–17.

[7] *Id.*

[8] *See Final Results* at Comment 2 (''Fresh unprocessed shrimp is a different input from frozen semi-processed shrimp, which we consider to be an intermediate, processed input. Accordingly, these inputs must be reported separately and valued appropriately, which in this instance means applying different SVs to each. . . We continue to value frozen shrimp using Bangladeshi UN Comtrade data, as it satisfies our surrogate value selection criteria and is from the primary surrogate country'') and Comment 8 (''consistent with our established practice, packing for direct materials, which are discarded (or sold as scrap) prior to entering the production process for subject merchandise, do not qualify as 'byproducts'').

[9] *Id.* at Comment 2B.

[10] *Id.*

[11] *See Soc Trang Seafood Joint Stock Company and Ca Mau Seafood Joint Stock Company* v. *United States,* Consol. Court No. 16–00205, Slip Op. 18–75 (June 21, 2018) (*Remand Opinion and Order*).

[12] *Id.* at 40.

[13] *See* Final Results of Redetermination Pursuant to Court Remand, dated September 18, 2018, at 6–9 and 13–20 (Remand Redetermination); available at *https://enforcement.trade.gov/remands/18–75.pdf.*

value.[14] The Court sustained our Remand Redetermination on both issues.[15]

In the *Final Results,* we calculated a 4.78 percent weighted-average margin for the sole mandatory respondent Stapimex.[16] Based on our remand recalculations, the final margin for Stapimex in this administrative review changes from 4.78 percent to 0.71 percent.[17]

Timken Notice

In its decision in *Timken,*[18] as clarified by *Diamond Sawblades,*[19] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Act, Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's February 19, 2019, *Final Judgment* sustaining Commerce's Remand Redetermination with respect to using the India GTA surrogate value data under HTS 0306.17 to value frozen shrimp constitutes a final decision of that court that is not in harmony with the *Final Results.*

This notice is published in fulfillment of the publication requirement of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise at issue in the Remand Redetermination pending expiration of the period of appeal or, if appealed, a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision with respect to this case,[20] Commerce is amending the *Final Results.* Based on the Remand Redetermination, as affirmed by the Court on February 19, 2019, the revised weighted-average dumping margin for Stapimex, for the period February 1, 2014, through January 31, 2015, is 0.71 percent. Further, as the rate assigned to companies that qualified for a separate rate in this review was based on Stapimex's calculated rate,[21] we will accordingly apply Stapimex's revised margin as the rate applicable to the 27 separate-rate recipients which are parties to this litigation.

In the event that the CIT's ruling is not appealed or, if appealed, is upheld by a final and conclusive court decision, Commerce will instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise based on: (1) the non-public importer-specific assessment rates recalculated in the Remand Redetermination for Stapimex[22] and (2) the above-noted 0.71 percent revised rate for the non-individually examined respondents that received a separate rate in the *Final Results* and are subject to this litigation.

Cash Deposit Requirements

Mandatory Respondent

Because there have been no subsequent administrative reviews completed for mandatory respondent, Stapimex,[23] the recalculated cash deposit rate of 0.71 percent will be the rate established for Stapimex in these amended final results.

Separate-Rate Companies

With respect to the 27 non-individually examined companies that qualified for a separate rate in the tenth administrative review and are subject to this litigation, there have been subsequent administrative reviews completed for the exporters listed below; thus, the cash deposit rate for these exporters will remain the rate established in the most recently-completed administrative review in which they received a cash deposit rate:

Exporter	Cash deposit rate in effect (percent)	***Federal Register*** notice
Bac Lieu Fisheries Joint Stock Company	4.58	*AR12 Final Results.*[24]
C.P. Vietnam Corporation	4.58	*AR12 Final Results.*
Cadovimex Seafood Import-Export and Processing Joint Stock Company	4.58	*AR12 Final Results.*
Camau Frozen Seafood Processing Import Export Corporation, aka Camau Seafood Factory No. 4.	4.58	*AR12 Final Results.*
Can Tho Import Export Fishery Limited Company	4.58	*AR12 Final Results.*
Camau Seafood Processing and Service Joint Stock Corporation	4.58	*AR12 Final Results.*
Cuu Long Seaproducts Company	4.58	*AR12 Final Results.*
Investment Commerce Fisheries Corporation	4.58	*AR12 Final Results.*
Kim Anh Company Limited, aka Kim Anh Co., Ltd	4.58	*AR12 Final Results.*
Minh Hai Export Frozen Seafood Processing Joint-Stock Company	4.58	*AR12 Final Results.*
Minh Hai Joint-Stock Seafoods Processing Company	4.58	*AR12 Final Results.*
Ngoc Tri Seafood Joint Stock Company	4.58	*AR12 Final Results.*
Nha Trang Fisheries Joint Stock Company	[25] 25.76	*AR12 Final Results.*
Nha Trang Seafoods Group: Nha Trang Seaproduct Company, aka NT Seafoods Corporation, aka Nha Trang Seafoods—F89 Joint Stock Company, aka NTSF Seafoods Joint Stock Company.	4.58	*AR12 Final Results.*
Phuong Nam Foodstuff Corp	4.58	*AR12 Final Results.*
Sao Ta Foods Joint Stock Company, aka Fimex VN, aka Saota Seafood Factory	4.58	*AR12 Final Results.*
Seaprimexco Vietnam	4.58	*AR12 Final Results.*
Thong Thuan Company Limited, aka T&T Co., Ltd	4.58	*AR12 Final Results.*

[14] *Id.* at 9–13 and 20–24.

[15] *See Soc Trang Seafood Joint Stock Company and Ca Mau Seafood Joint Stock Company* v. *United States,* Consol. Court No. 16–00205, Slip Op. 19–23 (February 19, 2019) (*Final Judgement*) at 12.

[16] *See Final Results,* 81 FR at 62718.

[17] *See* Remand Redetermination at 25.

[18] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[19] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[20] *See Final Judgement.*

[21] *See Final Results* and accompanying Issues and Decision Memorandum at Comment 7, as affirmed in *Remand Opinion and Order.*

[22] *See* Remand Redetermination, citing to Memorandum to the File, re: ''Remand Redetermination—Revised Final Results Calculations,'' dated August 6, 2018, at Attachment 2, which contains the SAS Output generated for Stapimex, and displays the revised, non-public importer-specific assessment rates for all importers that Stapimex reported in its questionnaire responses (*see* Stapimex's Section C Questionnaire Response, dated June 22, 2015, at 11–12 under ACCESS Barcode 3285551–01).

[23] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Review; 2015–2016,* 81 FR 46047 (July 15, 2016) (*AR11 Partial Rescission*) at Appendix I, and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Partial Rescission of Antidumping Duty Administrative Review; 2016–2017,* 82 FR 37563 (August 11, 2017) (*AR12 Partial Rescission*).

Exporter	Cash deposit rate in effect (percent)	*Federal Register* notice
Thuan Phuoc Seafoods and Trading Corporation	4.58	*AR12 Final Results.*
UTXI Aquatic Products Processing Corporation	4.58	*AR12 Final Results.*
Viet Foods Co., Ltd	4.58	*AR12 Final Results.*
Viet Hai Seafood Co., Ltd., aka Vietnam Fish One Co., Ltd	4.58	*AR12 Final Results.*
Vietnam Clean Seafood Corporation	4.58	*AR12 Final Results.*

With respect to the non-individually examined companies listed below that qualified for a separate rate in the tenth administrative review and are subject to this litigation, there have been either: (1) No subsequent administrative reviews completed for these exporters because they were rescinded from review,[26] or (2) these exporters certified they had no shipments in subsequent reviews;[27] thus, the cash deposit rate of 0.71 percent, as recalculated in the Remand Redetermination, applies to these companies:

Exporter	Cash deposit rate in effect (percent)
Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd	0.71
Viet I-Mei Frozen Foods Co., Ltd	0.71
Quang Minh Seafood Co., Ltd	0.71
Trong Nhan Seafood Company Limited	0.71

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: March 1, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–04045 Filed 3–5–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–881]

Large Diameter Welded Pipe From India: Antidumping 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 an antidumping duty order on large diameter welded carbon and alloy steel line pipe from India.

DATES: Applicable March 6, 2019.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929 or Jaron Moore at (202) 482–3640, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2018, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of large diameter welded pipe from India.[1] The scope of the investigation in Commerce's final determination covered large diameter welded carbon and alloy steel line pipe (welded line pipe), large diameter welded carbon and alloy steel structural pipe (welded structural pipe), and stainless steel large diameter welded pipe (stainless steel pipe) from India.[2] As discussed below, the ITC subsequently found three domestic like products covered by the scope of the investigation (welded line pipe, welded structural pipe, and stainless steel pipe) and accordingly made a separate injury determination with respect to each domestic like product. On January 30, 2019, the ITC notified Commerce of its final determination, pursuant to 735(d) of the Tariff Act of 1930, as amended (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 welded line pipe from India.[3] Additionally, the ITC made a negligibility determination with respect to welded structural pipe and a negative determination of material injury or threat of material injury with respect to stainless steel pipe.[4] On February 13, 2019, Commerce released draft revised scope language for comment by parties. No party objected to the revised scope language in this proceeding.

[24] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2016–2017,* 83 FR 46704 (September 14, 2018) (*AR12 Final Results*).

[25] *See AR12 Final Results* at Appendix II.

[26] In addition to Stapimex, as noted above, both Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. and Viet I-Mei Frozen Foods Co., Ltd. were rescinded from the eleventh and twelfth antidumping duty administrative reviews. *See AR11 Partial Rescission* at Appendix I and *AR12 Partial Rescission,* 82 FR at 37563.

[27] Quang Minh Seafood Co., Ltd. and Trong Nhan Seafood Company Limited both certified they had no shipments of subject merchandise in the eleventh and twelfth administrative reviews, with no information on those records contradicting their certifications. Neither of these companies received revised cash deposit rates in the final results of the eleventh and twelfth administrative reviews. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2015–2016,* 82 FR 11431–11432 (February 23, 2017) and *AR12 Final Results,* 83 FR at 46704, respectively.

[1] *See Large Diameter Welded Pipe from India: Final Determination of Sales at Less Than Fair Value; 2017,* 83 FR 56811 (November 14, 2018).

[2] *Id.*

[3] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation Nos. 701–TA–593–594, 731–TA–1402, and 731–TA–1404 (January 30, 2019) (ITC Notification). *See also Large Diameter Welded Pipe from China and India; Determinations,* 84 FR 1785 (February 5, 2019) (*ITC Final Determination*) and Large Diameter Welded Pipe from China and India, Investigation Nos. 701–TA–593–594, 731–TA–1402 and 731–TA–1404 (Final), Publication 4859, January 2019 (Final ITC Report).

[4] *Id.*

Scope of the Order

The product covered by this order is welded line pipe from India. For a complete description of the scope of this order, see the Appendix to this notice.

Antidumping Duty Order

On January 30, 2019, 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 large diameter welded line pipe are materially injuring a U.S. industry.[5] As a result, and in accordance with section 735(c)(2) and 736 of the Act, we are publishing this antidumping duty order. As noted above, in its determination, the ITC found three domestic like products covered by the scope of the LTFV investigation: Welded line pipe, welded structural pipe, and stainless steel pipe. The ITC made a negative determination with respect to stainless steel pipe from India, and found that imports of welded structural pipe from India are negligible. The ITC made an affirmative determination with respect to welded line pipe imported from India. Because the ITC made distinct and different injury determinations for separate domestic like products, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of welded line pipe (subject merchandise) from India, and not on entries of welded structural pipe and stainless steel pipe (excluded merchandise) from India.

Welded Line Pipe

The Final ITC Report describes welded line pipe as a tubular product produced from carbon and alloy steel, produced to American Petroleum Instiute (API) 5L specifications, and designed for conveying liquids and gases.[6] Because the ITC determined that LTFV imports of welded line pipe from India are materially injuring a U.S. industry,[7] all unliquidated entries of subject merchandise from India, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties, as described below.

As a result of the *ITC Final Determination,* in accordance with section 736(a) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, antidumping duties for all relevant entries of welded line pipe from India. Antidumping duties will be assessed on unliquidated entries of welded line pipe from India entered, or withdrawn from warehouse, for consumption on or after August 27, 2018, the date of publication of the *Preliminary Determination,*[8] but will not be assessed on entries occurring after the expiration of the provisional measures period (December 24, 2018), in accordance with section 733(d) of the Act), until the date of publication of the *ITC Final Determination* in the **Federal Register**.

Welded Structural Pipe

The Final ITC Report describes welded structural pipe as a tubular product produced from carbon and alloy steel, produced to American Society for Testing and Materials (ASTM) specifications, and designed for support in construction projects and piling.[9] Because the ITC found that imports of welded structural pipe from India are negligible, Commerce will direct CBP to terminate the suspension of liquidation for entries of welded structural pipe from India entered, or withdrawn from warehouse, and to refund all cash deposit with respect to these entries pursuant to section 705(c)(2) of the Act.

Stainless Steel Pipe

The Final ITC Report describes stainless steel pipe as being produced from stainless steel for its high-chrome chemistry and corrosion-resistant properties.[10] Because the ITC made a negative determination of material injury or threat of material injury by reason of LTFV imports of stainless steel pipe from India,[11] Commerce will direct CBP to terminate the suspension of liquidation for entries of stainless steel pipe from India entered, or withdrawn from warehouse, and to refund all cash deposits with respect to these entries pursuant to section 735(c)(2) of the Act.

Suspension of Liquidation

In accordance with section 736 of the Act, Commerce will direct CBP to reinstitute the suspension of liquidation of subject merchandise (*i.e.,* welded line pipe) from India, effective the date of publication of the *ITC Final Determination* in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise. We intend to instruct CBP to require, at the same time as importers would normally deposit estimated import 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. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from India have been adjusted, as appropriate, for export subsidies found in the final determination of the companion countervailing duty investigation of this merchandise imported from India. The all-others rate applies to all other producers or exporters not specifically listed.

Exporter or producer	Estimated weighted-average dumping margin (percent)	Estimated weighted-average dumping margin adjusted for subsidy offset(s) (percent)
Bhushan Steel	50.55	16.85
Welspun Trading Limited	50.55	16.85
All-Others	50.55	16.85

[5] *See* ITC Notification; *ITC Final Determination,* 84 FR 1785.

[6] *See* Final ITC Report at 11–12.

[7] *Id.* at 1 and 3.

[8] *See Large Diameter Welded Pipe From India: Preliminary Determination of Sales at Less Than Fair Value,* 83 FR 43653 (August 27, 2018) (*Preliminary Determination*).

[9] *Id.* at 11–12.

[10] *Id.* at 10.

[11] *Id.* at 1 and 3.

Notifications to Interested Parties

This notice constitutes the antidumping duty order with respect to welded line pipe from India 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 order is published in accordance with sections 735(c) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: February 28, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Order

The merchandise covered by this order is welded carbon and alloy steel line pipe (other than stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded line pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases.

Large diameter welded line pipe is used to transport oil, gas, or natural gas liquids and is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded line pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All line pipe meeting the physical description set forth above, including any dual- or multiple-certified/stenciled pipe with an API (or comparable) welded line pipe certification/stencil, is covered by the scope of this order.

Subject merchandise also includes large diameter welded line pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope large diameter welded line pipe.

Excluded from the scope of this order is structural pipe, which is produced only to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, or comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards. Also excluded is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

The large diameter welded line pipe that is subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, and 7305.19.5000. Merchandise currently classifiable under subheadings 7305.31.4000, 7305.31.6090, 7305.39.1000 and 7305.39.5000 and that otherwise meets the above scope language is also covered. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[FR Doc. 2019–04048 Filed 3–5–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010]

Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Sol-lite Manufacturing Company Limited (Sol-lite), Ri Shen Products (SZ) (Ri Shen), and Shenzhen Sungold Solar Co., Ltd. (Sungold) have not demonstrated their eligibility for a separate rate during the period of review (POR) February 1, 2017 through January 31, 2018.

DATES: Applicable March 6, 2019.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the notice of initiation of this review with respect to 12 companies/company groups on April 16, 2018.[1] On September 7, 2018, Commerce published a notice rescinding the review with respect to nine companies for which all review requests had been withdrawn.[2] The only three companies remaining under review are Sol-lite, Ri Shen, and Sungold. On October 19, 2018, Commerce postponed the preliminary results of this review until January 29, 2019.[3] Subsequent to that postponement, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[4] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary results decision is now March 11, 2019. For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[5]

Scope of the Order

The merchandise covered by the order is modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials.[6] Merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.60.15, 8541.40.6020, 8541.40.6030, 8541.40.60.35 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the order is dispositive.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Tariff

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[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 16298 (April 16, 2018) (*Initiation Notice*).

[2] *See Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2017–2018,* 83 FR 45417 (September 7, 2018) (*Partial Rescission Notice*).

[3] *See* memorandum to James Maeder Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review'' dated October 19, 2018.

[4] *See* memorandum to the Record from 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, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[5] *See* ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China; 2017–2018'', issued concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[6] For a complete description of the scope of the order, *see* Preliminary Decision Memorandum.

Act of 1930, as amended (the Act). For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *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 the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination Regarding No Shipments Claim

Based on an analysis of U.S. Customs and Border Protection (CBP) information, we determine that Sungold, which claimed no exports, sales or entries of subject merchandise during the POR, did, in fact, ship subject merchandise to the United States during the POR. For additional information regarding this preliminary determination, *see* the Preliminary Decision Memorandum.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the NME country are subject to government control and that a single weighted-average dumping margin (China-wide entity rate) is applicable to all exporters under review unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Sol-lite was selected as a mandatory respondent in the instant review, but failed to respond to Commerce's questionnaire. Sungold made shipments during the POR but did not file a separate rate certification. Ri Shen also did not file a separate rate certification. Therefore, Commerce preliminarily determines that neither Sol-lite, Ri Shen, nor Sungold is entitled to a separate rate and has treated them as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review and the entity's rate (*i.e.,* 151.98 percent) is not subject to change in this review.[7] For additional information regarding Commerce's separate rates determination, *see* the Preliminary Decision Memorandum.

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[8] Rebuttal briefs may be filed no later than five days after case briefs are due and may respond only to arguments raised in the case briefs.[9] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[10]

Interested parties who wish to request a hearing 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.[11] Requests should contain the party's name, address, and telephone number, the number of participants that will attend, whether any participant is a foreign national, and a list of the issues to be discussed at the hearing. Oral arguments at the hearing will be limited to issues raised in case and rebuttal briefs. If a hearing is held, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[12] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[13] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[14]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If Commerce continues to find that Sol-lite, Ri Shen, and Sungold are ineligible for a separate rate in the final results of this review, it will instruct CBP to liquidate all POR entries of subject merchandise from these companies at 151.98 percent, *i.e.,* the rate for the China-wide entity. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding, but which have a separate rate from a completed prior segment of the proceeding, the cash deposit rate will be the exporter-specific separate rate currently in effect from a previously completed segment of the proceeding; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, 151.98 percent; and (3) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR

[7] *See Certain Silicon Photovoltaic Products from the People's Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 8592 (February 18, 2015).

[8] *See* 19 CFR 351.309(c)(ii).

[9] *See* 19 CFR 351.309(d).

[10] *See* 19 CFR 351.309(c)(2), (d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310(d).

[13] *See generally* 19 CFR 351.303.

[14] *See* 19 CFR 351.303 (for general filing requirements); *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred, and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: February 28, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Respondent Selection
4. Scope of the Order
5. Preliminary Determination Regarding No Shipments Claim
6. Separate Rates
7. Recommendation

[FR Doc. 2019–04046 Filed 3–5–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–077]

Large Diameter Welded Pipe From the People's Republic of China: Antidumping 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 an antidumping duty order on large diameter welded carbon and alloy steel line and structural pipe from the People's Republic of China (China).

DATES: Applicable March 6, 2019.

FOR FURTHER INFORMATION CONTACT: Ryan Mullen at (202) 482–5260, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2018, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of large diameter welded pipe from China.[1] The scope of the investigation in Commerce's final determination covered large diameter welded carbon and alloy steel line pipe (welded line pipe), large diameter welded carbon and alloy steel structural pipe (welded structural pipe), and stainless steel large diameter welded pipe (stainless steel pipe) from China.[2] As discussed below, the ITC subsequently found three domestic like products covered by the scope of the investigation (welded line pipe, welded structural pipe, and stainless steel pipe) and, accordingly, made a separate injury determination with respect to each domestic like product. On January 30, 2019, the ITC notified Commerce of its final determination, pursuant to section 735(d) of the Tariff Act of 1930, as amended (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 welded structural pipe from China, and is threatened with material injury within the meaning of section 735(b)(1)(A)(ii) of the Act by reason of LTFV imports of welded line pipe from China.[3] Additionally, the ITC made a negative determination of material injury or threat of material injury with respect to stainless steel pipe.[4] On February 13, 2019, Commerce released draft revised scope language for comment by parties. No party objected to the revised scope language in this proceeding.

Scope of the Order

The products covered by this order are welded line and structural pipe from China. For a complete description of the scope of this order, see the Appendix to this notice.

Antidumping Duty Order

On January 30, 2019, in accordance with sections 735(b)(1)(A)(i) and (ii) and 735(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that imports of welded structural pipe from China are materially injuring a U.S. industry, and that imports of welded line pipe from China threaten material injury.[5] As a result, and in accordance with sections 735(c)(2) and 736 of the Act, we are publishing this antidumping duty order. As noted above, in its determination, the ITC found three domestic like products covered by the scope of the investigation: welded line pipe, welded structural pipe, and stainless steel pipe. The ITC made a negative determination with respect to stainless steel pipe from China. The ITC made an affirmative determination with respect to welded line pipe and welded structural pipe from China. Because the ITC made distinct and different injury determinations for separate domestic like products, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of welded line pipe and welded structural pipe (subject merchandise) from China and not on entries of stainless steel pipe (excluded merchandise) from China.

Welded Line Pipe

The Final ITC Report describes welded line pipe as a tubular product produced from carbon and alloy steel, produced to American Petroleum Institute (API) 5L specifications, and designed for conveying liquids and gases.[6] Because the ITC determined that LTFV imports of welded line pipe from China are threatening material injury to a U.S. industry,[7] Commerce will direct CBP that unliquidated entries of subject merchandise from China, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties pursuant to section 736 of the Act. Specifically, as a result of the ITC's final determination, in accordance with section 736(a) 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 welded line pipe from China.

Pursuant to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's

[1] *See Large Diameter Welded Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 56816 (November 14, 2018) *(Final Determination*).

[2] *Id.*

[3] *See* ITC Notification Letter regarding ITC Investigation Nos. 701–TA–593–594 and 731–TA–1402 and 1404 (January 2019) (ITC Notification). *See also Large Diameter Welded Pipe from China and India; Determinations,* 84 FR 1785 (February 5, 2019) (*ITC Final Determination*) and Large Diameter Welded Pipe from China, Investigation Nos. 701–TA–583–594, 731–TA–1402 and 731–TA–1404 (Final), Publication 4859, January 2019 (Final ITC Report).

[4] *Id.*

[5] *See* ITC Notification; *ITC Final Determination,* 84 FR at 1785.

[6] *Id.* at 11–12.

[7] *Id.* at 1 and 3.

notice of final determination if that determination is based on the threat of material injury, other than threat of material injury described in section 736(b)(1) of the Act.[8] In addition, section 736(b)(2) of the Act requires CBP to release any bond or other security, and refund any cash deposit made of estimated antidumping duties posted since Commerce's preliminary antidumping duty determination. Because the ITC's final determination with respect to welded line pipe from China is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since Commerce's preliminary determination, section 736(b)(2) of the Act is applicable. Accordingly, antidumping duties will be assessed on unliquidated entries of welded line pipe from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. Further, Commerce will direct CBP to terminate the suspension of liquidation for entries of welded line pipe from China entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC's notice of final determination in the **Federal Register**. Commerce will also instruct CBP to refund any cash deposits made with respect to entries of welded line pipe entered, or withdrawn from warehouse, for consumption on or after August 27, 2018 (the date of publication of the *Preliminary Determination*), but before December 25, 2018 (the date suspension of liquidation was discontinued in accordance with section 733(d) of the Act).

Welded Structural Pipe

The Final ITC Report describes welded structural pipe as a tubular product produced from carbon and alloy steel, produced to American Society for Testing and Materials (ASTM) specifications, and designed for support in construction projects and piling.[9] Because the ITC found that LTFV imports of welded structural pipe from China are materially injuring a U.S. industry,[10] Commerce will direct CBP that all unliquidated entries of subject merchandise from China, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties pursuant to section 736 of the Act. Specifically, as a result of the ITC's final determination, in accordance with section 736(a) 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 welded structural pipe from China. Antidumping duties will be assessed on unliquidated entries of welded structural pipe from China entered, or withdrawn from warehouse, for consumption on or after August 27, 2018, the date of publication of the *Preliminary Determination,*[11] but not on entries occurring between the expiration of the provisional measures period and the date of publication of the ITC's notice of final determination in the **Federal Register**, as discussed further below.

Stainless Steel Pipe

The Final ITC Report describes stainless steel pipe as being produced from stainless steel for its high-chrome chemistry and corrosion-resistant properties.[12] Because the ITC made a negative determination of material injury or threat of material injury by reason of LTFV imports of stainless steel pipe from China,[13] Commerce will direct CBP to terminate the suspension of liquidation for entries of stainless steel pipe from China entered, or withdrawn from warehouse, and refund all cash deposits with respect to these entries pursuant to section 735(c)(2) of the Act.

Suspension of Liquidation

In accordance with section 736 of the Act, Commerce will direct CBP to reinstitute the suspension of liquidation of subject merchandise (*i.e.,* welded line and structural pipe) from China, effective the date of publication of the *ITC Final Determination* in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise. We intend to instruct CBP to require, at the same time as importers would normally deposit estimated import 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. As stated in the *Final Determination,* Commerce is making no adjustments for export subsidies to the antidumping cash deposit rate in because we have made no findings in the companion countervailing duty investigation that any of the programs are export subsidies.[14]

Exporter/producer	Estimated weighted-average dumping margin (percent)
China-wide Entity	132.63

Notifications to Interested Parties

This notice constitutes the antidumping duty order with respect to welded line and structural pipe 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 order is published in accordance with sections 735(c) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: February 28, 2019.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by this order is welded carbon and alloy steel pipe (other than stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L.

[8] Section 736(b)(1) of the Act states that ''{if the ITC}, in its final determination under section 735(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(2) would have led to a finding of material injury, then entries of the subject merchandise, the liquidation of which has been suspended under section 733(d)(2), shall be subject to the imposition of antidumping duties under section 731.'')

[9] *See* Final ITC Report at 11–12.

[10] *Id.* at 1 and 3.

[11] *See Large Diameter Welded Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 83 FR 43644 (August 27, 2018) (*Preliminary Determination*).

[12] *Id.* at 10.

[13] *Id.* at 1 and 3.

[14] *See Final Determination,* 83 FR at 56817.

Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All pipe meeting the physical description set forth above is covered by the scope of this order, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope large diameter welded pipe.

The large diameter welded pipe that is subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[FR Doc. 2019–04050 Filed 3–5–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–882]

Large Diameter Welded Pipe From India: 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 large diameter welded carbon and alloy steel line pipe from India.

DATES: Applicable March 6, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Palmer at (202) 482–9068 or Suzanne Lam at (202) 482–0783, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2018, Commerce published its affirmative final determination in the countervailing duty investigation of large diameter welded pipe from India.[1] The scope of the investigation in Commerce's final determination covered large diameter welded carbon and alloy steel line pipe (welded line pipe), large diameter welded carbon and alloy steel structural pipe (welded structural pipe), and stainless steel large diameter welded pipe (stainless steel pipe) from India.[2] As discussed below, the ITC subsequently found three domestic like products covered by the scope of the investigation (welded line pipe, welded structural pipe, and stainless steel pipe) and accordingly made a separate injury determination with respect to each domestic like product. On January 30, 2019, the ITC notified Commerce of its final determination, pursuant to 705(d) of the Tariff Act of 1930, as amended (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 welded line pipe from India.[3] Additionally, the ITC made a negligibility finding with respect to welded structural pipe and a negative determination of material injury or threat of material injury with respect to stainless steel pipe.[4] On February 13, 2019, Commerce released draft revised scope language for comment by parties. No party objected to the revised scope language in this proceeding.

Scope of the Order

The product covered by this order is welded line pipe from India. For a complete description of the scope of this order, see the Appendix to this notice.

Countervailing Duty Order

On January 30, 2019, in accordance with section 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that imports of welded line pipe are materially injuring a U.S. industry.[5] As a result, and in accordance with section 705(c)(2) and 706 of the Act, we are publishing this countervailing duty order. As noted above, in its determination, the ITC found three domestic like products covered by the scope of the investigation: Welded line pipe, welded structural pipe, and stainless steel pipe. The ITC made a negative determination with respect to stainless steel pipe from India, and found that imports of welded structural pipe from India are negligible. The ITC made an affirmative determination with respect to welded line pipe from India. Because the ITC made distinct and 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 welded line pipe (subject merchandise) from India, and not on entries of welded structural pipe and stainless steel pipe (excluded merchandise) from India.

Welded Line Pipe

The Final ITC Report describes welded line pipe as a tubular product produced from carbon and alloy steel, produced to American Petroleum Instiute (API) 5L specifications, and designed for conveying liquids and gases.[6] Because the ITC determined that subsidized imports of welded line pipe from India are materially injuring a U.S. industry,[7] all unliquidated entries of subject merchandise from India, entered or withdrawn from warehouse, are subject to the assessment of countervailing duties, as described below.

As a result of the *ITC Final Determination,* in accordance with section 706(a) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of welded line pipe from India. Countervailing duties will be assessed on unliquidated entries of welded line pipe from India entered, or withdrawn from warehouse, for consumption on or after June 29, 2018, the date of publication of the *Preliminary Determination,*[8] but will not be assessed on entries occurring after the expiration

[1] *See Large Diameter Welded Pipe from India: Final Affirmative Countervailing Duty Determination,* 83 FR 56819 (November 14, 2018).

[2] *Id.*

[3] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation Nos. 701–TA–593–594, 731–TA–1402, and 731–TA–1404 (January 30, 2019) (ITC Notification). *See also Large Diameter Welded Pipe from China and India; Determinations,* 84 FR 1785 (February 5, 2019) (*ITC Final Determination*) and Large Diameter Welded Pipe from China and India, Investigation Nos. 701–TA–593–594, 731–TA–1402 and 731–TA–1404 (Final), Publication 4859, January 2019 (Final ITC Report).

[4] *Id.*

[5] *See* ITC Notification; *ITC Final Determination,* 84 FR 1785.

[6] *See* Final ITC Report at 11–12.

[7] *Id.* at 1 and 3.

[8] *See Large Diameter Welded Pipe From India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 30690 (June 29, 2018) (*Preliminary Determination*).

of the provisional measures period (October 27, 2018), in accordance with section 703(d) of the Act, until the date of publication of the *ITC Final Determination* in the **Federal Register**.

Welded Structural Pipe

The Final ITC Report describes welded structural pipe as a tubular product produced from carbon and alloy steel, produced to American Society of Testing and Materials (ASTM) specifications, and designed for support in construction projects and piling.[9] Because the ITC found that subsidized imports of welded structural pipe from India are negligible, Commerce will direct CBP to terminate the suspension of liquidation for entries of welded structural pipe from India entered, or withdrawn from warehouse, and to refund all cash deposit with respect to these entries pursuant to section 705(c)(2) of the Act.

Stainless Steel Pipe

The Final ITC Report describes stainless steel pipe as being produced from stainless steel for its high-chrome chemistry and corrosion-resistant properties.[10] Because the ITC made a negative determination of material injury or threat of material injury by reason of subsidized imports of stainless steel pipe from India,[11] Commerce will direct CBP to terminate the suspension of liquidation for entries of stainless steel pipe from India entered, or withdrawn from warehouse, and to refund all cash deposits with respect to these entries pursuant to section 705(c)(2) of the Act.

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.,* welded line pipe) from India, effective the date of publication of the *ITC 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. We intend to instruct CBP to require, at the same time as importers would normally deposit estimated import 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 other producers or exporters not specifically listed.

Company	Subsidy rate (percent)
Bhushan Steel	541.15
Welspun Trading Limited	541.15
All-Others	541.15

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to welded line pipe from India pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is published in accordance with sections 705(c) and 706(a) of the Act and 19 CFR 351.211(b).

Dated: February 28, 2019.

Gary Taverman,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by this order is welded carbon and alloy steel line pipe (other than stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded line pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases.

Large diameter welded line pipe is used to transport oil, gas, or natural gas liquids and is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded line pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All line pipe meeting the physical description set forth above, including any dual- or multiple-certified/stenciled pipe with an API (or comparable) welded line pipe certification/stencil, is covered by the scope of this order.

Subject merchandise also includes large diameter welded line pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope large diameter welded line pipe.

Excluded from the scope of this order is structural pipe, which is produced only to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, or comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards. Also excluded is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

The large diameter welded line pipe that is subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, and 7305.19.5000. Merchandise currently classifiable under subheadings 7305.31.4000, 7305.31.6090, 7305.39.1000 and 7305.39.5000 and that otherwise meets the above scope language is also covered. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[FR Doc. 2019–04047 Filed 3–5–19; 8:45 am]

BILLING CODE 3510–DS–P

[9] *Id.* at 11–12.

[10] *Id.* at 10.

[11] *Id.* at 1 and 3.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG856

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 59 Assessment Webinar I.

SUMMARY: The SEDAR 59 assessment of the South Atlantic stock of Greater Amberjack will consist of a series of webinars.

DATES: The SEDAR 59 Assessment Webinar I will be held on Friday, March 22, 2019, from 9 a.m. until 1 p.m.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North

Charleston, SC 29405; phone: (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. The product of the SEDAR webinar series will be a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Webinar I are as follows:

1. Participants will review data and discuss remaining data issues, as necessary.
2. Participants will begin discussions to develop population models to evaluate stock status, estimate population benchmarks, and project future conditions, as specified in the Terms of Reference.
3. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.
4. Participants will prepare a workshop report and determine whether the assessment(s) are adequate for submission for review.

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 intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 1, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–04062 Filed 3–5–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

ACTION: Notice of Public Comment Period for the Hudson River National Estuarine Research Reserve Management Plan revision.

SUMMARY: Notice is hereby given that the Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce is announcing a thirty-day public comment period for the Hudson River National Estuarine Research Reserve Management Plan revision. The revision of the existing management plan is necessitated by the applicable requirements of the National Estuarine Research Reserve System. The Hudson River Reserve revised plan will replace the plan approved in 2009.

SUPPLEMENTARY INFORMATION: Pursuant to15 CFR 921.33(c), a state must periodically update its management plan for a National Estuarine Research Reserve. The Hudson River National Estuarine Research Reserve revised plan will replace the plan previously approved in 2009. NOAA issues this notice of a public comment period for the revised plan under 15 CFR 921.33(a).

The revised management plan outlines the administrative structure; the research/monitoring, stewardship, education, and training programs and priorities of the reserve; plans for including inholdings within the existing boundary into state ownership; and facility development priorities to support reserve operations.

The Hudson River Reserve takes an integrated approach to management, linking research and education, coastal training, and stewardship functions. The New York Department of Environmental Conservation has outlined how it will administer the reserve and its core programs by providing detailed actions that will enable it to accomplish specific goals and objectives. Since the last management plan, the reserve has: Provided technical expertise to coastal communities to reduce risks to natural hazards; expanded monitoring programs; installed a sentinel site for monitoring marsh ecosystem response to sea level rise; conducted training workshops; implemented K–12 and public education programs; installed a water level observation station that is compliant with NOAA's National Water Level Observation Network; restored hydrologic flows at Gay's Point in the Stockport Flats component; and established itself as a regional leader in the design and implementation of living shorelines. The total number of acres within the reserve boundary is 5,000 acres. The revised management plan will serve as the guiding document for the Hudson River Reserve for the next five years.

NOAA's Office Coastal Management will be conducting an environmental analysis in accordance with the National Environmental Policy Act on the proposed approval of the Reserve's revised management plan. The public is invited to provide comment or information about any potential environmental impacts of the proposed action, and these comments will be used to inform the decision making process.

The Hudson River Reserve Management Plan revision may be viewed at: *https://www.dec.ny.gov/lands/4915.html.* Comments on the revision may be submitted to the Reserve's Manager, Heather Gierloff (*heather.gierloff@dec.ny.gov*) by April 5, 2019.

FOR FURTHER INFORMATION CONTACT: Nina Garfield at (240) 533–0817, or Kim Texeira at (240) 533–0781, of NOAA's Office for Coastal Management, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: February 25, 2019.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2019–03969 Filed 3–5–19; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) announces the availability of the inventions listed below, assigned to the United States Government, as represented by the Secretary of the Navy, for domestic and foreign licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, Email *Christopher.Monsey@navy.mil,* 812–854–2777.

SUPPLEMENTARY INFORMATION: The following patents are available for licensing: Patent No. 10,200,081 (Navy Case No. 200348): SYSTEMS AND METHODS FOR SIGNAL DETECTION AND DIGITAL BANDWIDTH REDUCTION IN DIGITAL PHASED ARRAYS// Patent No. 10,204,875 (Navy Case No. 200421): SYSTEMS AND METHODS FOR INHIBITING BACKEND ACCES TO INTEGRATED CIRCUITS BY INTEGRATING PHOTON AND ELECTRON SENSING LATCH–UP CIRCUITS// Patent No. 10,209,342 (Navy Case No. 200479): ELECTROMAGNETIC RADIATION SOURCE LOCATING SYSTEM// and Patent No. 10,215,531 (Navy Case No. 200357): TESTING SYSTEM FOR OPTICAL AIMING SYSTEMS WITH LIGHT EMITTER SYSTEMS INCLUDING TESTING SYSTEM FOR THERMAL DRIFT AND RELATED METHODS.

Authority: 35 U.S.C. 207, 37 CFR part 404

Dated: March 1, 2019.

M.S. Werner,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2019–04016 Filed 3–5–19; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0093]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; E-Complaint Form (FERPA) and PPRA E-Complaint Form

AGENCY: Office of Management (OM), Department of Education (ED).

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 5, 2019.

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–0093. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9088, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Frank Miller, (202) 453–6631.

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: E-Complaint Form (FERPA) and PPRA E-Complaint Form.

OMB Control Number: 1880–0544.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 500.

Total Estimated Number of Annual Burden Hours: 500.

Abstract: The Family Policy Compliance Office (FPCO) reviews, investigates, and processes complaints of alleged violations of the Family Education Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA) filed by parents and eligible students. FPCO's authority to investigate, review, and process complaints extends to allegations of violations of FERPA by any recipient of United States Department of Education (Department) funds under a program administered by the Secretary (*e.g.,* schools, school districts, postsecondary institutions, state educational agencies, and other third parties that receive Department funds). This revision includes the addition of the PPRA Complaint form that would allow parents to file a complaint. The Department expects to receive more than 10 complaints under the PPRA requiring approval.

Dated: February 28, 2019.

Stephanie Valentine,

PRA Clearance Coordinator, Information Collection Clearance Program, Office of the Chief Information Officer.

[FR Doc. 2019–03972 Filed 3–5–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–178–000]

Alaska Gasline Development Corporation; Notice of Revised Schedule for Environmental Review of the Alaska LNG Project

This notice identifies the Federal Energy Regulatory Commission (Commission) staff's revised schedule for the completion of the environmental impact statement (EIS) for the Alaska Gasline Development Corporation's (AGDC) Alaska LNG Project. The previous notice of schedule, issued on August 31, 2018, identified November 8, 2019 as the final EIS issuance date. The previous notice stated that the forecasted schedule was based upon AGDC providing complete and timely responses to any data requests. In its partial data request responses filed in January and February 2019, AGDC states that it would provide the remainder of the responses in stages through July 2019. As a result, staff has revised the schedule for issuance of the EIS. The revised schedule for the EIS is based upon AGDC meeting its commitment to provide complete responses to outstanding data requests on the dates it has identified. Staff has revised the schedule for issuance of the final EIS based on an issuance of the draft EIS in June 2019.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—March 6, 2020
90-day Federal Authorization Decision Deadline—June 4, 2020

In an additional notice issued on August 31, 2018, the Commission identified February 6, 2020 as the anticipated final order issuance for the Alaska LNG Project. Based on the revised final EIS schedule, the Commission currently anticipates issuing a final order for the project no later than:

Issuance of Final Order—June 4, 2020

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–178), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: February 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03995 Filed 3–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR19–42–000.
Applicants: Arkansas Oklahoma Gas Corporation.
Description: Annual Report and Request for Continued Limited Waivers of Requirements to submit informational rate filing, et al. of Arkansas Oklahoma Gas Corporation.
Filed Date: 2/22/19.
Accession Number: 201902225228.
Comments/Protests Due: 5 p.m. ET 3/15/19.

Docket Number: PR19–27–001.
Applicants: DCP Guadalupe Pipeline, LLC.
Description: Tariff filing per 284.123(b),(e)+(g): Amendment to Remove Section 311 Firm Transportation to be effective 1/1/2019.
Filed Date: 2/25/19.
Accession Number: 201902255154.
Comments Due: 5 p.m. ET 3/18/19.
284.123(g) Protests Due: 5 p.m. ET 3/18/19.

Docket Number: PR19–43–000.
Applicants: EasTrans, LLC.
Description: Tariff filing per 284.123(b)(1)+(g): EasTrans SOC Rate Certification Filing to be effective 3/31/2019.
Filed Date: 2/27/19.
Accession Number: 201902275000.
Comments Due: 5 p.m. ET 3/20/19.
284.123(g) Protests Due: 5 p.m. ET 4/29/19.

Docket Numbers: RP19–668–001.
Applicants: WestGas InterState, Inc.
Description: Tariff Amendment: Amendment to be effective 2/20/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5139.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–698–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiatad Rate—Pal Citigroup Deal 951825 eff 3–2–19 to be effective 3/2/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5001.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–699–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—ConocoPhillips Company to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5002.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–700–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Macquarie Energy to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5003.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–701–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Nicor Gas Company to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5004.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–702–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement—Tenaska Marketing Ventures to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5005.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–703–000.
Applicants: Dauphin Island Gathering Partners.

Description: § 4(d) Rate Filing: Negotiated Rate Filing 2–27–2019 to be effective 3/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5006.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–704–000.
Applicants: Millennium Pipeline Company, LLC.
Description: § 4(d) Rate Filing: RAM 2019 to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5028.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–705–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: 2019 Summer Fuel Filing to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5046.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–706–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Bay State 510804 releases eff 3–1–19 to be effective 3/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5047.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–707–000.
Applicants: Northwest Pipeline LLC.
Description: § 4(d) Rate Filing: NWP 2019 South Seattle Incremental Rate Update Filing to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5053.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–708–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Boston 510807 releases eff 3–1–19 to be effective 3/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5055.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–709–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 022719 Negotiated Rates—Castleton Commodities Merchant Trading H–4010–89 to be effective 2/26/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5057.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–710–000.
Applicants: Golden Pass Pipeline LLC.
Description: Compliance filing Golden Pass Pipeline 2019 Annual Retainage Report to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5059.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–711–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: LA Storage 2019 Annual Adjustment of Fuel Retainage Percentage to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5073.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–712–000.
Applicants: High Island Offshore System, L.L.C.
Description: 2019 Annual Fuel Tracker Filing of High Island Offshore System, L.L.C. under RP19–712.
Filed Date: 2/27/19.
Accession Number: 20190227–5118.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–713–000.
Applicants: Golden Pass Pipeline LLC.
Description: Compliance filing Golden Pass Pipeline Operational Purchases and Sales Report 2018.
Filed Date: 2/27/19.
Accession Number: 20190227–5122.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–714–000.
Applicants: Sabine Pipe Line LLC.
Description: § 4(d) Rate Filing: Annual Fuel and Line Loss Reimbursement Filing to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5141.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–715–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: FL&U and EPCT Periodic Rate Adjustment 2019 to be effective 4/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5147.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–716–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Compliance filing Annual Report on Operational Transactions.
Filed Date: 2/27/19.
Accession Number: 20190227–5148.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–717–000.
Applicants: Columbia Gulf Transmission, LLC.
Description: Compliance filing Annual Report on Operational Purchases and Sales.
Filed Date: 2/27/19.
Accession Number: 20190227–5149.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–718–000.
Applicants: Crossroads Pipeline Company.
Description: Compliance filing Annual Report on Operational Transactions.
Filed Date: 2/27/19.
Accession Number: 20190227–5151.
Comments Due: 5 p.m. ET 3/11/19.

Docket Numbers: RP19–719–000.
Applicants: Hardy Storage Company, LLC.
Description: Compliance filing Annual Report on Operational Transactions.
Filed Date: 2/27/19.
Accession Number: 20190227–5152.
Comments Due: 5 p.m. ET 3/11/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03994 Filed 3–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–137–000]

Columbia Gas Transmission, LLC; Notice of Schedule for Environmental Review of the Buckeye Xpress Project

On March 26, 2018, Columbia Gas Transmission, LLC (Columbia) filed an application in Docket No. CP18–137–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed Project is known as the Buckeye Xpress Project (Project), and would increase the firm natural gas transportation capacity on Columbia's system by 275 million cubic feet per day.

On April 9, 2018, the Federal Energy Regulatory Commission (Commission or

FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

SCHEDULE FOR ENVIRONMENTAL REVIEW

Issuance of EA	April 8, 2019.
90-day Federal Authorization Decision Deadline.	July 7, 2019.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Columbia's Project would consist of replacing 60.8 miles of aging 20- to 24-inch-diameter pipeline with 66.2 miles of new 36-inch-diameter pipeline on Columbia's existing Line R–501, constructing 0.2 mile of 4-inch-diameter pipeline for the Wellston Lateral, installing four new mainline valves, and modifying existing compressor and regulator stations, all in Ohio and West Virginia. The project would also abandon 1.1 miles of 2- to 3-inch-diameter distribution pipeline. The new pipeline would be 5.4 miles longer than the existing pipeline to avoid steep land contours.

Background

On October 16, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Buckeye Xpress Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions* (NOI). The NOI was issued during the pre-filing review of the Project in Docket No. PF17–6 and was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Bureau of Indian Affairs, the Ohio Farm Bureau, the Ohio Environmental Protection Agency, the Sierra Club, the Center for Biological Diversity, the Ohio Environmental Council, the Ohio Valley Conservation Coalition, and four landowners. Major issues raised during scoping include alternatives, greenhouse gas emissions, the need for an environmental impact statement instead of an environmental assessment, upstream and downstream impacts, climate impacts, induced development, compliance with Wayne National Forest's 2006 Forest Plan, and that the project is not needed. All substantive comments will be addressed in the EA.

The U.S. Forest Service and the U.S. Army Corps of Engineers are cooperating agencies in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP18–137), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: February 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03997 Filed 3–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–89–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on February 19, 2019, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP19–89–000, a Prior Notice Request pursuant to sections 157.205 and 157.213(b) of the Commission's regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000, requesting authorization to construct and operate two new horizontal injection/withdrawal (I/W) storage wells and approximately 450 feet of associated 6-inch-diameter pipeline and appurtenances at Columbia's Pavonia Storage Field located in Ashland County, Ohio. Columbia states the proposed wells will provide approximately 17.4 MMcf/d of restored deliverability to the Columbia storage system and cost approximately $10 million, all as more fully described 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this prior notice should be directed to Linda Farquhar, Manager, Project Determinations & Regulatory Administration, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 700, Houston, Texas 77002, by phone at (832) 320–5685, by fax at (832) 320–6685, or by email at *linda_farquhar@transcanada.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 and will be notified of any 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 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 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: February 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03999 Filed 3–5–19; 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: ER17–1568–002.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Request for Deferral of Effective Date—Order No. 831 Compliance Filing to be effective N/A.
Filed Date: 2/28/19.
Accession Number: 20190228–5196.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER18–2342–004.
Applicants: GridLiance Heartland LLC.
Description: Compliance filing: GridLiance Heartland LLC—ER18–2342 Compliance Filing—Revised to be effective 2/27/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5129.
Comments Due: 5 p.m. ET 3/20/19.

Docket Numbers: ER19–231–002.
Applicants: Dynegy Oakland, LLC.
Description: Tariff Amendment: Amended Filing ? Request for Commission Action to be effective 1/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5128.
Comments Due: 5 p.m. ET 3/20/19.

Docket Numbers: ER19–404–001.
Applicants: Public Service Company of Colorado.
Description: Compliance filing: 2019–02–27 Transmission Template Update—Compliance ER19–404 to be effective 2/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5144.
Comments Due: 5 p.m. ET 3/20/19.

Docket Numbers: ER19–460–002.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Request for Deferral of Effective Date—Order No. 841 Compliance Filing to be effective N/A.
Filed Date: 2/28/19.
Accession Number: 20190228–5100.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1120–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Eratta re: Second Revised ISA No. 3604, Queue No. W4–009/X4–005/AD1–113 to be effective 1/26/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5247.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1136–000.
Applicants: City of Pasadena, California.
Description: § 205(d) Rate Filing: Transmission Revenue Requirement Revision to be effective 3/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5143.
Comments Due: 5 p.m. ET 3/20/19.

Docket Numbers: ER19–1137–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: East Texas Cooperatives Stated Rate Revisions to be effective 5/1/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5145.
Comments Due: 5 p.m. ET 3/20/19.

Docket Numbers: ER19–1138–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5291, Queue No. AC1–165 to be effective 1/28/2019.
Filed Date: 2/27/19.
Accession Number: 20190227–5150.
Comments Due: 5 p.m. ET 3/20/19.

Docket Numbers: ER19–1141–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5287, Queue No. AB2–100 to be effective 1/29/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5052.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1142–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–28_Termination of SA 3169 Crittenden Wind—EAI GIA (J662) to be effective 4/2/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5103.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1143–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–28_SA 3206 Dakota Range I & II–OTP MPFCA (J436 J437 Hankinson Ellendale) to be effective 1/7/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5107.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1144–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–28_SA 3241 Deuel Harvest Wind Energy–NSP–OTP FCA (J526) to be effective 2/20/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5112.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1145–000.
Applicants: PPL Electric Utilities Corporation, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PPL submits revisions to the OATT, Att. H–8G re: Tax Cuts and Jobs Act of 2017 to be effective 6/1/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5127.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1146–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: March 2019 Membership Filing to be effective 2/1/2019.

Filed Date: 2/28/19.
Accession Number: 20190228–5129.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1147–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: PG&E Coyote Valley BESS SGIA (SA 415) to be effective 4/30/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5173.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1148–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OA, Schedule 12 RE: Membership Terminations for Default to be effective 4/30/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5178.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1149–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Phase 2 Retail Rate Change to be effective 3/1/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5185.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1150–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5292; Queue No. AB2–174 to be effective 1/29/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5200.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1151–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to the OATT, Att. L to add Transource WV as a new Transmission Owner to be effective 4/30/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5202.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1152–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to the CTOA Att. A to add Transource WV as a new Transmission Owner to be effective 4/30/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5204.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1153–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–02–26 Inverter-Based Interconnection Requirements Amendment to be effective 4/30/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5210.
Comments Due: 5 p.m. ET 3/21/19.

Docket Numbers: ER19–1154–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits 3 ECSAs, Service Agreement Nos. 5138, 5197, and 5206 to be effective 4/29/2019.
Filed Date: 2/28/19.
Accession Number: 20190228–5226.
Comments Due: 5 p.m. ET 3/21/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–15–000.
Applicants: El Paso Electric Company.
Description: Supplement to January 30, 2019 Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of El Paso Electric Company.
Filed Date: 2/26/19.
Accession Number: 20190226–5198.
Comments Due: 5 p.m. ET 3/19/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03993 Filed 3–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–51–000]

Columbia Gas Transmission, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed VNG Suffolk No. 3 Meter Station Expansion Project 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 VNG Suffolk No. 3 Meter Station Expansion Project involving construction and operation of facilities by Columbia Gas Transmission, LLC (Columbia) in Suffolk, Virginia. 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 pm Eastern Time on March 29, 2019.

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 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 January 17, 2019, you

will need to file those comments in Docket No. CP19–51–000 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.

Columbia 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*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf*.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp*.

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 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 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 (CP19–51–000) 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

Columbia proposes to install new meter station facilities to replace its existing facilities at the VNG Suffolk No. 3 Meter Station (MS–831056) in the City of Suffolk, Virginia. The purpose of the project is to realign and increase the current Maximum Daily Delivery Obligations of natural gas from 3.73 million cubic feet per day to 12 million cubic feet per day between various points of delivery on the Columbia system in southeastern Virginia. The realignment would serve and meet the market demand on Columbia's system by providing an additional point of delivery and operational flexibility. Columbia would design the proposed facilities for a maximum allowable operating pressure of 600 pounds per square inch gauge, which is consistent with the supply pressure of Columbia's existing VM–107 and VM–108 pipeline system. Upon completion of the new meter station facilities, Columbia would abandon the existing meter station.

The general location of the project is shown in appendix 1.[1]

Land Requirements for Construction

The land requirements for the proposed project include the use of existing permanent right-of-way, new permanent right-of-way, additional temporary workspace, and permanent access roads. Columbia would disturb up to 3.1 acres of land for construction activities and up to 1.0 acres for facilities operation. Following construction, Columbia would restore the land affected during construction to preconstruction contours, except for permanent roads and aboveground facilities needed for operations.

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;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- 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 electronic format in the public record through eLibrary[2] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider 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

[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.

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 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] 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. 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 Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached Mailing List Update Form (appendix 2).

[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.

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.,* CP19–51). 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.

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: February 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03998 Filed 3–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–125]

Georgia Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by Georgia Power Company (licensee) to allow Greenbriar Sand Company, in Greene County, Georgia, the use of Wallace Dam Hydroelectric (FERC No. 2413) project lands and waters to conduct hydraulic sand mining. The project is located at about river mile 173 on the Oconee River in the Altamaha River Basin in Putnam, Morgan, Oconee, Oglethorpe, Greene and Hancock counties, Georgia. The proposed sand mine would be operated by Greenbriar Sand Company and sited in Greene County. The project occupies federal land administered by the U.S. Forest Service, but the proposed sand mine will not operate on Forest Service land.

An Environmental Assessment (EA) has been prepared as part of Commission staff's review of the proposal. In the application, Greenbriar Sand anticipates removing 1,336 acre feet of sand by dredging at an average depth of four feet within 334 acres of the project reservoir, over the life of the operation. The dredge would pump sand to a 14 acre processing area outside of the project area. This EA contains Commission staff's analysis of the probable environmental impacts of the proposed action and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is available for electronic review and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number (P–2413) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372 or for TTY, (202) 502–8659.

For further information, contact Michael Calloway at (202) 502–8041 or by email at *michael.calloway@ferc.gov.*

Dated: February 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–04001 Filed 3–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–494–000, CP17–495–000]

Pacific Connector Gas Pipeline LP; Jordan Cove Energy Project L.P.; Notice of Revised Schedule for the Environmental Review and the Final Order for the Jordan Cove Energy Project

This notice identifies the Federal Energy Regulatory Commission (Commission) staff's revised schedule for the completion of the environmental impact statement (EIS) for the Jordan Cove Energy Project. The first notice of schedule, issued on August 31, 2018, identified August 30, 2019 as the final EIS issuance date. The previous notice states, however, that the forecasted schedule assumes that the cooperating agencies will provide input on their areas of responsibility on a timely basis. Due to the funding lapse at certain

federal agencies between December 22, 2018 and January 25, 2019, an extension is required for the cooperating agencies to complete their respective input. Staff has revised the schedule for issuance of the final EIS, based on an issuance of the draft EIS in March 2019.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS—October 11, 2019

90-day Federal Authorization Decision Deadline—January 9, 2020

In an additional notice issued on August 31, 2018, the Commission identified November 29, 2019 as the anticipated final order issuance for the Jordon Cove Energy Project. Based on the revised final EIS schedule, the Commission currently anticipates issuing a final order for the project no later than:

Issuance of Final Order—January 9, 2020

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–494 and CP17–495), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Dated: February 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–03996 Filed 3–5–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–1128–000]

Rush Springs Energy Storage, 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 of Rush Springs Energy Storage, 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 March 20, 2019.

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 above. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 28, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–04000 Filed 3–5–19; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1223]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before April 5, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1223.

Title: Payment Instructions from the Eligible Entity Seeking Reimbursement from the TV Broadcaster Relocation Fund.

Form Number: FCC Form 1876.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government.

Number of Respondents and Responses: 2,500 respondents; 2,500 responses.

Estimated Time per Response: 5 hours.

Frequency of Response: One-time reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96 (Spectrum Act) § 6403(b)(4)(A) and Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Public Law 115–141, Div. P, (RAY BAUM'S Act) § 1452.

Total Annual Burden: 12,500 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: The information collection includes information identifying bank accounts and providing account and routing numbers to access those accounts. FCC considers that information to be records not routinely available for public inspection under 47 CFR 0.457, and exempt from disclosure under FOIA exemption 4 (5 U.S.C. 552(b)(4)).

Needs and Uses: The Commission is requesting Office of Management and Budget (OMB) approval for revisions to, and a three-year extension of, this information collection as described below.

- There will be 2,500 respondents in FY19, because reimbursements from the Broadcaster Relocation Fund has been expanded to include additional types of eligible entities: TV translator stations, low power TV stations, and FM radio stations. The additional eligible entities will use the form to provide payment instructions to the government.
- A few data elements have been added to adapt the form to the additional types of eligible entities, which do not materially affect respondent burden.
- Instructions have been revised based on the first year's experience with the form, to reduce error rates.

The Spectrum Act requires the Commission to reimburse broadcast television licensees for costs ''reasonably incurred'' in relocating to new channels assigned in the repacking process and Multichannel Video Programming Distributors (MVPDs) for costs reasonably incurred in order to continue to carry the signals of stations relocating to new channels as a result of the repacking process or a winning reverse auction bid.[1] RAY BAUM'S Act expands the program to include reimbursement to TV translator stations, low power TV stations, and FM radio stations.[2]

The information collection for which we are requesting approval is necessary for eligible entities to instruct the Commission on how to pay the approved amounts the entities requested, and for the entities to make certifications that reduce the risk of waste, fraud, abuse and improper payments.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–04038 Filed 3–5–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0951]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to

[1] Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96 (Spectrum Act) § 6403(b)(4)(A)(i), (ii).

[2] Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Public Law 115–141, Div. P, (RAY BAUM'S Act) § 1452.

further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 6, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0951.

Title: Sections 1.204(b) Note and 1.1206(a) Note 1, Service of Petitions for Preemption.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Individuals or households; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents and Responses: 125 respondents; 125 responses.

Estimated Time per Response: 0.28 hours (17 minutes).

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

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, and 303.

Total Annual Burden: 35 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: Yes.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe is confidential, respondents may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

The FCC has a system of records, FCC/OGC–5, ''Pending Civil Cases,'' to cover the collection, purpose(s), storage, safeguards, and disposal of the personally identifiable information (PII) that individuals may submit with their petitions for preemption that they file with the Commission.

Needs and Uses: These provisions supplement the procedures for filing petitions seeking Commission preemption of state and local government regulation of telecommunications services. They require that such petitions, whether in the form of a petition for rulemaking or a petition for declaratory ruling, be served on all state and local governments. The actions for which are cited as a basis for requesting preemption. Thus, in accordance with these provisions, persons seeking preemption must serve their petitions not only on the state or local governments whose authority would be preempted, but also on other state or local governments whose actions are cited in the petition.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–04042 Filed 3–5–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Disclosure Requirements of Regulation Y Associated with Minimum Requirements for Appraisal Management Companies (FR HY–5; OMB No. 7100–0370).

DATES: Comments must be submitted on or before May 6, 2019.

ADDRESSES: You may submit comments, identified by *FR HY–5* by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove sensitive personally identifiable information at the commenter's request. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue 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.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to

solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Information Collection

Report title: Disclosure Requirements of Regulation Y Associated with Minimum Requirements for Appraisal Management Companies.

Agency form number: FR HY–5.

OMB control number: 7100–0370.

Frequency: Event generated.

Respondents: Federally regulated and state regulated Appraisal Management Companies (AMCs) and U.S. states.

Estimated number of respondents: 3,136.

Estimated average hours per response: Section 225.192, 0.08 hours; Section 225.193, 41 hours; Section 225.195, 1 hour; Section 225.196, 1 hour.

Estimated annual burden hours: Section 225.192, 237 hours; Section 225.193, 3214 hours; Section 225.195, 11 hours; Section 225.196, 51 hours.

General description of report: The Board's disclosure requirements associated with minimum requirements for AMCs are found in sections 225.192, 225.193, 225.195, and 225.196 of the Board's Regulation Y.

Section 225.192(b), Written Notice of Appraiser Removal from Network or Panel, provides that an appraiser in an AMC's network or panel is deemed to remain a part of the AMC's appraiser panel until the AMC (1) sends a written notice to the appraiser removing the appraiser with an explanation or (2) receives a written notice from the appraiser asking to be removed or a notice of the death or incapacity of the appraiser.

Participating states must have an AMC registration and supervision program. Pursuant to section 225.193(a), each participating state must establish and maintain within its appraiser certifying and licensing agency a registration and supervision program with the legal authority and mechanisms to, among other things, review and approve or deny an AMC's application for initial registration; require AMCs to submit reports, information, and documents; and report violations of appraisal-related laws, regulations, or orders, and disciplinary and enforcement actions to the Appraisal Subcommittee.

Section 225.193(b) requires each participating state to require non-federally regulated AMCs to register with the state appraiser certifying and licensing agency.

Section 225.195(c) requires a federally regulated AMC to report to the state or states in which it operates the information required to be submitted by the state pursuant to the Appraisal Subcommittee's policies regarding the determination of the AMC National Registry fee, including information relating to certain ownership limitations in the regulation.

Section 225.196 requires that each participating state submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the state.

There are no required reporting forms associated with these information collections. Compliance with the information collections is mandatory for AMCs and voluntary for states. No other federal law mandates these disclosure requirements. This information is not available from any other source.

Legal authorization and confidentiality: The FR HY–5 is authorized pursuant to section 1124(a) of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), which provides that the Agencies ''shall jointly, by rule, establish minimum requirements to be applied by a State in the registration of [AMCs].'' [1] Section 1124(e) of the FIRREA requires that the Agencies ''jointly promulgate regulations for the reporting of the activities of [AMCs] to the [Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC)] in determining the payment of the annual registry fee.'' [2] In addition, pursuant to section 1109(a) of the FIRREA, each participating state with an appraiser certifying and licensing agency must transmit to the ASC ''[1] a roster listing individuals who have received a State certification or license . . . [2] reports on the issuance and renewal of licenses and certifications, sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the [ASC] . . . [3] including investigations initiated and disciplinary actions taken.'' [3]

Section 1124 of the FIRREA does not compel a state to establish an AMC registration and supervision program, nor is a penalty imposed on a state that does not establish a regulatory structure for AMCs.[4] Therefore, the FR HY–5 is voluntary for states. The FR HY–5 is mandatory for AMCs.

Because the Federal Reserve will not collect this information, confidentiality issues would normally not arise. Because the records are retained at banking organizations, the Freedom of Information Act (FOIA) will only be implicated if the Board's examiners retain a copy of the record as part of an examination or supervision of a banking institution. In that case, the records would be exempt from disclosure under exemption 8 of the FOIA, which protects examination materials from disclosure (5 U.S.C. 552(b)(8)). Exemption 4 of the FOIA, which protects confidential financial information, and exemption 6 of the FOIA, which protects non-public personal information, may also be applicable (5 U.S.C. 552(b)(4) and (b)(6)).

Consultation outside the agency: The Board, the FDIC, the OCC, and the FHFA collaborated in reassessing and confirming their burden estimates and methodologies for this submission and discussed potential improvements and evaluations for future submissions.

[1] 12 U.S.C. 3353(a).

[2] 12 U.S.C. 3353(e).

[3] 12 U.S.C. 3338(a)(1)–(3).

[4] 80 FR 32658 (June 9, 2015).

Board of Governors of the Federal Reserve System, March 1, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–04068 Filed 3–5–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-19–19MM; Docket No. CDC–2019–0006]

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 Study on Disparities in Distress Screening among Lung and Ovarian Cancer Survivors. The goal of this study is to understand the processes, facilitators, and barriers related to implementing distress screening in 50 healthcare facilities.

DATES: CDC must receive written comments on or before May 6, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0006 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

Study on Disparities in Distress Screening Among Lung and Ovarian Cancer—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

Within the cancer treatment community, interest in the psychosocial impacts of cancer diagnosis and treatment is increasing. These psychosocial impacts are wide ranging and include not only anxiety related to the illness and treatment side effects such as pain, fatigue and cognition, but also stress related to nonmedical issues such as family relationships, financial hardship, social stressors (*e.g.* transportation), and stigmatization. There is growing evidence that addressing the psychosocial stresses of cancer survivors increases both their longevity and quality of life.

The 2016 Institute of Medicine (currently, National Academies of Sciences, Engineering, and Medicine) ovarian cancer report, funded by CDC, calls for increased study of the psychosocial needs of ovarian cancer survivors, recognizing the high rates of depression, anxiety, and distress. Up to 60% of lung cancer survivors also experience high levels of distress. Both ovarian and lung cancer patients have relatively low 5-year survival rates (45% and 17%, respectively). Therefore, CDC believes that it is imperative to develop a greater understanding about the types of psychosocial services they receive during their course of treatment and follow-up care.

CDC proposes a new information collection to examine the extent to which disparities exist in distress screening and follow-up among cancer treatment facilities and programs across the country. The study will include 50 healthcare facilities. From these facilities, we will request electronic health records (EHR) of 2,000 lung and ovarian cancer survivors. Data elements collected will include patient demographic information, cancer diagnosis and treatment, experience with distress screening and follow-up care, and medical service utilization. Patient names, addresses, birth dates and Social Security Numbers will not be collected.

Staff from twelve of the 50 participating healthcare facilities will be invited to participate in an interview and focus group to provide contextual understanding about facilitators and barriers to distress screening and follow-up processes. This is a one-time data collection. Results of this study will provide CDC's National Comprehensive Cancer Control Program (NCCCP) with information to assist with the development of information, resources, technical assistance, and future evidence-based interventions to improve the quality of life of lung and ovarian cancer survivors. Summative findings will be used to evaluate the need to help with policy, systems, or environmental changes that may enhance the landscape of quality of life services for cancer survivors in communities at large. OMB approval is

requested for one year. The total estimated annualized burden hours are 512.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Quantitative:					
Healthcare Professionals (POC)	Survey	50	1	20/60	17
IT Staff	EMR data	50	1	7.5	375
Qualitative:					
Healthcare Professionals	Key Informant Interview	12	1	1	12
	Focus Groups	72	1	1.5	108
Total					512

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–04011 Filed 3–5–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–19–0980; Docket No. CDC–2019–0011]

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 National Environmental Assessment Reporting System (NEARS) to collect data from foodborne illness outbreak environmental assessments routinely conducted by local, state, territorial, or tribal food safety programs during outbreak investigations.

DATES: CDC must receive written comments on or before May 6, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0011 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

National Environmental Assessment Reporting System (NEARS) (OMB Control No. 0920–0980, Exp. 8/31/2019)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval for the National Environmental Assessment Reporting System (NEARS) (0920–0980) to collect data from foodborne illness outbreak environmental assessments routinely conducted by local, state, territorial, or tribal food safety programs during outbreak investigations. Prior to the development of NEARS, environmental assessment data were not collected at the national level. The data reported through this surveillance system provides timely information on the causes of outbreaks, including environmental factors associated with

outbreaks, and are essential to environmental public health regulators' efforts to respond more effectively to outbreaks and prevent future, similar outbreaks. This surveillance system was specifically designed to link to CDC's National Outbreak Reporting System (NORS), a disease (*e.g.* enteric diseases transmitted by food) outbreak surveillance system. NEARS was developed by the Environmental Health Specialists Network (EHS–Net), a collaborative network of CDC, the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and nine state food safety programs (California, Connecticut, Georgia, Iowa, New York, Minnesota, Oregon, Rhode Island, and Tennessee). The network consists of environmental health specialists (EHSs), epidemiologists, and laboratorians. EHS-Net developed a standardized protocol for identifying, reporting, and analyzing data relevant to foodborne illness outbreak environmental assessments.

While conducting environmental assessments during outbreak investigations is routine for food safety program officials, reporting information from the environmental assessments to CDC is not routine. Local, state, federal, territorial, and tribal food safety programs are the primary respondents for this data collection. One official from each participating program will report environmental assessment data on outbreaks. These programs are typically located in public health or agriculture agencies. In the U.S., there are approximately 3,000 such agencies. Currently, 31 state and local health departments are registered to report data on outbreaks to NEARS. Based on our experience over the past five years, we expect up to 10 additional local and state public health departments to register to report outbreak data to NEARS over the next three years. It is not possible to determine exactly how many outbreaks will occur in the future, nor where they will occur. Based on past trends, it is likely that up to 300 foodborne illness outbreaks may be reported annually to NEARS from up to 41 entities for the duration of the next PRA clearance. Only programs in the jurisdictions in which these outbreaks occur would report to NEARS. Thus, not every program of the approximate 3,000 programs will respond every year. Assuming each outbreak occurs in a different jurisdiction, there will be one respondent per outbreak.

The activities associated with NEARS that require a burden estimate consist of training, observing, data recording, and data reporting events. The first activity is the training for the food safety program personnel participating in NEARS. These staff will be encouraged to attend a Skype Meeting (*i.e.,* webinar) training session conducted by CDC staff. Training burden is based on the maximum expected participation from the reporting entities which could be up to 10 additional local and state health departments. We estimate the burden of this training to be a maximum of two hours. Respondents will only be required to take this training one time. Assuming a maximum participation of up to 10 programs and about five staff being trained at each participating program, the total estimated burden associated with this training is 100 hours.

Food safety program personnel participating in NEARS will also be encouraged to complete CDC's Environmental Assessment Training Series (EATS). This eCourse provides training to staff on how to use a systems approach in foodborne illness outbreak environmental assessments. We estimate the burden of this training to be a maximum of 10 hours. Respondents will only have to take this training one time. Assuming a maximum participation of up to 10 programs and approximately five staff being trained at each program, the estimated burden associated with this training is 500 hours.

Data reporting activities for NEARS will be done once for each establishment involved in the outbreak. Information collection activities for NEARS consist of the following: NEARS data reporting and NEARS manager interview. For each outbreak, the respondent (one official from each participating program) will spend around 30 minutes recording environmental assessment data on pen and paper. Assuming a maximum of 300 outbreaks, the estimated annual burden is 150 hours for recording observations.

The manager interview will be conducted at each establishment associated with an outbreak and data is initially recorded using pen and paper. The respondents for this activity are the retail food managers of the outbreak establishments. Most outbreaks are associated with only one establishment; however, some are associated with multiple establishments. We estimate that a maximum of four manager interviews will be conducted per outbreak. Each interview and data reporting will take about 20 minutes. Assuming a maximum of 300 outbreaks, the estimated annual burden is 400 hours. Web-based data entry for both data recording and the manager interview will be combined. Data entry into the NEARS system is expected to take approximately 40 minutes for the combined activities, for a total of 200 burden hours. The total estimated annual burden for this information collection is 1,350 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Food safety program personnel	NEARS Food Safety Program Training.	50	1	2	100
	NEARS e-Learning (screenshots)	50	1	10	500
	NEARS Data Recording (paper form).	300	1	30/60	150
	NEARS Data reporting and manager's interview (web entry).	300	1	40/60	200
Retail food personnel	NEARS Manager Interview	1200	1	20/60	400
Total					1,350

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–04012 Filed 3–5–19; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1398]

Mitigation Strategies To Protect Food Against Intentional Adulteration; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a revised draft guidance for industry entitled ''Mitigation Strategies to Protect Food Against Intentional Adulteration: Guidance for Industry.'' The revised draft guidance supersedes the version of the intentional adulteration draft guidance that we announced on June 20, 2018. This draft guidance document, when finalized, will help food facilities that manufacture, process, pack, or hold food, and that are required to register under the Federal Food, Drug, and Cosmetic Act (FD&C Act) comply with the requirements of our regulation entitled ''Mitigation Strategies to Protect Food Against Intentional Adulteration.''

DATES: Submit either electronic or written comments on the draft guidance by July 5, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1398 for ''Mitigation Strategies to Protect Food Against Intentional Adulteration: Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ryan Newkirk, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–3712, *ryan.newkirk@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public health by helping to ensure the safety and security of the food supply. FSMA enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur.

FSMA added to the FD&C Act several new sections that reference intentional adulteration. For example, section 418 of the FD&C Act (21 U.S.C. 350g) addresses intentional adulteration in the context of facilities that manufacture, process, pack, or hold food, and that are required to register under section 415 (21 U.S.C. 350d). Section 420 of the FD&C Act (21 U.S.C. 350i) addresses intentional adulteration in the context of high-risk foods and exempts farms except for farms that produce milk.

We are announcing the availability of a revised draft guidance for industry entitled ''Mitigation Strategies to Protect Food Against Intentional Adulteration: Guidance for Industry.'' This revised draft guidance supersedes the version of

the intentional adulteration draft guidance that we announced on June 20, 2018 (83 FR 28651). This multi-chapter draft guidance for industry is intended to help food facilities required to comply develop and implement some of the components of a food defense plan, including conducting vulnerability assessments, and meet other requirements under 21 CFR part 121. We are announcing the availability of the following chapters:

- Introduction
- Chapter One—The Food Defense Plan
- Chapter Two—Vulnerability Assessment to Identify Significant Vulnerabilities and Actionable Process Steps
- Chapter Three—Mitigation Strategies for Actionable Process Steps
- Chapter Four—Mitigation Strategies Management Components: Food Defense Monitoring
- Chapter Eight—Education, Training, or Experience
- Appendix 1—Food Defense Plan Worksheets
- Appendix 4— Vulnerability Assessment Examples

We have indicated new content, mostly located in Chapter Two, Chapter Eight, Appendix 1 and Appendix 4, with brackets stating, ''[New March 2019] or [Updated March 2019].'' We have also made minor changes to previously published sections for clarity and consistency with the new content. We intend to announce the availability for public comment of the final portion of the draft guidance once it is complete.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on food defense measures against intentional adulteration for the regulation ''Mitigation Strategies to Protect Food Against Intentional Adulteration.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 507 have been approved under OMB control number 0910–0789.

IV. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: February 28, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–04060 Filed 3–5–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2017–0079; FF09A30000–190FXIA16710900000]

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); Eighteenth Regular Meeting; Provisional Agenda; Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The United States, as a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), will attend the eighteenth regular meeting of the Conference of the Parties to CITES (CoP18) in Colombo, Sri Lanka, May 23 to June 3, 2019. Currently, the United States is developing its negotiating positions on proposed resolutions, decisions, and amendments to the CITES Appendices (species proposals), as well as other agenda items that have been submitted by other Parties, the permanent CITES committees, and the CITES Secretariat for consideration at CoP18. With this notice we announce the provisional agenda for CoP18, solicit your comments on the items on the provisional agenda, and announce a public meeting to discuss the items on the provisional agenda.

DATES: *Public meeting:* The public meeting will be held on March 13, 2019, at 1 p.m.

Comment submission: In developing the U.S. negotiating positions on species proposals and proposed resolutions, decisions, and other agenda items submitted by other Parties, the permanent CITES committees, and the CITES Secretariat for consideration at CoP18, we will consider written information and comments you submit if we receive them by April 22, 2019.

ADDRESSES: *Public meeting:* The public meeting will be held in the Sidney Yates Auditorium at the Main Interior Building at 18th and C Streets NW, Washington, DC. Directions to the building are available on our website at *https://www.fws.gov/international/cites/cop18/index.html.* For more information about the meeting, see ''Announcement of Public Meeting'' under **SUPPLEMENTARY INFORMATION.**

Comment submission: You may submit comments pertaining to items on the provisional agenda for discussion at CoP18 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2017–0079 (the docket number for this notice).
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–IA–2017–0079; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS BPHC; Falls Church, VA 22041.

Comments and materials we receive, as well as supporting documentation, will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at: U.S. Fish and Wildlife Service Headquarters, Division of Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: For information pertaining to resolutions, decisions, and other agenda items, contact: Pamela Scruggs, Chief, Division of Management Authority; telephone 703–358–2095; facsimile 703–358–2298. For information pertaining to species proposals, contact: Rosemarie Gnam, Chief, Division of Scientific Authority; telephone 703–358–1708; fascsimile 703–358–2276.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may become threatened with extinction. These

species are listed in Appendices to CITES, which are available on the CITES Secretariat's website at *http://www.cites.org/eng/app/index.php.*

Currently 182 countries and the European Union have ratified, accepted, approved, or acceded to CITES; these 183 entities are known as Parties. The Convention calls for regular biennial meetings of the Conference of the Parties, unless the Conference of the Parties decides otherwise. At these meetings, the Parties review the implementation of CITES, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the lists of species in Appendices I and II, consider reports presented by the Secretariat and the permanent CITES committees (Standing, Animals, and Plants Committees), and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and other agenda items for consideration by all of the Parties at the meetings.

This is our fourth in a series of **Federal Register** notices that, together with the announced public meeting, provides you with an opportunity to participate in the development of U.S. negotiating positions for the eighteenth regular meeting of the Conference of the Parties to CITES (CoP18). We published our first CoP18-related **Federal Register** notice on January 23, 2018 (83 FR 3179), in which we requested information and recommendations on species proposals for the United States to consider submitting for consideration at CoP18. In that notice, we also described the U.S. approach to preparations for CoP18. We published our second such **Federal Register** notice on March 12, 2018 (83 FR 10736), in which we requested information and recommendations on proposed resolutions, decisions, and other agenda items for the United States to consider submitting for consideration at CoP18, and provided preliminary information on how to request approved observer status for non-governmental organizations that wish to attend the meeting. In our third CoP18-related **Federal Register** notice, published on October 1, 2018 (83 FR 49421), we requested public comments and information on species proposals that the United States was considering submitting for consideration at CoP18. We also requested public comments and information on proposed resolutions, decisions, and other agenda items that the United States was considering submitting for consideration at CoP18, and provided more information on how to request approved observer status for non-governmental organizations that wish to attend the meeting.

The three prior CoP18 **Federal Register** notices are in the docket (FWS–HQ–IA–2017–0079) at *http://www.regulations.gov.* A link to these notices, along with information on U.S. preparations for CoP18, can also be found at *https://www.fws.gov/international/cites/cop18/index.html.* For further information on proposed resolutions, decisions, and other agenda items, contact the U.S. Fish and Wildlife Service, Division of Management Authority, 5275 Leesburg Pike, MS–IA, Falls Church, VA 22041; and for information on species proposals, contact the Division of Scientific Authority, 5275 Leesburg Pike, MS–IA, Falls Church, VA 22041. Our regulations governing this public process are found in title 50 of the Code of Federal Regulations at 50 CFR 23.87.

On December 21, 2018, the United States submitted to the CITES Secretariat, for consideration at CoP18, its species proposals, proposed resolutions, proposed decisions, and other agenda items. These documents are available on our website at *https://www.fws.gov/international/cites/cop18/index.html.*

Announcement of Provisional Agenda for CoP18

The provisional agenda for CoP18 is currently available on the CITES Secretariat's website at *https://cites.org/eng/cop/18/doc/index.php.* The working documents associated with the items on the provisional agenda, including proposed resolutions, proposed decisions, and discussion documents, are also available on the Secretariat's website. To view the working document associated with a particular agenda item, access the provisional agenda at the above website, locate the particular agenda item, and click on the document link for that agenda item in the column entitled ''Document.'' The species proposals that will be considered at CoP18 are also available on the Secretariat's website. Proposals for amendment of Appendices I and II can be accessed at *https://cites.org/eng/cop/18/prop/index.php.* We look forward to receiving your comments on the items on the provisional agenda.

Announcement of Public Meeting

We will hold a public meeting to discuss the items on the provisional agenda for CoP18. The public meeting will be held on the date specified in **DATES** and at the address specified in **ADDRESSES**. Directions to the building are available on our website at *https://www.fws.gov/international/cites/cop18/index.html.* Please note that the Sidney Yates Auditorium is wheelchair accessible and all persons planning to attend the meeting will be required to present photo identification when entering the building. The U.S. Fish and Wildlife Service is committed to providing access to this meeting for all participants. Please direct all requests for sign language interpreting services, close captioning, or other accommodation needs to Frank Kohn, 703–358–2408 (voice), *frank_kohn@fws.gov,* TTY 800–877–8339 by close of business March 1, 2019. For those who cannot attend the public meeting but are interested in watching via live stream please go to our website: *https://www.fws.gov/international/cites/cop18/index.html,* and look for the link to the live feed.

Public Comments

We will not consider comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Future Actions

Through an additional notice and website posting in advance of CoP18, we will inform you about tentative U.S. negotiating positions on species proposals, proposed resolutions, proposed decisions, and agenda items that were submitted by other Parties, the permanent CITES committees, and the CITES Secretariat for consideration at CoP18.

Author

The primary author of this notice is Frank B. Kohn, Division of Management Authority; under the authority of the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 27, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–04132 Filed 3–4–19; 4:15 pm]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB0100.L19900000.EX0000.211B.19X MO#4500130127]

Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Mount Hope Project, Eureka County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Mount Lewis Field Office, Battle Mountain, Nevada, has prepared a Draft Supplemental Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the public comment period to solicit public comments on the Draft Supplemental EIS. The Mount Hope Project (Project) is owned by Eureka Moly, LLC (EML) and is located in central Nevada, approximately 23 miles northwest of Eureka, Nevada.

The BLM has prepared this Draft Supplemental EIS as a response to the United States Court of Appeals for the Ninth Circuit's remand decision for further action on issues identified in its December 28, 2016 decision.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Draft Supplemental EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: You may submit comments related to the Mount Hope Project by any of the following methods:

- *Email: blm_nv_bmdo_eurekamoly_seis@blm.gov.*
- *Fax:* 775–635–4034.
- *Mail:* 50 Bastian Road, Battle Mountain, NV 89820.

Documents pertinent to this proposal may be downloaded from *https://go.usa.gov/xUhRK* or examined at the Mount Lewis Field Office.

FOR FURTHER INFORMATION CONTACT: Kevin Hurrell—Project Manager, telephone 775–635–4000; address 50 Bastian Road, Battle Mountain, Nevada 89820. Contact Kevin Hurrell to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM has prepared this Draft Supplemental EIS as a response to the United States Court of Appeals for the Ninth Circuit's remand decision for further action on issues identified in its December 28, 2016 decision. The Draft Supplemental EIS includes the following: (1) An explanation of the usage of baseline values of zero for several air pollutants; (2) a quantitative cumulative air quality impacts analysis; and (3) a clarification of the status of certain springs and water holes under Executive Order Public Water Reserve No. 107.

The Bureau of Land Management Mount Lewis Field Office authorized the Mount Hope Project Record of Decision, Plan of Operations Approval, and Approval of Issuance of Right-of-Way Grants on November 16, 2012. The Project consists of a proposed molybdenum mine including a power transmission line, a water well field, and all associated facilities to be located on public land administered by the BLM Mount Lewis Field Office and on private land controlled by EML. The Project will utilize an open pit mining method and will process the mined ore using a flotation and roasting process. When completed, a total of 8,618 acres of disturbance would occur within the 23,065-acre Project area. Of the 8,618 acres, 8,359 is public land and 259 is private land.

The BLM has consulted, and continues to consult, with Native American tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the Project are invited to participate in the comment process.

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

Authority: 40 CFR 1501.7

Jon D. Sherve,
Field Manager, Mount Lewis Field Office.

[FR Doc. 2019–04059 Filed 3–5–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW00000.L51100000.GN0000.LVEMF1805980.18X MO#4500131512]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed POA11 Project—Modification to the Plan of Operations for the Coeur Rochester and Packard Mines, Pershing County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Humboldt River Field Office, Winnemucca, Nevada intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts of approving an expansion to the existing Coeur Rochester and Packard silver mining operation in Pershing County, Nevada. This notice announces the beginning of the scoping process to solicit public comments and identify issues to be considered in the EIS, and serves to initiate public consultation, as required under the National Historic Preservation Act.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues to be considered in the EIS may be submitted in writing until April 5, 2019. The dates and locations of two scoping meetings, one in Lovelock and the other in Winnemucca, Nevada, will be announced at least 15 days in advance through local media, newspapers and the BLM website at: *https://www.blm.gov/office/winnemucca-district-office.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Coeur Rochester and

Packard Mines POA11 Project by any of the following methods:

- *Website: https://go.usa.gov/xPdjC.*
- *Email: wfoweb@blm.gov.* Include ''Coeur POA11 EIS Comments'' in the subject line.
- *Fax:* (775) 623–1503.
- *Mail:* BLM Winnemucca District, Humboldt River Field Office, 5100 East Winnemucca Boulevard, Winnemucca, NV 89445.

Documents pertinent to this proposal may be examined at the Humboldt River Field Office.

FOR FURTHER INFORMATION CONTACT: Kathleen Rehberg, telephone 775–623–1500; address BLM Winnemucca District, Humboldt River Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445; email *krehberg@blm.gov.* Contact Ms. Rehberg to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant, Coeur Rochester Inc. has requested to modify its approved Plan of Operations at the Rochester and Packard mines to expand its mining operations. The mine is located approximately 26 miles northeast of Lovelock, Nevada. The mine is currently authorized to disturb up to 2203.1 acres (approximately 164.6 acres of private land and 2038.5 acres of public land), as permitted under a series of Environmental Impacts Statements and Environmental Assessments beginning with the initial Plan of Operations in 1986 through the latest EIS in 2015. Coeur Rochester Inc, is proposing to expand and optimize their current operations. Their proposed action would expand mining in both of their current pits (the Rochester and Packard pits) and move, relocate, or expand: Heap leach pads, waste rock dumps, haul roads, access road, water pipeline, and processing facilities. The proposal would increase disturbance by 2,815.4 acres (435.2 acres on private land and 2380.2 acres on public land).

Mining of the Rochester Pit would extend below groundwater and require dewatering, resulting in a permanent pit lake after closure. Additional potentially acid generating material would be excavated and would be processed as ore or stored according to their Waste Rock Storage Plan. The plan would also necessitate an upgrade in power distribution lines and a substation. With the proposed expansion, mine life would be extended to 2033, and would be followed by mine closure and reclamation.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: (a) Dewatering during mining and the formation of a pit lake after completion of mining activities; (b) Production of acid forming rock and to waters of the state and public lands; (c) Potential impacts to visual resources; (d) Potential impacts to wildlife habitat; and (e) Potential impacts to the Rochester Historic Mining district.

The BLM will use the procedures for public involvement under the NEPA process to also satisfy the public involvement requirements under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and the National Historic Preservation Act.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175, Secretarial Order 3317, and other policies. Tribal concerns, including but not limited to impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed Coeur Rochester and Packard Mines Plan of Operations—POA11 Project are invited to participate in the scoping process and, if eligible, may request or be asked by the BLM to participate in the development of the environmental analysis as a cooperating agency.

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

Authority: 40 CFR 1501.7

David Kampwerth,

Field Manager, Humboldt River Field Office.

[FR Doc. 2019–04058 Filed 3–5–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM 952800; 3720–58]

Legal Description of the Limestone Hills Training Area Withdrawal, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of legal description.

SUMMARY: This notice provides official publication of the legal description for the Limestone Hills Training Area (LHTA) Withdrawal and notification of the availability of the map dated May 11, 2017.

DATES: The lands in the legal description contained in this notice were withdrawn on December 26, 2013.

FOR FURTHER INFORMATION CONTACT: Mike Insko, Realty Specialist, telephone: 406–533–7600; email: *minsko@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for Mr. Insko. The FRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Section 2912(a)(1) of Public Law 113–66, enacted December 26, 2013, and known as the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 (FY2014 NDAA), withdrew lands in the LHTA for military purposes based on a map dated April 10, 2013. The FY2014 NDAA required the Bureau of Land Management (BLM) to publish the official legal description of the lands in the **Federal Register** as soon as practicable after enactment of the legislation. The BLM could not use the April 10, 2013, map to create a legal description without an on-the-ground cadastral survey, and agreed to correct the map. Section 2850 of Public Law 115–232, enacted August 13, 2018, and known as the NDAA for FY 2019 (FY2019 NDAA), references an updated map dated May 11, 2017, as a technical correction and the basis for the legal description.

The legal description of the withdrawal for the LHTA is as follows:

Principal Meridian, Montana

T. 5 N., R. 1 E.,

Sec. 4, lots 1 and 2.
T. 6 N., R. 1 E.,
Sec. 2, lots 2, 3, and 4, W1/2SW1/4NE1/4, S1/2NW1/4, N1/2SW1/4, SE1/4SW1/4, SW1/4SE1/4, and SW1/4SE1/4SE1/4;
Sec. 3, lots 1 thru 4, S1/2NE1/4, S1/2NW1/4, and S1/2;
Sec. 4, lots 1 thru 4, S1/2NE1/4, S1/2NW1/4, and S1/2;
Sec. 5, lots 1 and 2, S1/2NE1/4, and SE1/4;
Sec. 8, E1/2 and E1/2SW1/4;
Secs. 9 and 10;
Sec. 11, E1/2, E1/2NW1/4, E1/2SW1/4, and SW1/4SW1/4;
Sec. 12, lots 2, 3, and 4, W1/2NE1/4, W1/2, and W1/2SE1/4;
Sec. 13, lots 1 thru 4, W1/2NE1/4, W1/2, and W1/2SE1/4;
Secs. 14 and 15;
Sec. 17, E1/2, E1/2NW1/4, and E1/2SW1/4;
Sec. 20, E1/2, E1/2NW1/4, and E1/2SW1/4;
Sec. 21;
Sec. 22, lots 3 and 4, W1/2NW1/4, and S1/2SW1/4;
Sec. 23;
Sec. 24, lots 1 thru 4, W1/2NE1/4, W1/2, and W1/2SE1/4;
Sec. 25, lots 1 thru 4, W1/2NE1/4, W1/2, and W1/2SE1/4;
Sec. 26;
Sec. 27, lots 1 thru 9, NE1/4NE1/4, S1/2NE1/4, and SE1/4;
Sec. 28, lots 1 thru 4, N1/2NE1/4, W1/2, and W1/2SE1/4;
Sec. 29, NE1/4, E1/2NW1/4, NE1/4SW1/4, N1/2SE1/4, and SW1/4SE1/4;
Sec. 33, E1/2;
Sec. 34, lots 1 thru 8, NE1/4, N1/2NW1/4, and N1/2SE1/4;
Sec. 35, lots 1 thru 4, N1/2, N1/2SW1/4, and N1/2SE1/4.
T. 7 N., R. 1 E.,
Sec. 26, S1/2NE1/4, S1/2SW1/4NW1/4, S1/2SE1/4NW1/4, and S1/2;
Sec. 27, lots 6, 7, and 8, S1/2SW1/4, and S1/2SE1/4;
Sec. 28, SE1/4SW1/4SW1/4SW1/4, S1/2SE1/4SW1/4SW1/4, SE1/4NE1/4SE1/4SW1/4, S1/2SE1/4SW1/4, NE1/4SW1/4SE1/4, S1/2NW1/4SW1/4SE1/4, S1/2SW1/4SE1/4, and SE1/4SE1/4;
Sec. 32, lots 1 and 6, NE1/4NE1/4NE1/4, S1/2NE1/4NE1/4, NE1/4SE1/4NW1/4NE1/4, S1/2SE1/4NW1/4NE1/4, E1/2NW1/4SW1/4NE1/4, E1/2SW1/4SW1/4NE1/4, E1/2SW1/4NE1/4, SE1/4NE1/4, and E1/2SE1/4;
Secs. 33, 34, and 35.
T. 6 N., R. 2 E.,
Sec. 17, S1/2SW1/4;
Sec. 18, lot 4, SE1/4SW1/4, and S1/2SE1/4;
Sec. 19, lots 1, 2, and 3;
Sec. 19, E1/2NE1/4 and SE1/4 (minerals only);
Sec. 20, W1/2;
Sec. 30, lots 2, 3, and 4, NE1/4NE1/4, S1/2NE1/4, SE1/4NW1/4, E1/2SW1/4, and SE1/4;
Sec. 30, NW1/4NE1/4 and NE1/4NW1/4 (minerals only).

The lands described aggregate 18,962.72 acres, including 18,642.72 acres of public domain and 320 acres of Federal reserved mineral estate.

The FY14 NDAA withdrew the lands on December 26, 2013, from all forms of appropriation under the public land laws, including the mining laws, the mineral leasing laws, and geothermal leasing laws, subject to valid existing rights except as otherwise provided for under Sections 2931–2936 of the FY2014 NDAA.

Copies of the legal description and map as corrected under Section 2850 of the FY2019 NDAA are available for public inspection in the following offices:

BLM, Attn: Celeste Mitchell (WO350), 20 M Street SE, Washington, DC 20003–3503.

BLM, Montana/Dakotas State Office (954), 5001 Southgate Drive, Billings, Montana 59101.

BLM, Butte Field Office, 106 North Parkmont, Butte, Montana 59701.

U.S. Army Corps of Engineers, Seattle District Real Estate Division, 4735 E. Marginal Way S., Bldg 1202, Seattle, WA 98134.

Montana Army National Guard, Public Affairs Office, 1956 Mt Majo Street, Fort Harrison, Montana 59636–4789.

Office of the Secretary of Defense, 1000 Defense Pentagon, Washington, DC 20301–1000.

Scott S. Haight,

Field Manager, Butte Field Office, Montana/Dakotas Bureau of Land Management.

[FR Doc. 2019–04061 Filed 3–5–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X LLUT920000 L13200000.EL0000 UTU–93299]

Notice of Invitation To Participate; Coal Exploration License Application UTU–93299, Sanpete County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation.

SUMMARY: Pursuant to the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, and the Bureau of Land Management (BLM) regulations, the BLM invites all interested, qualified parties to participate with Canyon Fuel Company, LLC (CFC) on a pro rata cost sharing basis for the exploration of coal deposits owned by the United States of America in Sanpete County, Utah.

DATES: CFC published a notice of invitation to participate in this coal exploration license once each week for two consecutive weeks in the Pyramid Newspaper in Mt. Pleasant, Utah, dated May 31, 2018, and June 7, 2018, and by virtue of this announcement in the **Federal Register**. Any party seeking to participate in this exploration program must send written notice to the BLM and CFC, as provided in the **ADDRESSES** section below, no later than April 5, 2019.

ADDRESSES: Copies of the exploration license application and exploration plan are available for review from 7:45 a.m.–4:30 p.m., Monday through Friday, excluding Federal holidays (serialized under the number of UTU–93299) in the State Office public room at 440 West 200 South, Suite 500, Salt Lake City, Utah.

The written notice to participate in the exploration program must be sent to Kent Hoffman, BLM Utah State Office, Division of Lands and Minerals, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, and to Paul Jensen, Canyon Fuel Company LLC., c/o Skyline Mine, HC 35 Box 380, Helper, Utah 84526.

FOR FURTHER INFORMATION CONTACT: Stan Perkes by telephone (801) 539–4036, or by email: *sperkes@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 leave a message or question for the above individual. The FRS is available 24 hours a day, 7 days a week. The BLM will reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM authorizes coal exploration on lands not contained in a federal coal lease per the Mineral Leasing Act of 1920, as amended. This BLM coal exploration program allows the public a methodology to gain geologic information to determine the viability of the coal resources. The BLM issues the licenses for up to two years. If the holder requires more time for the exploration, the BLM can issue a new license based on a new application. The BLM regulations at 43 CFR 3410.2 require the publication of an invitation for interested parties to participate in the coal exploration in the **Federal Register**. The BLM may require a modification to the exploration plan to accommodate the legitimate exploration needs of persons seeking to participate. The proposed exploration area includes the following described lands in Sanpete County, Utah:

Salt Lake Meridian, Utah

T. 14 S., R. 6 E.,
Sec. 8, NE1/4;

Sec. 9.

The areas described contain 800 acres.

Authority: 43 CFR 3410.2–1(c)(1)

Anita Bilbao,

Associate State Director.

[FR Doc. 2019–04057 Filed 3–5–19; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520]

Grant Notification for Fiscal Year 2019

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement, are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Title IV Abandoned Mine Land Reclamation Program and the Title V Regulatory Program under the Surface Mining Control and Reclamation Act of 1977. We will award these grants during fiscal year 2019.

DATES: A single point of contact or other interested state or local entities may submit written comments regarding AML and Regulatory funding until April 5, 2019.

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

- *Electronic mail:* Send your comments to *yrichardson@osmre.gov.*
- *Mail, hand-delivery, or courier:* Send your comments to Office of Surface Mining Reclamation and Enforcement, Attn: Administrative Record, Room 4558, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Yetunde Richardson, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, MS 4551, Washington, DC 20240; Telephone (202) 208–2766.

SUPPLEMENTARY INFORMATION:

Grant Notification

We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Title IV Abandoned Mine Land (AML) Reclamation Program and the Title V Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). We are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the AML Reclamation Program. Additionally, we are notifying the public that we intend to grant funds to eligible applicants for regulating coal mining within their jurisdictional borders under the Regulatory Program. We will award these grants during fiscal year 2019. Eligible applicants are those states and Indian Tribes with a reclamation plan, regulatory program, and/or regulatory development program approved under SMCRA, as amended, 30 U.S.C. 1201 *et seq.,* and the State of Tennessee. Under Executive Order (E.O.) 12372, we must provide state officials the opportunity to review and comment on proposed federal financial assistance activities. Of the eligible applicants, nineteen states or Indian tribes do not have single points-of-contact under the E.O.12372 review process; therefore, we are required to publish this notice as an alternate means of notification.

Description of the AML Program

SMCRA established the Abandoned Mine Reclamation Fund to receive the AML fees used to finance reclamation of AML coal mine sites. Title IV of SMCRA authorizes the Office of Surface Mining Reclamation and Enforcement to provide grants to eligible states and Indian tribes that are funded from permanent (mandatory) appropriations. Recipients use these funds to reclaim the highest priority AML coal mine sites that were left abandoned prior to the enactment of SMCRA in 1977, eligible non-coal sites, projects that address the impacts of mineral development, and non-reclamation projects.

Description of the Regulatory Program

Title V of SMCRA authorizes the Office of Surface Mining Reclamation and Enforcement to provide grants to states and Indian tribes to develop, administer, and enforce state regulatory programs addressing the disturbance from coal mining operations. Additionally, Title V authorizes states to develop regulatory programs pursuant to SMCRA, and upon approval of regulatory programs, to assume regulatory primacy and act as the regulatory authority, and to administer and enforce their respective approved SMCRA regulatory programs. Our regulations at Title 30 of the Code of Federal Regulations, Chapter V implement the provisions of SMCRA.

Dated: February 11, 2019.

Glenda H. Owens,

Deputy Director, Exercising the Authority of the Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2019–03963 Filed 3–5–19; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Data Transmission Devices, Components Thereof, Associated Software, and Products Containing the Same, DN 3368;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Data Scape Limited and C-Scape Consulting Corp. on February 28, 2019. The

complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain data transmission devices, components thereof, associated software, and products containing the same. The complaint names as respondents: Apple Inc. of Cupertino, CA; Amazon.com, Inc. of Seattle, WA; Amazon Digital Services, LLC of Seattle, WA; Verizon Communications Inc. of New York, NY and Cellco Partnership d/b/a Verizon Wireless of Basking Ridge, NJ. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3368) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 1, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–04039 Filed 3–5–19; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1146]

Certain Taurine (2-Aminoethanesulfonic Acid), Methods of Production and Processes for Making the Same, and Products Containing the Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 30, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Vitaworks IP, LLC of North Brunswick, New Jersey; Vitaworks, LLC of North Brunswick, New Jersey; and Dr. Songzhou Hu of North Brunswick, New Jersey. Supplemental exhibits were filed February 19, 2019. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain taurine (2-aminoethanesulfonic acid), methods of production and processes for making the same, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 9,573,890 (''the '890 patent''); U.S. Patent No. 9,745,258 (''the '258 patent''); and U.S. Patent No. 10,040,755 (''the '755 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained

therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 28, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1 and 3–10 of the '890 patent; claims 1–3 of the '258 patent; and claims 1–9 of the '755 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''taurine in its raw form, or combined with chemical additives such as an anti-caking agent, manufactured through processes featuring the use of alkali isethionate or ammonium isethionate'';

(3) Pursuant to section 210.10(b)(3) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(3), the presiding Administrative Law Judge shall hold an early evidentiary hearing, find facts, and issue an early decision, within 100 days of institution except for good cause shown, as to whether the complainants have satisfied the economic prong of the domestic industry requirement. Notwithstanding any Commission Rules to the contrary, which are hereby waived, any such decision should be issued in the form of an initial determination (ID) under Commission Rule 210.42(a)(3), 19 CFR 210.42(a)(3). The ID will become the Commission's final determination 30 days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission Rules 210.43, 210.44, and 210.45, 19 CFR 210.43, 210.44, and 210.45. The issuance of an early ID finding that complainant does not satisfy the economic prong of the domestic industry requirement shall stay the investigation unless the Commission orders otherwise; any other decision shall not stay the investigation or delay the issuance of a final ID covering the other issues of the investigation;

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Vitaworks IP, LLC, 195 Black Horse Lane, North Brunswick, NJ 08902
Vitaworks, LLC, 195 Black Horse Lane, North Brunswick, NJ 08902
Dr. Songzhou Hu, 195 Black Horse Lane, North Brunswick, NJ 08902

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

A to Z Nutrition, Inc., 14359 Miramar Parkway, Suite 218, Miramar, FL 33027
Ampak Company, Inc., 1890 Palmer Avenue, Suite 301, Larchmont, NY 10538
Armada Nutrition LLC, 4637 Port Royal Road, Spring Hill, TN 37174
Atlantic Chemicals Trading of North America, Inc., 2 Oliver Street, Suite 602, Boston, MA 02109
Crossroad Ingredients LLC, 271 U.S. 46 West, Suite H206, Fairfield, NJ 07004
Emote International, Inc., 1736 Wright Avenue, La Verne, CA 91750
Epikix, Inc., 6 Imperial Aisle, Irvine, CA 92606
Fuerst Day Lawson (USA), Ltd., Metropolitan Wharf, 70 Wapping Wall, London, England E1W 3SS, United Kingdom
Glanbia Nurtitional (NA), Inc., 2840 Loker Avenue East, Carlsbad, CA 92101
Greating Shipping Co., 2225 W. Commonwealth Avenue, Suite 316, Alhambra, CA 91803
Green Wave Ingredients, Inc., 14821 Northam Street, La Mirada, CA 90638
Hard Eight Nutrition, LLC, 7511 Eastgate Road, Henderson, NV 89011
Fuchi Pharmaceutical Co., Ltd. d/b/a, Hubei Grand Life Science and Technology Co., Ltd., 12 Wangfen Road, Fuchi Town, Yangxin County, Hubei Province, China 435200
Jiangyin Huachang Food Additive Co., Ltd., No. 152, Yingbin West Road, Huangtu Town, JiangYin City, Jiang Su Province, China 214445
Natural Ingredient Corp., 155 N. Lake Avenue, 8th Floor, Suite 808, Pasadena, CA 91101
JSW Enterprises, LLC d/b/a, Nurtavative Ingredients, 600 Century Parkway, Suite 200, Allen, TX 75013
N.V.E., Inc. a/k/a, N.V.E. Pharmaceuticals, Inc., 15 Whitehall Road, Andover, NJ 07821
Pacific Rainbow International, Inc., 19905 Harrison Avenue, City of Industry, CA 91789
Pharmachem Laboratories, Inc., 265 Harrison Avenue, Kearny, NJ 07032
Prinova USA, LLC, 285 E. Fullerton Avenue, Carol Stream, IL 60188
Qianjiang Yongan Pharma. Co., Ltd., No. 2, Guangze Avenue, Economic Development Zone, Qianjiang City, Hubei Province, China 433132
SEM Minerals, L.P., 3806 Gardner Expressway, Quincy, IL 62305
Signo, LLC, 2000 S. Dairy Ashford Road, Suite 370, Houston, TX 77077
Stauber Holdings, Inc., f/k/a, Stauber Performance Ingredients, Inc., 4120 N. Palm Street, Fullerton, CA 92835–1026
Shandong Xinhua Pharmaceutical USA, Inc., d/b/a SX Pharma, 2025 Mountain View Road, South El Monte, CA 91733
Uniprime International, LLC, 99 Corbett Way, Eatontown, NJ 07724
Wild Flavors, Inc., 1261 Pacific Avenue, Erlanger, KY 41018

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be

submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 28, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–03988 Filed 3–5–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1145]

Certain Botulinum Toxin Products, Processes for Manufacturing or Relating to Same and Certain Products Containing Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 30, 2019, under section 337 of the Tariff Act of 1930, as amended, on behalf of Medytox Inc. of South Korea; Allergan plc of Ireland; Allergan, Inc., Irvine, California. Supplements to the complaint were filed on February 12, 2019, February 13, 2019, and February 14, 2019. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain botulinum toxin products, processes for manufacturing or relating to same and certain products containing same by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry in the United States.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 28, 2019, *ordered that*—

(1) Pursuant to section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure a domestic industry in the United States;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is botulinum neurotoxin products manufactured by Daewoong Pharmaceuticals Co., Ltd., specifically: (1) DWP–450 (prabotulinumtoxinA), variously marketed under the brand names Nabota®, Jeuveau™ and other brand names; (2) products containing or derived from DWP–450; and (3) products containing or derived from the BTX strain assigned the high-risk pathogen control number 4–029–CBB–IS–001 by the Korean Centers for Disease Control and Prevention or the manufacturing process used to manufacture DWP–450;

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Medytox Inc., 626 Tehran Road, Gangnam, Seoul, South Korea; Allergan plc, Clonshaugh Business and Technology Park, Coolock, Dublin, D17 E400, Irland; Allergan, Inc., 2525 Dupont Drive, Irvine, CA 92612.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Daewoong Pharmaceuticals Co., Ltd., Bongeunsaro 114-gil 12, Gangnam, Seoul, 06170; South Korea; Evolus, Inc., 17901 Von Karman Avenue, Suite 150, Irvine, CA 92614.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be

deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 28, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–03987 Filed 3–5–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—X12 Incorporated

Notice is hereby given that, on February 11, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), X12 Incorporated (''X12'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: X12 Incorporated, McClean, VA. The nature and scope of X12's standards development activities are: The development and maintenance of cross industry e-commerce standards that improve business process interoperability and facilitate business information exchange supporting the finance, government, supply chain, transportation and insurance industries and associated business partners.

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–04010 Filed 3–5–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—HEI Industry Group

Notice is hereby given that, on January 28, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HEI Industry Group (''HIG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identity of the parties to the venture are: Chevron North America Exploration and Production Company, a division of Chevron U.S.A. Inc., Houston, TX; ConocoPhillips Company, Houston, TX; Exxon Mobil Corporation, Irving, TX; Halliburton Energy Services, Inc., Houston, TX; Noble Energy, Inc., Houston TX, SWEPI LP (SWEPI), Houston, TX; Schlumberger Technology Corporation, Houston, TX; BHP, Houston, TX; Statoil Gulf Services LLC, Houston, TX; and Schlumberger Limited, N.V., Houston, TX. The general area of HIG's planned activity is to commence a joint industry-government research initiative entitled HEI's Energy Research Program to (1) evaluate the existing health and exposure literature related to potential impacts from onshore oil and natural gas operations; and possibly (2) conduct a study to assess potential exposures from those operations. The industry sponsors have created the HEI Industry Group (HIG) to facilitate coordinated input to HEI. HEI is a nonprofit organization chartered in 1980 as an independent research institute to provide high-quality, impartial, and relevant science on the health effects of air pollution. The HEI-managed program represents a first-of-its-kind, comprehensive collaboration between the oil and gas industry and government to assess exposure to chemical stressors associated with onshore unconventional oil and natural gas operations. Part 1 of the research program will last for approximately one year and will evaluate the existing health and exposure literature as well as conduct workshops to inform the literature reviews and frame research needs. Part 2 (an exposure study) is being considered and will be informed by the results of the Part 1 literature review. If Part 2 goes forward, future studies will be considered as warranted by the Part 2 results.

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–04009 Filed 3–5–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: The registrant listed below has applied for and been granted registration by-the Drug Enforcement Administration (DEA) as an importer of schedule I controlled substances.

SUPPLEMENTARY INFORMATION: The company listed below applied to be registered as an importer of scheduled I controlled substances. Information on the previously published notice is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for this notice.

Company	FR Docket	Published
Agilent Technologies	83 FR 66751	December 27, 2018.

The Drug Enforcement Administration (DEA) has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrant to import the applicable basic classes of schedule I controlled substances is consistent with the public interest and with United States obligations under

international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted a registration as an importer for schedule I controlled substances to the above listed company.

Dated: February 22, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–04026 Filed 3–5–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Patheon Pharmaceuticals, Inc.

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 April 5, 2019. Such persons may also file a written request for a hearing on the application on or before April 5, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 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 (''Assistant Administrator'') pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on December 24, 2018, Patheon Pharmaceuticals, Inc., 2110 E Galbraith Road, Cincinnati, Ohio 45237, has re-applied to be registered as a bulk manufacturer of the Schedule I controlled substance Gamma Hydroxybutyric Acid (2010), a basic class of controlled substance.

The Gamma Hydroxybutyric Acid will be produced during the process of converting gamma-butyrolactone (GBL) into a new product for development. The company plans to manufacture the above listed controlled substance as Active Pharmaceutical Ingredient (API) that will be further synthesized into dosage forms of a new product. No other activities for this drug code are authorized for this registration.

Dated: February 18, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–04029 Filed 3–5–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: The registrant listed below has applied for and has been granted a registration by the Drug Enforcement Administration (DEA) as a bulk manufacturer of various classes of schedule I and II controlled substances.

SUPPLEMENTARY INFORMATION: The company listed below applied to be registered as a bulk manufacturer of various basic classes of controlled substances. Information on the previously published notice is listed in the table below. No comments or objections were submitted for this notice.

Company	FR Docket	Published
Cambrex Charles City	83 FR 49579	October 2, 2018.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of this registrant to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing their physical security systems, verifying their compliance with state and local laws, and reviewing their background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed company.

Dated: February 22, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–04027 Filed 3–5–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: Registrants listed below have applied for and been granted registration by the Drug Enforcement Administration (DEA) as bulk manufacturers of schedule I or schedule II controlled substances.

SUPPLEMENTARY INFORMATION: The companies listed below applied to be registered as bulk manufacturers of schedule I or schedule II controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted for these notices.

Company	FR docket	Published
Patheon API Manufacturing, Inc.	83 FR 58596	November 20, 2018.
Insys Manufacturing, LLC	83 FR 60899	November 27, 2018.
Cayman Chemical Company	83 FR 60900	November 27, 2018.
Noramco Inc.	83 FR 60898	November 27, 2018.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of the listed registrants to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed companies.

Dated: February 18, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–04033 Filed 3–5–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: The registrant listed below has applied for and has been granted a registration by the Drug Enforcement Administration (DEA) as a bulk manufacturer of schedule I controlled substances.

SUPPLEMENTARY INFORMATION: The company listed below applied to be registered as a bulk manufacturer of various basic classes of controlled substances. Information on the previously published notice is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for this notice.

Company	FR Docket	Published
Insys Manufacturing, LLC	83 FR 54611	October 30, 2018.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of the listed registrant to manufacture the applicable basic classes of schedule I and II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed company.

Dated: February 18, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–04032 Filed 3–5–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: The registrant listed below has applied for and has been granted a registration by the Drug Enforcement Administration (DEA) as bulk manufacturer of schedule I and II controlled substances.

SUPPLEMENTARY INFORMATION: The company listed below applied to be registered as a bulk manufacturer of various basic classes of controlled substances. Information on the previously published notice is listed in the table below. No comments or objections were submitted for this notice.

Company	FR Docket	Published
Organix, Inc	83 FR 58601	November 20, 2018.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of this registrant to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and

local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed company.

Dated: February 18, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–04031 Filed 3–5–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: S&B Pharma Inc.

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 May 6, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 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 (''Assistant Administrator'') 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 February 28, 2017, S&B Pharma Inc., 405 South Motor Avenue, Azusa, California 91702–3232 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Pentobarbital	2270	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to manufacture the listed controlled substances in bulk for use in product development and for commercial sales to its customers. In reference to drug codes 7360 (marihuana) and 7370 (THC), the company plans to bulk manufacture both as synthetic substances. No other activity for these drug codes is authorized for this registration.

Dated: February 18, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–04030 Filed 3–5–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Registration

ACTION: Notice of registration.

SUMMARY: The registrant listed below has applied for and been granted a registration by the Drug Enforcement Administration (DEA) as a bulk manufacturer of various classes of schedule I and II controlled substances.

SUPPLEMENTARY INFORMATION: The company listed below applied to be registered as a bulk manufacturer of various basic classes of controlled substances. Information on a previously published notice is listed below. No comments or objections were submitted for the notice.

Company	FR Docket	Published
Eli-Elsohly Laboratories	83 FR 64159	December 13, 2018.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of this registrant to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted a registration as a bulk manufacturer to the above listed company.

Dated: February 26, 2019.

John J. Martin,

Assistant Administrator.

[FR Doc. 2019–04025 Filed 3–5–19; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request, Reentry Employment Opportunities Evaluation, New Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data about the Reentry Employment Opportunities Program. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before May 6, 2019.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Jessica Lohmann, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Jessica Lohmann by email at *ChiefEvaluationOffice@dol.gov* or by phone at (202) 693–5087.

SUPPLEMENTARY INFORMATION:

I. *Background:* The information collection activities described in this notice will provide data for the Reentry Employment Opportunities (REO) program evaluation. As part of the REO program, DOL awarded $78 million in Reentry Project (RP) grants in 2018, $73 million in RP grants during 2017, $31 million in Reentry Demonstration Project grants during 2016, and $21 million in Training to Work grants during 2015 and 2016. Although each grant program is distinctive, the overarching aim of the REO program is to improve employment outcomes and workforce readiness for people involved in the justice system by way of employment services, case management, and other supportive services. The REO program evaluation will involve grantees that received grants during 2016, 2017, and 2018. The evaluation will involve an implementation study and an impact study. The implementation study will address four main research questions: (1) How were programs implemented and what factors influenced implementation?; (2) What are the variations in the model, structure, partnerships, and services of the REO grants?; (3) How did implementation vary by organization type (such as an intermediary organization that operates in more than one state or a community-based organization) and target population?; and (4) What key program elements appear to be promising? Research questions for the impact study include: (1) What impact do grantees or strategies implemented by grantees have on participants' outcomes, such as employment and recidivism?; (2) Does program effectiveness vary by grantee characteristics, such as population served and services offered?; and (3) To what extent do impacts vary across selected subpopulations, such as age group and type of offense?

This **Federal Register** Notice provides the opportunity to comment on the following proposed REO evaluation data collection instruments:

1. *Semi-structured inverview protocols.* As part of the implementation study, which will be conducted in approximately 28 sites, the evaluation team will conduct semi-structured interviews with program administrators, frontline staff, and partners to understand how the program implementation has been developed, managed, and delivered.

2. *Participant focus group protocols.* As part of the implementation study, the evaluation team will conduct focus groups to gather information from participants. Participant focus groups will ask about participants' reasons for enrolling, impressions of the program and the extent to which it has helped them prepare for employment.

3. *Employer focus group protocols.* As part of the implementation study, the evaluation team will conduct focus groups to gather information from employers. The focus groups with employers will enable an exploration of how the grantees are meeting the needs of employers.

4. *Semi-structured telephone interview protocols.* As part of the implementation study, the study team will conduct telephone interviews with approximately 58 sites that were not visited in person. These semi-structured interviews with program administrators will focus on understanding program implementation, challenges encountered, and their potential solutions.

5. *Virtual focus group protocols.* As part of the implementation study, the study team will conduct approximately 15 virtual focus groups, including approximately 135 REO program administrators in total. Each focus group will be topically focused to gather more in-depth information on a specific aspect of implementation, such as participant retention strategies, data management, or outcomes tracking.

6. *Follow-up survey.* Approximately 5 grantees will be selected for the impact study. Among the selected grantees, the survey will be administered to approximately 1,890 impact study participants and will allow us to capture respondents' experiences in the program or in other services since enrollment in the study while measuring detailed information about study members' employment experiences. Specifically, the survey will collect data about participants' employment, earnings, credential attainment, skills attainment, recidivism and other topics of interest.

II. *Desired Focus of Comments:* Currently, the Department of Labor is soliciting comments concerning the above data collection for the REO Evaluation. DOL is particularly interested in comments that do the following:

○ evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;

○ evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;

○ 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—for example, permitting electronic submissions of responses.

III. *Current Actions:* At this time, the Department of Labor is requesting clearance for the semi-structured interviews with program administrators, frontline staff, and partner staff, and the focus groups with employers, program participants, and program administrators as part of the implementation study as well as the follow-up survey with a subset of sample members in the impact study.

Type of Review: New information collection request.

OMB Control Number: 1290–0NEW.

Affected Public: REO program staff, evaluation participants, local employers, and partner agency staff.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

ESTIMATED ANNUAL BURDEN HOURS

Type of instrument	Number of respondents [a]	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Annual estimated burden hours [a]
Semi-structured interview: Grant administrators [b]	19	1	19	3	57
Semi-structured interview: Frontline staff [b]	196	1	196	1	196
Semi-structured interview: Partner-staff administrators [b]	28	1	28	1	28
Semi-structured interview: Intermediary grant administrators [b]	6	1	6	1.5	9
Participant focus groups [c]	75	1	75	1	75
Employer focus groups [d]	37	1	37	1	37
Semi-structured telephone calls [e]	58	1	58	2	116
Virtual focus groups [f]	45	1	45	1	45
Follow-up survey [g]	630	1	630	.33	208
Total	1,094		1,094		771

[a] All annual totals reflect a three year clearance and study data collection period. Estimates are rounded to the nearest whole number.

[b] Assumes each visit will, on average, involve individual or group interviews with approximately 2 grant administrators, approximately 3 partner-staff administrators, and approximately 21 frontline staff. The team anticipates completing approximately 28 visits in total. The average burden time per response for the grant administrator interviews will be 3 hours. The average burden time per response for the partner-staff administrator interviews will be 1 hour. The average burden time per response for the frontline staff interviews will be 1 hour. For all types of staff, some meetings will be shorter and some will be longer than the averages. Additionally, the team anticipates conducting interviews with approximately 3 intermediary grant administrators in approximately 6 of the 28 visits. The intermediary grant administrator interviews will be approximately 1.5 hours, on average.

[c] Assumes each participant focus group will, on average, involve 8 individuals and will be conducted in approximately 28 sites. The average burden time per response will be 1 hour.

[d] Assumes each employer focus group will, on average, involve 4 individuals and will be conducted in approximately 28 sites. The average burden time per response will be 1 hour.

[e] Assumes each phone interview will be conducted with approximately 3 program administrators from each of approximately 58 sites. The average length of the phone interview will be two hours.

[f] Assumes approximately 15 virtual focus groups with approximately 9 program administrators participating per group. The average burden time per response will be 1 hour.

[g] Assumes a follow-up survey will be conducted with approximately 1,890 study participants. The average burden time per response will be 20 minutes.

Molly Irwin,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2019–04054 Filed 3–5–19; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Office of the Secretary

Department of Labor's Fleet Alternative Fuel Vehicle Acquisition

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of availability of the Department of Labor's annual report on its alternative fuel vehicle acquisitions for fiscal year 2018.

SUMMARY: In compliance with the Energy Policy Act of 1992, and subsequent amendments, this notice announces the availability of fiscal year 2018 report that summarizes the U.S. Department of Labor's (DOL) compliance with the annual alternative fuel vehicle acquisition requirement for its vehicle fleet. The website also contains the Department's annual reports for fiscal years 1999–2017. Additionally, the reports include data relative to the agency's effort in reducing petroleum consumption. The report issued next year in 2020 shall be DOL's final report submitted under the Energy Policy Act.

ADDRESSES: U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Business Operations Center, 200 Constitution Avenue NW, Room S1520, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert-Miller, Sustainability and Fleet Manager, at (202) 693–6662 or email *Gilbert.Susan.J@dol.gov.*

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992 (42 U.S.C. 13211–13219), as amended by the Energy Conservation and Reauthorization Act of 1998 (Pub. L. 105–388, section 310(b)(3), and the Energy Policy Act of 2005 (Pub. L. 109–58, section 705), were intended to decrease the country's dependence on petroleum for transportation purposes. The Energy Policy Act of 1992 requires

Federal fleets to acquire 75 percent of their new covered vehicle acquisitions as alternative fuel vehicles. Pursuant to 42 U.S.C. 13218 of the Energy Policy Act, DOL and other covered agencies are required annually to submit to Congress reports on their Energy Policy Act alternative fuel vehicle acquisition requirements. These reports must also be placed on an available website and their availability, including the website address, must be published in the **Federal Register**. The 2019 penultimate report is required to include an announcement that the report for the next year shall be the final report. DOL annual reports for fiscal years 1999 through 2018 may be accessed at the DOL Fleet Information and Regulations website at *https://www.dol.gov/oasam/programs/boc/EPAct.htm.*

Dated: February 15, 2019.

Bryan Slater,

Assistant Secretary for Administration and Management.

[FR Doc. 2019–04056 Filed 3–5–19; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of Strategies Used in TechHire and Strengthening Working Families Initiative (SWFI) Grant Programs

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. Currently, DOL is soliciting comments concerning the collection of data about the Evaluation of Strategies Used in TechHire and SWFI Grant Programs. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before May 6, 2019.

ADDRESSES: You may submit comments by either one of the following methods: *Email: ChiefEvaluationOffice@dol.gov; Mail or Courier:* Christina Yancey, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. 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 OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Christina Yancey by email at *ChiefEvaluationOffice@dol.gov* or by phone at (202)693–5910.

SUPPLEMENTARY INFORMATION:

I. Background: The Chief Evaluation Office (CEO), in collaboration with the Employment and Training Administration (ETA), of DOL seeks to build evidence about effective approaches to prepare Americans with skills and connect them to well-paying, middle- and high-skilled, and high growth jobs in H-lB industries (such as IT, healthcare, advanced manufacturing, financial services, and broadband). The evaluation will advance the evidence on innovative approaches being used to meet these goals in the TechHire Partnership (TechHire) and Strengthening Working Families Initiative (SWFI) grant programs. The evaluation will include two components, an implementation study and an impact study. This **Federal Register** Notice provides the opportunity to comment on the proposed data collection instrument that will be used in the last stage of the impact study. The goal of the impact study is to provide rigorous evidence on the effectiveness of strategies used in the TechHire and SFWI grant programs. The impact study consists of both a randomized controlled trial (RCT) and a quasi-experimental design (QED) evaluation. Five grantees have been selected to participate in an RCT. The QED includes all 53 TechHire and SWFI grantees and uses the pooled RCT control group as the comparison group using propensity score matching. The QED will collect data from an existing wage record data. It will also use data from the implementation study in an effort to analyze how variation in program correlates with implementation factors.

In January 2018, OMB approved the baseline data collection for this evaluation (OMB 1290–0014), which includes a baseline information form (BIF), 6-month follow-up participant survey, a participant tracking form, and a first round of site visit interviews. A second data collection for this evaluation is currently under review by OMB. This second collection includes a survey of grantees, semi-structured telephone interviews with grantees, a template for partner contact information, a survey of partners, semi-structured telephone interviews with partners, and a second round of site visit interviews. This **Federal Register** Notice provides the opportunity to comment on the proposed data collection instrument that will be used in the last stage of this evaluation.

• *18-month participant follow-up survey.* The 18 month follow-up survey is the last piece of data collection required for this study. It will be administered 18 months after random assignment, to both the treatment and control groups. The purpose of the survey is to collect information on outcomes not available in existing data. These include current and past employment situation, hours worked, wages, shift work, employer benefits, job search activities, job satisfaction, promotion, education and training participation, criminal justice involvement, and childcare. The information will be delivered via a web survey, with three reminders sent via text message, email, and additional follow-up via telephone and field locator engagement.

II. Desired Focus of Comments: Currently, DOL is soliciting comments concerning the above data collection for the Evaluation of Strategies Use in the TechHire and SWFI programs. DOL is particularly interested in comments that do the following:

○ Evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;

○ evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;

○ 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—for example, permitting electronic submissions of responses.

III. Current Actions: At this time, DOL is requesting clearance for an 18-month participant follow-up survey.

Type of Review: New information collection request.

OMB Control Number: 1290–0NEW.

Affected Public: TechHire and SWFI grantees and partners.

Comments submitted in response to this request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

ESTIMATED ANNUAL BURDEN HOURS

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated burden hours
18-month follow up participant survey	454 [a]	1	454	.5	227

[a] Based on an expected 80% response rate from participants.

Molly Irwin,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2019–04053 Filed 3–5–19; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Veterans Supplement to the Current Population Survey (CPS),'' to be conducted in August 2019, August 2020, and August 2021.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before May 6, 2019.

ADDRESSES: Send comments to Erin Good, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Erin Good, BLS Clearance Officer, 202–691–7763 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment since 1940. Collection of labor force data through the CPS is necessary to meet the requirements in Title 29, United States Code, Sections 1 and 2. The Veterans Supplement provides information on the labor force status of veterans with a service-connected disability; combat-zone veterans; past or present National Guard and Reserve members; recently discharged veterans; and Afghanistan, Iraq, and Vietnam veterans. The supplement also provides information on veterans' participation in various transition and employment and training programs. The data collected through this supplement will be used by the Veterans Employment and Training Service and the Department of Veterans Affairs to determine policies that better meet the needs of our Nation's veteran population.

II. Current Action

Office of Management and Budget clearance is being sought for the Veterans Supplement to the CPS. An extension without change of a currently approved collection is needed to continue to provide the Nation with timely information about the labor force status of veterans with a service-connected disability; combat-zone veterans; past or present National Guard and Reserve members; recently discharged veterans; and veterans who have served in Afghanistan, Iraq, or Vietnam.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

Type of Review: Extension without change of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Veterans Supplement to the CPS.

OMB Number: 1220–0102.

Affected Public: Households.

Total Respondents: 7,800.

Frequency: Annually.

Total Responses: 7,800.

Average Time per Response: Approximately 3.25 minutes.

Estimated Total Burden Hours: 423 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on February 25, 2019.

Mark Staniorski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2019–03964 Filed 3–5–19; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; NSF I-Corps Teams Executive Summary Form

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 6, 2019 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF I-Corps Teams Executive Summary Form.

OMB Control No.: 3145–New.

Expiration Date of Approval: Not applicable.

Abstract: The NSF Innovation Corps (I-Corps) Teams Program Executive Summary is an important component of the NSF I-Corps Teams pre-submission process and conveys information needed to direct the proposed team project to the appropriate NSF Program Director (PD) for review and possible proposal submission invitation. This Executive Summary (ES) is to be submitted by the applying team to the cognizant I-Corps Team's PD outlining solicitation-specific aspects of the project (such as proposed team members, technology, commercial application and NSF lineage). In the past, this ES was submitted via email as an attached two-page (maximum) document and was often in varying formats or missing some parts of the required ES elements. The NSF I-Corps Teams Executive Summary Form captures the same requested information, as outlined in NSF I-Corps Teams Program solicitation, but all within one secure, web-based form. In specific, the form collects submitting team member information (composition, roles and a brief description of each member's qualifications), Principal Investigator (PI) information (and a brief description of their connection to the team), NSF lineage (relevant current or previous NSF awards), a brief description of the core technology, a brief description of the potential commercial application, and a brief description of the current commercialization plan for the proposed technology. If the proposed I-Corps Team is applying based on participation in a local or regional NSF I-Corps Site or Node training session, the form will provide fields for the applying team to complete regarding the associated I-Corps Site or Node senior member's contact information (as a reference) and location of the associated Site or Node.

Respondents: Investigators who submit proposals to NSF's I-Corps Teams Program.

Estimated Number of Annual Respondents: 400.

Burden on the Public: 2 hour (per response) for an annual total of 800 hours.

Dated: February 28, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–03977 Filed 3–5–19; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; NSF Small Business Innovation Research (SBIR) Program Phase I and Small Business Technology Transfer (STTR) Program Phase I Presubmission Project Pitch Form

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 6, 2019 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: NSF Small Business Innovation Research (SBIR) Program Phase I and Small Business Technology Transfer (STTR) Program Phase I Presubmission Project Pitch Form.

OMB Control No.: 3145-New.

Expiration Date of Approval: Not applicable.

Abstract: The NSF Small Business Innovation Research Program (SBIR) Phase I and Small Business Technology Transfer Program (STTR) Phase I Project Pitch is the new NSF SBIR/STTR pre-submission process that conveys information needed to direct the proposed SBIR/STTR project to the appropriate NSF Program Director (PD) for review and possible proposal submission invitation. This Project Pitch is to be submitted by the applying small business (as ''proposer'') to the relevant NSF SBIR/STTR Phase I technology topic. The Project Pitch

outlines solicitation-specific aspects of the project (such as the proposed technology innovation and project objectives with associated level of technical risk). In the past, this Project Pitch (previously referred to as the Executive Summary) was an optional submission via email as an attached two to three-page (maximum) document and was often in varying formats or missing some parts of the required document elements, which in turn caused delays or additional corrections on behalf of the proposer. The NSF SBIR/STTR Phase I Project Pitch form captures the same requested information, as outlined in the NSF SBIR/STTR Phase I Program solicitation, but all within one secure, web-based form. In specific, the form collects submitting proposer company and team information; the proposed technology innovation; the technical objectives and challenges; and the market opportunity. The form also allows the proposer to choose (from a drop-down menu) the most relevant NSF SBIR/STTR Phase I technical topic area, ensuring that the submitted Project Pitch goes to the most appropriate Program Director.

Respondents: Small businesses who submit proposals to NSF's SBIR/STTR Phase I Program.

Estimated Number of Annual Respondents: 2000.

Burden on the Public: 2 hours (per response) for an annual total of 4000 hours.

Dated: February 28, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–04004 Filed 3–5–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of March 4, 11, 18, 25, April 1, 8, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 4, 2019

Tuesday, March 5, 2019

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of March 11, 2019—Tentative

There are no meetings scheduled for the week of March 11, 2019.

Week of March 18, 2019—Tentative

Wednesday, March 20, 2019

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public) (Contact: Paul Michalak: 301–415–5804)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of March 25, 2019—Tentative

Thursday, March 28, 2019

9:00 a.m. Transformation at the NRC: Innovation (Public Meeting) (Contact: June Cai: 301–415–1771)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of April 1, 2019—Tentative

Thursday, April 4, 2019

10:00 a.m. Meeting with the Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Kellee Jamerson: 301–415–7408)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of April 8, 2019—Tentative

There are no meetings scheduled for the week of April 8, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of March 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–04081 Filed 3–4–19; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–39; NRC–2018–0256]

Connecticut Yankee Atomic Power Company, Haddam Neck Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) for its review and approval of the decommissioning funding plans submitted by Connecticut Yankee Atomic Power Company (CYAPCO) on December 17, 2012, and December 14, 2015, for the independent spent fuel storage installation (ISFSI) at Haddam Neck in East Hampton, Connecticut.

DATES: The EA and FONSI referenced in this document are available on March 6, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0256 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–2018–0256. Address questions about NRC Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For

problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the Availability of Documents section.

• *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: Pamela Longmire, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7465, email: *Pamela.Longmire@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering the approval of the decommissioning funding plans (DFPs) for the Haddam Neck ISFSI. CYAPCO submitted an initial DFP and an updated DFP for NRC review and approval by letters dated December 17, 2012 (ADAMS Accession No. ML12363A024), and December 14, 2015 (ADAMS Accession No. ML16020A209), respectively. The NRC staff has prepared a final EA (ADAMS Accession No. ML19053A429) in support of its review of CYAPCO's DFPs, in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). Based on the EA, the NRC staff has determined that approval of the DFPs for the Haddam Neck ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not warranted.

II. Environmental Assessment

Background

The Haddam Neck ISFSI is located in East Hampton, Connecticut. CYAPCO is authorized by the NRC, under License No. SFGL–21, to store spent nuclear fuel at the Haddam Neck ISFSI.

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation now requires each holder of, or applicant for, a license under 10 CFR part 72 to submit, for NRC review and approval, a DFP. The purpose of the DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff is reviewing the DFPs submitted by CYAPCO on December 17, 2012, and December 14, 2015. Specifically, the NRC must determine whether CYAPCO's DFPs contain the information required by 10 CFR 72.30(b) and 10 CFR 72.30(c) and whether CYAPCO has provided reasonable assurance that funds will be available to decommission the ISFSI.

Description of the Proposed Action

The proposed action is the NRC's review and approval of CYAPCO's DFPs submitted in accordance with 10 CFR 72.30(b) and 72.30(c). To approve the DFPs, the NRC evaluates whether the decommissioning cost estimate (DCE) adequately estimates the cost to conduct the required ISFSI decommissioning activities prior to license termination, including identification of the volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the license termination criteria in 10 CFR 20.1402 or 10 CFR 20.1403. The NRC also evaluates whether the aggregate dollar amount of CYAPCO financial instruments provides adequate financial assurance to cover the DCE and that the financial instruments meet the criteria of 10 CFR 72.30(e). Finally, the NRC evaluates whether the effects of the following events have been considered in CYAPCO's submittal: (1) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material; (2) facility modifications; (3) changes in authorized possession limits; and (4) actual remediation costs that exceed the previous cost estimate, consistent with 10 CFR 72.30(c).

The proposed action does not require any changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require any new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of CYAPCO's DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of any decontamination or decommissioning activity or license termination for the ISFSI or any other part of Haddam Neck.

Need for the Proposed Action

The proposed action provides a means for the NRC to confirm that CYAPCO will have sufficient funding to cover the costs of decommissioning the ISFSI, including the reduction of the residual radioactivity at the ISFSI to the level specified by the applicable NRC license termination regulations concerning release of the property (10 CFR 20.1402 or 10 CFR 20.1403).

Environmental Impacts of the Proposed Action

The NRC's approval of the DFPs will not change the scope or nature of the operation of the ISFSI and will not authorize any changes to licensed operations or maintenance activities. The NRC's approval of the DFPs will not result in any changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFPs will not authorize any construction activity or facility modification. Therefore, the NRC staff concludes that the approval of CYAPCO's DFPs is a procedural and administrative action that will not result in any significant impact to the environment.

Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 30618) (NHPA), requires Federal agencies to consider the effects of their undertakings on historic properties. In accordance with the NHPA implementing regulations at 36 CFR part 800, ''Protection of Historic Properties,'' the NRC's approval of CYAPCO's DFPs constitutes a Federal undertaking. The NRC, however, has determined that the approval of the DFPs is a type of undertaking that does not have the potential to cause effects on historic properties, assuming such historic properties were present, because the NRC's approval of CYAPCO's DFPs will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the NHPA.

Under Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (ESA), prior to taking a proposed action, a Federal agency must determine

whether (i) endangered and threatened species or their critical habitats are known to be in the vicinity of the proposed action and if so, whether (ii) the proposed Federal action may affect listed species or critical habitats. The NRC has determined that the proposed action will have no effect on any listed species or their critical habitats because the NRC's approval of CYAPCO's DFPs will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste.

Alternative to the Proposed Action

In addition to the proposed action, the NRC evaluated the no-action alternative. The no-action alternative is to deny CYAPCO's DFPs. A denial of a DFP that meets the criteria of 10 CFR 72.30(b) or 72.30(c) does not support the regulatory intent of the 2011 rulemaking. As noted in the EA for the 2011 rulemaking (ADAMS Accession No. ML090500648), not promulgating the 2011 final rule would have increased the likelihood of additional legacy sites. Thus, denying CYAPCO's DFPs, which the NRC has found to meet the criteria of 10 CFR 72.30(b) and 72.30(c), will undermine the licensee's decommissioning planning. On this basis, the NRC has concluded that the no-action alternative is not a viable alternative.

Agencies and Persons Consulted

The NRC staff consulted with other agencies and parties regarding the environmental impacts of the proposed action. The NRC provided a draft of its EA to the Connecticut Department of Energy and Environmental Protection (State) by letter dated September 2, 2016 (ADAMS Accession No. ML17139C482), and gave the State 30 days to respond. The State did not respond. The NRC also consulted with the Fish and Wildlife Service by letter dated September 2, 2016 (ADAMS Accession No. ML16250A476). However, the NRC staff has determined that consultation under ESA Section 7 is not required because the proposed action is administrative/procedural in nature and will not affect listed species or critical habitat (ADAMS Accession No. ML17135A062).

III. Finding of No Significant Impact

The NRC staff has determined that the proposed action, the review and approval of CYAPCO's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and 72.30(c), will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFPs will not authorize any construction activity, facility modification, or any other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action and as such, that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC staff has determined not to prepare an EIS for the proposed action but will issue this FONSI.

IV. Availability of Documents

The following documents, related to this notice, can be found using any of the methods provided in the following table. Instructions for accessing ADAMS were provided under the **ADDRESSES** section of this document.

Date	Document	ADAMS Accession No.
December 17, 2012	Submission of CYAPCO decommissioning funding plan	ML12363A024
December 14, 2015	Submission of CYAPCO triennial decommissioning funding plan	ML16020A209
February 1, 2009	Environmental Assessment for Final Rule—Decommissioning Planning	ML090500648
May 15, 2017	Note to File re Sct 7 Consultations for ISFSI DFPs	ML17135A062
September 2, 2016	Consultation Letter: ML16250A526–RLSO	ML17139C482
September 2, 2016	Letter to M. Miller re: U.S. Nuclear Regulatory Commission Preliminary Determination of No Effects Regarding the Haddam Neck Plant Independent Spent Fuel Storage Installation Decommissioning Funding Plan.	ML16250A476
February 20, 2019	NRC staff's Final EA for the approval of the decommissioning funding plan	ML19053A429

Dated at Rockville, Maryland, on February 28, 2019.

For the Nuclear Regulatory Commission.

John McKirgan,

Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–03966 Filed 3–5–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–35; NRC–2018–0258]

Energy Northwest, Columbia Generating Station, Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) for its review and approval of the decommissioning funding plans submitted by Energy Northwest (EN) on December 17, 2012, and December 15, 2015, for the independent spent fuel storage installation (ISFSI) at Columbia Generating Station in Richland, Washington.

DATES: The EA and FONSI referenced in this document are available on March 6, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0258 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–2018–0258. Address questions about NRC Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at

http://www.nrc.gov/reading-rm/adams.html. To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the Availability of Documents section.

• *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: Pamela Longmire, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7465, email: *Pamela.Longmire@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering the approval of the decommissioning funding plans (DFPs) for the Columbia Generating Station ISFSI. EN submitted an initial DFP and an updated DFP for NRC review and approval by letters dated December 17, 2012 (ADAMS Accession No. ML123550043), and December 15, 2015 (ADAMS Accession No. ML15351A459), respectively. The NRC staff has prepared a final EA (ADAMS Accession No. ML19053A293 in support of its review of EN's DFPs, in accordance with the NRC regulations in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' which implement the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). Based on the EA, the NRC staff has determined that approval of the DFPs for the Columbia Generating Station ISFSI will not significantly affect the quality of the human environment, and accordingly, the staff has concluded that a FONSI is appropriate. The NRC staff further finds that preparation of an environmental impact statement (EIS) is not warranted.

II. Environmental Assessment

Background

The Columbia Generating Station ISFSI is located in Richland, Washington. EN is authorized by the NRC, under License No. SFGL–15, to store spent nuclear fuel at the Columbia Generating Station ISFSI.

The NRC requires its licensees to plan for the eventual decommissioning of their licensed facilities prior to license termination. On June 17, 2011, the NRC published a final rule in the **Federal Register** amending its decommissioning planning regulations (76 FR 35512). The final rule amended the NRC regulation, 10 CFR 72.30, which concerns financial assurance and decommissioning for ISFSIs. This regulation now requires each holder of, or applicant for, a license under 10 CFR part 72 to submit, for NRC review and approval, a DFP. The purpose of the DFP is to demonstrate the licensee's financial assurance, *i.e.,* that funds will be available to decommission the ISFSI. The NRC staff is reviewing the DFPs submitted by EN on December 17, 2012, and December 15, 2015. Specifically, the NRC must determine whether EN's DFPs contain the information required by 10 CFR 72.30(b) and 72.30(c) and whether EN has provided reasonable assurance that funds will be available to decommission the ISFSI.

Description of the Proposed Action

The proposed action is the NRC's review and approval of EN's DFPs submitted in accordance with 10 CFR 72.30(b) and 72.30(c). To approve the DFPs, the NRC evaluates whether the decommissioning cost estimate (DCE) adequately estimates the cost to conduct the required ISFSI decommissioning activities prior to license termination, including identification of the volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the license termination criteria in 10 CFR 20.1402 or 10 CFR 20.1403. The NRC also evaluates whether the aggregate dollar amount of EN financial instruments provides adequate financial assurance to cover the DCE and that the financial instruments meet the criteria of 10 CFR 72.30(e). Finally, the NRC evaluates whether the effects of the following events have been considered in EN's submittal: (1) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material; (2) facility modifications; (3) changes in authorized possession limits; and (4) actual remediation costs that exceed the previous cost estimate, consistent with 10 CFR 72.30(c).

The proposed action does not require any changes to the ISFSI's licensed routine operations, maintenance activities, or monitoring programs, nor does it require any new construction or land-disturbing activities. The scope of the proposed action concerns only the NRC's review and approval of EN's DFPs. The scope of the proposed action does not include, and will not result in, the review and approval of any decontamination or decommissioning activity or license termination for the ISFSI or any other part of Columbia Generating Station.

Need for the Proposed Action

The proposed action provides a means for the NRC to confirm that EN will have sufficient funding to cover the costs of decommissioning the ISFSI, including the reduction of the residual radioactivity at the ISFSI to the level specified by the applicable NRC license termination regulations concerning release of the property (10 CFR 20.1402 or 10 CFR 20.1403).

Environmental Impacts of the Proposed Action

The NRC's approval of the DFPs will not change the scope or nature of the operation of the ISFSI and will not authorize any changes to licensed operations or maintenance activities. The NRC's approval of the DFPs will not result in any changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFPs will not authorize any construction activity or facility modification. Therefore, the NRC staff concludes that the approval of EN's DFPs is a procedural and administrative action that will not result in any significant impact to the environment.

Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 30618) (NHPA), requires Federal agencies to consider the effects of their undertakings on historic properties. In accordance with the NHPA implementing regulations at 36 CFR part 800, ''Protection of Historic Properties,'' the NRC's approval of EN's DFPs constitutes a Federal undertaking. The NRC, however, has determined that the approval of the DFPs is a type of undertaking that does not have the potential to cause effects on historic properties, assuming such historic properties were present, because the NRC's approval of EN's DFPs will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Therefore, in accordance with 36 CFR 800.3(a)(1), no consultation is required under Section 106 of the NHPA.

Under Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (ESA), prior to taking a proposed action, a Federal agency must determine whether (i) endangered and threatened species or their critical habitats are known to be in the vicinity of the proposed action and if so, whether (ii) the proposed Federal action may affect listed species or critical habitats. The NRC has determined that the proposed action will have no effect on any listed species or their critical habitats because the NRC's approval of EN's DFPs will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste.

Alternative to the Proposed Action

In addition to the proposed action, the NRC evaluated the no-action alternative. The no-action alternative is to deny EN's DFPs. A denial of a DFP that meets the criteria of 10 CFR 72.30(b) or 72.30(c) does not support the regulatory intent of the 2011 rulemaking. As noted in the EA for the 2011 rulemaking (ADAMS Accession No. ML090500648), not promulgating the 2011 final rule would have increased the likelihood of additional legacy sites. Thus, denying EN's DFPs, which the NRC has found to meet the criteria of 10 CFR 72.30(b) and 72.30(c), will undermine the licensee's decommissioning planning. On this basis, the NRC has concluded that the no-action alternative is not a viable alternative.

Agencies and Persons Consulted

The NRC staff consulted with other agencies and parties regarding the environmental impacts of the proposed action. The NRC provided a draft of its EA to the State of Washington Department of Health, Office of Radiation Protection (State) by letter dated July 7, 2016 (ADAMS Accession No. ML17139B940), and gave the State 30 days to respond. The State did not respond. The NRC also consulted with the Fish and Wildlife Service by letter dated July 7, 2016 (ADAMS Accession No. ML16189A442). However, the NRC staff has determined that consultation under ESA Section 7 is not required because the proposed action is administrative/procedural in nature and will not affect listed species or critical habitat (ADAMS Accession No. ML17135A062).

III. Finding of No Significant Impact

The NRC staff has determined that the proposed action, the review and approval of EN's initial and updated DFPs, submitted in accordance with 10 CFR 72.30(b) and 72.30(c), will not authorize or result in changes to licensed operations or maintenance activities, or changes in the types, characteristics, or quantities of radiological or non-radiological effluents released into the environment from the ISFSI, or result in the creation of any solid waste. Moreover, the approval of the DFPs will not authorize any construction activity, facility modification, or any other land-disturbing activity. The NRC staff has concluded that the proposed action is a procedural and administrative action and as such, that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC staff has determined not to prepare an EIS for the proposed action but will issue this FONSI.

IV. Availability of Documents

The following documents, related to this notice, can be found using any of the methods provided in the following table. Instructions for accessing ADAMS were provided under the **ADDRESSES** section of this document.

Date	Document	ADAMS Accession No.
December 17, 2012	Submission of EN decommissioning funding plan	ML123550043
December 15, 2015	Submission of EN triennial decommissioning funding plan	ML15351A459
February 1, 2009	Environmental Assessment for Final Rule—Decommissioning Planning	ML090500648
May 15, 2017	Note to File re Sct 7 Consultations for ISFSI DFPs	ML17135A062
July 7, 2016	Consultation Letter: ML16189A440–RLSO	ML17139B940
July 7, 2016	Ltr M. Zablan, US FWS, USNRC Preliminary Determination of No Effects Regarding the Columbia Generating Station ISFSI Decommissioning Funding Plan (72-35) L24822.	ML16189A442
February 20, 2019	NRC staff's Final EA for the approval of the decommissioning funding plan	ML19053A293

Dated at Rockville, Maryland, on February 28, 2019.

For the Nuclear Regulatory Commission.

John McKirgan,

Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–03965 Filed 3–5–19; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–291, OMB Control No. 3235–0328]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Form ID

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form ID (OMB Control No. 3235–0328; SEC File No. 270–291) is used by companies and other entities to apply for identification numbers and access codes used in conjunction with the EDGAR electronic filing system. The information provided on Form ID is an essential part of the security of the EDGAR system. Form ID is a not a public document because it is used solely for the purpose of registering filers on the EDGAR system. Form ID must be filed every time a registrant or other person obtains or changes an

identification number. Form ID is filed by all persons that are required to file information electronically on EDGAR, including but not limited to, individuals, companies, other for-profit organizations, or governmental entities. We estimate that approximately 46,842 filers file Form ID annually and that it takes approximately 0.15 hours per response to prepare for a total of 7,027 annual burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 27, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–04008 Filed 3–5–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85224; File No. SR–EMERALD–2019–08]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 503, Openings on the Exchange, and Rule 515, Execution of Orders and Quotes, In Order To Harmonize Its Rule To the Rules of MIAX Options

February 28, 2019.

Pursuant to the provisions of 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 February 22, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a 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 filing a proposal to amend Exchange Rule 503, Openings on the Exchange, and MIAX Emerald Rule 515, Execution of Orders and Quotes, in order to harmonize its rule to the rules of MIAX Options.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend MIAX Emerald Rule 503, Openings on the Exchange, and MIAX Emerald Rule 515, Execution of Orders and Quotes, in order to harmonize its rule to the rules of MIAX Options.

Background

MIAX Emerald plans to commence operations as a national securities exchange registered under Section 6 of the Act[3] on March 1, 2019. As described more fully in MIAX Emerald's Form 1 application,[4] the Exchange is an affiliate of MIAX Options and MIAX PEARL, LLC (''MIAX PEARL''). MIAX Emerald Rules, in their current form, were filed as Exhibit B to its Form 1 on August 16, 2018, and at that time, the above mentioned rules, were substantially similar to the rules of the MIAX Options exchange. MIAX Options has filed a proposed rule change to amend MIAX Options Rule 503, Openings on the Exchange, and MIAX Options Rule 515, Execution of Orders and Quotes.[5] In order to ensure consistent operation of both MIAX Emerald and MIAX Options through having consistent rules, the Exchange proposes to amend MIAX Emerald Rules as described below.

Proposal

The Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, and Exchange Rule 515, Execution of Orders and Quotes, to delete certain rule text regarding functionality that the Exchange proposes to remove from the System[6] and to make certain minor clarifying changes related thereto. These changes would make MIAX Emerald Rule 503 and Rule 515 consistent with MIAX Options Rule 503 and Rule 515 and are identical to changes made by MIAX Options when it modified its rule.[7]

First, the Exchange proposes to delete Exchange Rule 515, Interpretations and Policies .01. Presently, this rule states that ''[r]esubmission of Orders. A Member[8] may submit written instructions to the Exchange designating orders the Member submits as eligible for automatic resubmission when the order or any remaining part of the order has been automatically cancelled by the System. The resubmitted order will be automatically submitted as a new order. This automatic resubmission functionality of the System will not apply to Immediate-or-Cancel, Fill-or-Kill or Intermarket Sweep Orders.'' The Exchange notes that this functionality was completely voluntary for Members to use on MIAX Options and was intended to provide Members with an automated way to resubmit certain cancelled orders. The Exchange believes this functionality is no longer necessary as very few Members on MIAX Options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX EMERALD, LLC for registration as a national securities exchange).

[5] *See* SR–MIAX–2019–06 filed on February 22, 2019 to amend Exchange Rule 503, Openings on the Exchange, and Exchange Rule 515, Execution of Orders and Quotes, to delete certain rule text regarding functionality that the Exchange proposes to remove from the System.

[6] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[7] *See supra* note 5.

[8] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

ever used such functionality, and no Members on MIAX Options are currently utilizing this functionality. Therefore, the Exchange proposes to delete this rule text as it believes no Member of MIAX Emerald would ever utilize this functionality because all Members of MIAX Emerald are currently also Members of MIAX Options.

Second, the Exchange proposes to amend Exchange Rule 515(e) related to handling of Immediate-or-Cancel (''IOC'') Orders. Specifically, the Exchange proposes to delete the last sentence of Rule 515(e) which currently states that ''[c]ontracts remaining from an IOC order will not be eligible for automatic resubmissions as a new order for Members who have instructed the Exchange in writing to re-enter remaining contracts.'' The Exchange notes that, since it is proposing to delete the order resubmission functionality, this corresponding rule text is no longer necessary because it was intended as a carve-out for IOC orders from the functionality the Exchange now proposes to delete from Interpretations and Policies .01.

Third, the Exchange proposes to amend Exchange Rule 515(f) related to handling of Fill-or-Kill (''FOK'') Orders. Specifically, the Exchange proposes to delete the last sentence of Rule 515(f) which currently states that ''[a]n FOK order will not be eligible for automatic resubmissions as a new order for Members who have instructed the Exchange in writing to re-enter remaining contracts.'' Similarly, this corresponding rule text is no longer necessary because it was intended as a carve-out for FOK orders from the functionality the Exchange now proposes to delete from Interpretations and Policies .01.

Fourth, the Exchange proposes to amend Exchange Rule 515(g) related to handling of Intermarket Sweep Orders and Intermarket Sweep eQuote (''ISOs''). Specifically, the Exchange proposes to delete part of the last sentence of Rule 515(g) which currently states that ''. . .and are not eligible for automatic resubmissions as a new order for Members who have instructed the Exchange in writing to re-enter remaining contracts.'' Similarly, this corresponding rule text is no longer necessary because it was intended as a carve-out for ISOs from the functionality the Exchange now proposes to delete from Interpretations and Policies .01.

Finally, the Exchange proposes to amend Exchange Rule 503(f)(2)(vii)(B)(5) to delete a sentence related to the automatic resubmission of new orders as part of the opening process. Specifically, the Exchange proposes to delete text which reads ''. . .unless the Member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. . .'' The Exchange notes that this functionality was completely voluntary for Members of MIAX Options to use and was intended to provide Members of MIAX Options with an automated way to resubmit certain cancelled orders. The Exchange believes this functionality is no longer necessary as very few Members of MIAX Options ever used such functionality, and the Exchange believes no Members of MIAX Emerald would ever utilize this functionality because all Members of MIAX Emerald are currently also Members of MIAX Options. Therefore, the Exchange proposes to delete this rule text as it no longer offers this functionality to MIAX Options Members,[9] and does not intend to offer this functionality to MIAX Emerald Members. The Exchange believes that the proposed changes will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to minimize the potential for confusion.

The proposed changes are scheduled to become operative March 1, 2019.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change deletes rule text that relates to voluntary functionality that the Exchange believes no Member would ever utilize and updates corresponding rules to remove carve-outs which would no longer be applicable, to provide uniformity in the Exchange's rulebook with respect to System functionality. The Exchange notes that the proposed changes to Exchange Rule 515, Execution of Orders and Quotes, and Exchange Rule 503, Openings on the Exchange, would not have a substantive impact on Exchange Members since the Exchange believes no Members would ever utilize such functionality because all Members of MIAX Emerald are currently also Members of MIAX Options. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system, since it is proposing to remove rule text that relates to functionality that would not be used by its Members. The Exchange further believes that the proposed rule change is consistent with the Act because Members will have other means of submitting orders and the removal of the automatic order resubmission functionality would not impact the ability of Members to transact on the Exchange. The Exchange does not believe that removing this functionality will negatively impact Members because very few MIAX Options Members ever used such functionality, and the Exchange believes no MIAX Emerald Members would ever utilize this functionality because all Members of MIAX Emerald are currently also Members of MIAX Options.

Additionally, the Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because they seek to add additional clarity to, and improve the accuracy of, the Exchange's rules. In particular, the Exchange believes that the proposed rule changes will provide clarity and transparency of the Exchange's rules to Members and the public because it would delete rule text related to voluntary functionality that is no longer available on MIAX Options [12] and would not be available on MIAX Emerald, and it is in the public interest for rules to be accurate and concise so as to minimize the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX Emerald does not believe that the proposed rule change will impose

[9] *See supra* note 5.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 5.

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will have no impact on competition as it is not designed to address any competitive issues but rather is designed to delete rule text that relates to voluntary functionality that is no longer used by Members of MIAX Options and that the Exchange believes would never be utilized by Members of MIAX Emerald because all Members of MIAX Emerald are currently also Members of MIAX Options, and updates corresponding rules to remove carve-outs which would no longer be applicable as a result. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition as the Rules apply equally to all Exchange Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) [14] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange seeks to make the voluntary functionality contained in Exchange Rule 515, Execution of Orders and Quotes, and Exchange Rule 503, Openings on the Exchange no longer available on March 1, 2019. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on March 1, 2019.[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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2019–08 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–EMERALD–2019–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2019–08 and should be submitted on or before March 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03983 Filed 3–5–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[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).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85221; File No. SR–MIAX–2019–06]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 503, Openings on the Exchange, and Exchange Rule 515, Execution of Orders and Quotes

February 28, 2019.

Pursuant to the provisions of 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 February 22, 2019, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 filing a proposal to amend Exchange Rule 503, Openings on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Exchange, and Exchange Rule 515, Execution of Orders and Quotes, to delete certain rule text regarding functionality that the Exchange proposes to remove from the System [3] and to make certain minor clarifying changes related thereto.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 503, Openings on the Exchange, and Exchange Rule 515, Execution of Orders and Quotes, to delete certain rule text regarding functionality that the Exchange proposes to remove from the System and to make certain minor clarifying changes related thereto.

First, the Exchange proposes to delete Exchange Rule 515, Interpretations and Policies .01. Presently, this rule states that ''[a] Member [4] may submit written instructions to the Exchange designating orders the Member submits as eligible for automatic resubmission when the order or any remaining part of the order has been automatically cancelled by the System. The resubmitted order will be automatically submitted as a new order. This automatic resubmission functionality of the System will not apply to Immediate or Cancel, Fill or Kill or Intermarket Sweep Orders.'' The Exchange notes that this functionality was completely voluntary for Members to use and was intended to provide Members with an automated way to resubmit certain cancelled orders. The Exchange believes this functionality is no longer necessary as very few Members ever used such functionality, and no Members are currently utilizing this functionality. Therefore, the Exchange proposes to delete this rule text as it no longer plans to offer this functionality to its Members.

Second, the Exchange proposes to amend Exchange Rule 515(e) related to handling of Immediate-or-Cancel (''IOC'') Orders. Specifically, the Exchange proposes to delete the last sentence of Rule 515(e) which currently states that ''[c]ontracts remaining from an IOC order will not be eligible for automatic resubmissions as a new order for Members who have instructed the Exchange in writing to re-enter remaining contracts.'' The Exchange notes that, since it is proposing to delete the order resubmission functionality, this corresponding rule text is no longer necessary because it was intended as a carve-out for IOC orders from the functionality the Exchange now proposes to delete from Interpretations and Policies .01.

Third, the Exchange proposes to amend Exchange Rule 515(f) related to handling of Fill-or-Kill (''FOK'') Orders. Specifically, the Exchange proposes to delete the last sentence of Rule 515(f) which currently states that ''[a]n FOK order will not be eligible for automatic resubmissions as a new order for Members who have instructed the Exchange in writing to re-enter remaining contracts.'' Similarly, this corresponding rule text is no longer necessary because it was intended as a carve-out for FOK orders from the functionality the Exchange now proposes to delete from Interpretations and Policies .01.

Fourth, the Exchange proposes to amend Exchange Rule 515(g) related to handling of Intermarket Sweep Orders and Intermarket Sweep eQuote (''ISOs''). Specifically, the Exchange proposes to delete part of the last sentence of Rule 515(g) which currently states that ''. . .and are not eligible for automatic resubmissions as a new order for Members who have instructed the Exchange in writing to re-enter remaining contracts.'' Similarly, this corresponding rule text is no longer necessary because it was intended as a carve-out for ISOs from the functionality the Exchange now proposes to delete from Interpretations and Policies .01.

Finally, the Exchange proposes to amend Exchange Rule 503(f)(2)(vii)(B)(5) to delete a sentence related to the automatic resubmission of new orders as part of the opening process. Specifically, the Exchange proposes to delete text which reads ''(i) the Member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order, or (ii). . .'' The Exchange notes that this functionality was completely voluntary for Members to use and was intended to provide Members with an automated way to resubmit certain cancelled orders. The Exchange believes this functionality is no longer necessary as very few Members ever used such functionality, and no Members are currently utilizing this functionality. Therefore, the Exchange proposes to delete this rule text as it no longer plans to offer this functionality to its Members.

The Exchange notes that it will issue a Regulatory Circular in order to notify its Members of this proposed rule change removing System functionality, which would no longer allow Members to request that the Exchange automatically resubmit orders.

The proposed changes are scheduled to become operative March 1, 2019.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, in that it is designed to 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change deletes rule text that relates to voluntary functionality that is no longer used by the Exchange's Members and updates corresponding rules to remove carve-outs which would no longer be applicable, to provide uniformity in the Exchange's rulebook with respect to System functionality. The Exchange notes that the proposed changes to

[3] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[4] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

Exchange Rule 515, Execution of Orders and Quotes, and Exchange Rule 503, Openings on the Exchange, would not have a substantive impact on Exchange Members since no Members currently make use of such functionality. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system, since it is proposing to remove rule text that relates to functionality that is not used by its Members. The Exchange further believes that the proposed rule change is consistent with the Act because Members will continue to have other means of submitting orders and the removal of the automatic order resubmission functionality does not impact the ability of Members to transact on the Exchange. The Exchange does not believe that removing this functionality will negatively impact Members because very few Members ever used such functionality, and no Members are currently utilizing this functionality.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX Options does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will have no impact on competition as it is not designed to address any competitive issues but rather is designed to delete rule text that relates to voluntary functionality that is no longer used by the Exchange's Members and updates corresponding rules to remove carve-outs which would no longer be applicable as a result.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition as the Rules apply equally to all Exchange Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days from the date of filing. However, Rule 19b–4(f)(6)(iii) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange seeks to make the voluntary functionality contained in Exchange Rule 515, Execution of Orders and Quotes, and Exchange Rule 503, Openings on the Exchange, no longer available on March 1, 2019. The Commission believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposal operative on March 1, 2019.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2019–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2019–06 and should be submitted on or before March 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03991 Filed 3–5–19; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 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).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85222; File No. SR–MSRB–2019–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Consisting of Interpretive Guidance About Frequently Asked Questions Regarding the Use of Social Media Under the MSRB's Advertising Rules

February 28, 2019.

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 February 26, 2019 the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of interpretive guidance about frequently asked questions regarding the use of social media under MSRB Rule G–21, on advertising by brokers, dealers and municipal securities dealers, and MSRB Rule G–40, on advertising by municipal advisors (Rule G–21, together with Rule G–40, the ''advertising rules''). The proposed rule change has been filed for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act [3] and Rule 19b–4(f)(6) thereunder.[4] The effective date of the amendments to Rule G–21 and Rule G–40 will be announced in an MSRB Notice to be published on the MSRB's website following the effectiveness of this proposed rule change. To provide brokers, dealers, municipal securities dealers and municipal advisors (collectively, ''regulated entities'') with sufficient time to develop supervisory and compliance policies and procedures, the effective date to be announced will be no less than 30 days and no more than 180 days following publication of the MSRB Notice.[5]

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-Filings.aspx,* at the MSRB's principal office, 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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify for brokers, dealers, and municipal securities dealers (collectively, ''dealers'') and municipal advisors the application of the recent amendments to Rule G–21 and new Rule G–40 to the use of social media by regulated entities [6] in connection with their municipal securities activities and municipal advisory activities. The MSRB committed to providing that guidance [7] before the effective date of the amendments to the advertising rules, and developed draft guidance regarding the use of social media in the format of frequently asked questions (the ''FAQs'').[8]

While developing the proposed rule change, the MSRB was mindful of the potential burden on a regulated entity if there were to be unnecessary inconsistencies between any adopted MSRB social media guidance and similar guidance issued by other regulators that may be applicable to other aspects of the regulated entity's business. To inform its approach, the MSRB consulted with staff from the Financial Industry Regulatory Authority, Inc. (''FINRA''). The MSRB endeavored, to the extent practicable, to align the FAQs with the social media guidance published by the SEC and FINRA.[9]

The FAQs are divided into four categories: Use of social media, third-party posts, recordkeeping and supervision. Further, the FAQs would provide references to additional resources that may be of use to the regulated entity.

Use of Social Media. The FAQs would provide guidance about when a regulated entity's or its associated person's use of social media becomes an ''advertisement'' under the advertising rules. The FAQs would clarify that, depending on the facts and circumstances and with limited exceptions, any material (including material that is posted on an associated person's personal social media) that relates to (i) the products or services of the dealer, (ii) the services of the municipal advisor, or (iii) the engagement of a municipal advisory client by the municipal advisor, may constitute an advertisement under the MSRB's advertising rules, if it is published or used in any electronic or other public media or written or electronic promotional literature distributed or made generally available to either customers or municipal entities, obligated persons, municipal advisory clients or the public.

Further, the FAQs would address:

• The other MSRB rules to consider when a regulated entity uses social

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 83177 (May 7, 2018), 83 FR 21794 (May 10, 2018) (File No. SR–MSRB–2018–01). The amendments to Rule G–21 and new Rule G–40 were to become effective on February 7, 2019. However, to provide the industry with sufficient time to establish supervisory and compliance policies and procedures, the MSRB filed with the SEC for immediate effectiveness an extension of that effective date. The new effective date of the amendments to Rule G–21 and new Rule G–40 will be announced in an MSRB Notice to be published on the MSRB's website. *See* File No. SR–MSRB–2019–01.

[6] Consistent with MSRB Rule D–11, references in the FAQs to a dealer, municipal advisor, or a regulated entity generally include the associated persons of such dealer, municipal advisor, or regulated entity.

[7] Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018, available at *http://msrb.org/~/media/Files/SEC-Filings/2018/MSRB-2018-01%20MSRB%20Letter%20to%20SEC.ashx?*

[8] Concurrent with the submission of this proposed rule change, the MSRB filed a proposed rule change to amend the advertising rules to exempt interactive content that is an advertisement and that would be posted or disseminated on an interactive electronic forum from the requirement that a municipal securities principal, general securities principal, or municipal advisor principal, as relevant, approve that advertisement prior to first use.

[9] *See, e.g.,* National Examination Risk Alert, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission (Jan. 4, 2012); Exchange Act Release No. 58288 (Aug. 1, 2008); FINRA Regulatory Notice 17–18 (Apr. 2017) (''RN 17–18''); and FINRA Regulatory Notice 10–06 (Jan. 2010) (''RN 10–06'').

media as part of its municipal securities or municipal advisory activities;

- the requirement for principal pre-approval of an advertisement; and
- a regulated entity's website hyperlinking to content on an independent third-party's website.

In particular, the FAQs would highlight the other obligations under MSRB rules that regulated entities may have, in addition to those set forth in the advertising rules, regarding the use of social media. Those other regulatory obligations would include obligations under: Rule G–17, on conduct of municipal securities and municipal advisory activities; Rule G–27, on supervision; Rule G–44, on supervisory and compliance obligations of municipal advisors; Rule G–8, on books and records to be made by brokers, dealers, municipal securities dealers, and municipal advisors; and MSRB Rule G–9, on retention of records.

Further, the FAQs would reinforce that a social media post that contains an advertisement, as defined under the advertising rules, would be subject to approval by a principal prior to its first use.

The FAQs would provide guidance regarding hyperlinking to an independent third-party website from a regulated entity's website. The FAQs would discuss the concepts of entanglement—*i.e.,* whether the regulated entity involved itself in the preparation of the content on the third-party website—and adoption—*i.e.,* whether the regulated entity implicitly or explicitly approved or endorsed the content on that third-party website. The FAQs then would state that the advertising rules would apply to hyperlinked content on an independent third-party's website if the regulated entity either were to become entangled with or adopt that content.

To assist regulated entities, the FAQs would identify various factors that would be relevant in determining whether a regulated entity has adopted or become entangled with the independent third-party hyperlinked content. Those factors would include: The context of the hyperlinked content; the potential for customer or municipal advisory client confusion about the source of the content; and the nature of the hyperlinked content (*i.e.,* hosted by an independent third-party that is not controlled or influenced by the regulated entity with an ''ongoing'' link). Further, the FAQs would provide that the inclusion by a regulated entity of a disclaimer would not, alone, be sufficient to avoid potential MSRB rule violations for hyperlinked content on an independent third-party website if the regulated entity knows, or has reason to know, that such content is materially false or misleading. However, the FAQs would highlight that MSRB rules would not apply to linked content within the independent hyperlinked content to which the regulated entity had hyperlinked.

Third-party posts. The FAQs would provide guidance regarding when a post by a customer, a municipal entity client or another third-party (collectively, a ''third-party post'') on a regulated entity's social media page may be considered advertising under the advertising rules. Further, the FAQs would provide that if the regulated entity were to become entangled with or adopt such third-party posts, such third-party posts would become subject to the advertising rules.

In addition, the FAQs would provide guidance regarding whether a municipal advisory client may post positive comments on a municipal advisor's social media page about the municipal advisor's municipal advisory activities without that post being deemed an advertisement containing a testimonial under Rule G–40. That guidance would provide that such post on the municipal advisor's social media page would only be deemed to be an advertisement containing a testimonial under Rule G–40 if the municipal advisor were to either be entangled with or adopt the post.

Recordkeeping. The FAQs would clarify that ''posts,'' ''chats,'' text messages, or messages sent through messaging applications related to a regulated entity's municipal securities or municipal advisory activities conducted through social media—regardless of (i) whether the social media is specifically identified as business or personal, (ii) the technology used for the messaging, or (iii) the device used for the messaging was issued by the regulated entity— are subject to the MSRB's recordkeeping rules (*i.e.,* Rules G–8 and G–9).

Specifically, for dealers, Rule G–9(b)(viii)(C) requires that ''all written and electronic communications received and sent, including inter-office memoranda, relating to the conduct of the activities of such municipal securities broker or municipal securities dealer with respect to municipal securities'' be retained. Similarly, for municipal advisors, Rule G–9(h)(i) requires the retention of records, which include, among other things, originals or copies of all written and electronic communications received and sent, including inter-office memoranda, relating to municipal advisory activities.[10] Neither the technology used for the communication nor the distinction between a communication made through a devise issued by a regulated entity or its associated person's personal device is determinative for this requirement.

Supervision. The FAQs would list MSRB rules, including the advertising rules, Rule G–17, Rule G–8 and Rule G–9, as well as other factors, such as usage restrictions, training and education, recordkeeping and monitoring, that are relevant to the development of policies and procedures regarding social media use. The FAQs also would provide guidance under Rule G–27 and Rule G–44 about factors that may be important for a regulated entity to consider in determining the effectiveness of its policies and procedures regarding social media.

Additional materials. The FAQs also would refer to resources where additional information about the MSRB's advertising rules could be obtained. Those resources would include the materials submitted to the Commission in File No. SR–MSRB–2018–01 related to the recent amendments to Rule G–21 and new Rule G–40, MSRB Notice 2018–08 concerning the SEC's approval of those recent amendments to Rule G–21 and new Rule G–40 and MSRB Notice 2018–32 concerning the application of the content standards to advertisements by municipal advisors under Rule G–40.

[10] Rule G–8(f) provides in part that ''[b]rokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a–3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that'' certain information is maintained. Rule 17a–3(a)(20) under the Exchange Act provides that every dealer shall keep a:

record, which need not be separate from the advertisements, sales literature, or communications, documenting that the member, broker or dealer has complied with, or adopted policies and procedures reasonably designed to establish compliance with, applicable federal requirements and rules of a self-regulatory organization of which the member, broker or dealer is a member which require that advertisements, sales literature, or any other communications with the public by a member, broker or dealer or its associated persons be approved by a principal.

Rule G–8(h)(i) requires municipal advisors to make and keep current all books and records described in Rule 15Ba1–8(a) under the Exchange Act. In particular, Rule 15Ba1–8(a)(1) requires that municipal advisors make and keep true, accurate, and current ''originals or copies of all written communications received, and originals or copies of all written communications sent, by such municipal advisor (including inter-office memoranda and communications) relating to municipal advisory activities, regardless of the format of such communications.''

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act [11] provides that:

[t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act [12] provides that the MSRB's rules shall:

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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2) [13] and 15B(b)(2)(C) [14] of the Exchange Act. The proposed rule change would help to prevent fraudulent and manipulative practices; foster coordination with persons engaged in regulating transactions in municipal securities; and protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is designed to prevent fraudulent and manipulative practices. The proposed rule change would provide guidance to a regulated entity regarding the use of social media under the advertising rules. By providing this guidance, the MSRB makes clear that certain social media use by a regulated entity would be advertising, and as such, that social media use must comply with the standards of the advertising rules, including the content standards. Those standards provide, among other requirements, that advertisements be based on the principles of fair dealing and good faith, be fair and balanced, and provide a sound basis for evaluating the facts and that the advertisements not make any false, exaggerated, unwarranted, promissory or misleading statement or claim.

Because the MSRB has endeavored to make its advertising rules, including its social media guidance, consistent with the communications rules and social media guidance published by other financial regulators, to the extent practicable, a regulated entity that is dually registered as a broker, dealer or investment adviser with the SEC may be able to more easily understand and develop consistent practices across business lines, and therefore promote compliance with the MSRB's advertising rules. In turn, this improved compliance would help prevent fraudulent and manipulative practices because the proposed rule change is designed to assist with and promote compliance with the advertising rules, rules that in and of themselves are designed to prevent fraudulent and manipulative practices.[15]

In addition, the proposed rule change would foster coordination with persons engaged in regulating transactions in municipal securities. As noted under ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,'' regulatory coordination has already occurred with respect to the proposed rule change as the MSRB has consulted with FINRA staff to inform its approach to the FAQs. Further, by providing social media guidance that would be consistent with the social media guidance of other financial regulators (including the social media guidance published by the SEC and FINRA, regulators that are charged with inspecting for compliance with MSRB rules), to the extent practicable, those other financial regulators would be familiar with the social media guidance, which in turn, should foster efficient examinations by those other financial regulators of MSRB-regulated entities. In addition, a regulated entity that is dually registered with the MSRB and with FINRA would be treated the same under the advertising rules as a regulated entity that is registered with the MSRB and not with FINRA. Thus, because the MSRB has endeavored to make the proposed rule change consistent with the communications rules and social media guidance of FINRA, the proposed rule change would help ensure that all regulated entities are subject to consistent advertising regulation.

The proposed rule change also would help protect investors and the public interest. The MSRB believes that the clear guidance provided by the proposed rule change would help to ensure that social media use by a regulated entity that constitutes advertising complies in a consistent way with the advertising rules as well as relevant supervision and recordkeeping rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act [16] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The MSRB's policy on the use of economic analysis does not apply to rulemaking proposals for which the MSRB seeks immediate effectiveness.[17] However, even though the MSRB did not conduct a full economic analysis of the proposed rule change, the MSRB still conducted an internal analysis to gauge the economic impact of the proposed rule change, with an emphasis on the burden on competition involving regulated entities.

In this regard, the MSRB believes the proposed rule change is necessary and appropriate in the furtherance of the purposes of the Exchange Act because it would promote compliance by regulated entities by promoting clarity regarding the intended application of the MSRB's rules and would reduce confusion concerning the application of its rules. The MSRB also believes the proposed rule change would promote regulatory consistency with the social media guidance published by the SEC and FINRA. In addition, the proposed rule change would apply the social media guidance uniformly to dealers and municipal advisors, to the extent practicable, which promotes consistency and preserves competitive balance between regulated entities with different business models.

[11] 15 U.S.C. 78*o*–4(b)(2).

[12] 15 U.S.C. 78*o*–4(b)(2)(C).

[13] 15 U.S.C. 78*o*–4(b)(2).

[14] 15 U.S.C. 78*o*–4(b)(2)(C).

[15] *See* Exchange Act Release No. 83177 (May 7, 2018), 83 FR 21794 (May 10, 2018) (File No. SR–MSRB–2018–01).

[16] 15 U.S.C. 78*o*–4(b)(2)(C).

[17] The scope of the Board's policy on the use of economic analysis in rulemaking provides that:

[t]his Policy addresses rulemaking activities of the MSRB that culminate, or are expected to culminate, in a filing of a proposed rule change with the SEC under Section 19(b) of the Exchange Act, other than a proposed rule change that the MSRB reasonably believes would qualify for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act if filed as such or as otherwise provided under the exception process of this Policy.

Policy on the Use of Economic Analysis in MSRB Rulemaking, available at *http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx*. For those rule changes which the MSRB seeks immediate effectiveness, the MSRB usually focuses exclusively its examination on the burden of competition on regulated entities.

Effect on Competition, Efficiency and Capital Formation

The MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as the proposed rule change is applicable to all dealers and municipal advisory firms.

Section 15B(b)(2)(L)(iv) of the Exchange Act [18] provides that MSRB rules may ''not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.'' The MSRB believes that, although the proposed rule change would affect all municipal advisors, including small municipal advisors, the proposed rule change is meant to clarify existing MSRB rules and therefore would not impose additional burdens on municipal advisors regardless of firm size.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The MSRB sought public comment on the FAQs in draft form.[19] In response to that request for comment, the MSRB received four comment letters.[20] Commenters generally expressed support for the guidance contained in the FAQs, but also expressed various concerns and suggested certain revisions. In particular, commenters focused on three areas—interactive versus static communications, interpretations of FINRA's social media guidance, and additional guidance.[21] Below, the MSRB discusses the comments received.[22]

Interactive Versus Static Communications

Commenters requested that the MSRB adopt the concepts of interactive and static content posted or disseminated to social media sites as described in FINRA Regulatory Notice 10–06.[23] In that notice, FINRA provides examples of both interactive and static content, and provides guidance that the definition of public appearance under FINRA Rule 2210(f) includes unscripted participation in an interactive electronic forum.[24] Since RN 10–06, however, FINRA has amended FINRA Rule 2210 so that such communications are now defined as retail communications that are excepted from the requirement of principal pre-approval.[25] Nevertheless, such retail communications in interactive forums are subject to other supervisory requirements and are subject to content standards of FINRA's communications rule.[26] However, FINRA considers static content to constitute ''advertisements'' under FINRA Rule 2210 and requires principal approval of such content prior to posting.[27]

In response, the MSRB has determined to propose to amend its advertising rules to address commenters' suggestions. Concurrent with this proposed rule change, the MSRB has submitted a separate proposed rule change with the Commission to do so.

Interpretations of FINRA's Social Media Guidance

Commenters requested that the MSRB adopt their interpretations of certain aspects of FINRA's social media guidance. Specifically, commenters requested that the MSRB adopt interpretations regarding the adoption of third-party content, hyperlinks, and FINRA's social media guidance.

Adoption. SIFMA commented that ''SIFMA and its members ''don't view 'liking' as the adoption of content'' and explained that current FINRA guidance defines adoption ''in regard to sharing or linking'' but not 'liking'.'' [28] Similarly, Wells Fargo suggested that the FAQs would not align with FINRA's guidance in FINRA Regulatory Notice 17–18 regarding adoption because simply ''liking'' a post does not rise to the level of ''sharing'' or ''linking.'' [29]

FINRA has provided guidance that it would deem adoption as explicitly or implicitly endorsing or approving third-party content, and that by liking or sharing unsolicited favorable third-party content posted on a representative's business-use social media website, the representative would be adopting that content.[30] In addition, the MSRB submits that FINRA's guidance relating to ''shares'' and ''links'' to which commenters refer, by its own terms, does not provide the exclusive list of how a firm can adopt independent third-party content, but rather responds to a narrow question regarding sharing and linking.[31] Consistent with the SEC's

[18] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[19] MSRB Notice 2018–19 (Aug. 14, 2018) (the ''request for comment'').

[20] Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated September 14, 2018 (''BDA''); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated September 17, 2018 (''NAMA''); Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated September 14, 2018 (''SIFMA''); and Letter from Robert J. McCarthy, Director, Regulatory Policy, Wells Fargo Advisors, dated September 14, 2018 (''Wells Fargo'').

[21] NAMA also stated that ''we would like to continue to express our general concern with having the MSRB produce guidance that is not formally approved by the SEC.'' NAMA letter at 1. Further, NAMA stated ''we do not believe that the information provided in the FAQs should instead be provided through amending current rules or developing new ones. The nature of this medium is fluid and dynamic. The MSRB should retain sufficient flexibility to update guidance as warranted, and doing so through rulemaking would be premature and constricting.'' The MSRB has filed the FAQs with the Commission in a format that is more flexible than rule text for making future changes as appropriate in this evolving area. In addition, the MSRB has filed a proposed rule change to amend the advertising rules that the SEC will consider. By so doing, the MSRB believes that it has been responsive to NAMA's concerns.

Further, NAMA commented that the MSRB's factors that a regulated entity ''should consider their recordkeeping obligations under 'Recordkeeping and Record Retention' in question 13 amounts to merely issue spotting and provides no guidance.'' NAMA letter at 5. To provide municipal advisors with the flexibility to develop policies and procedures that reflect the municipal advisor's organization, the MSRB developed a primarily principles-based approach to supervision and compliance. Consistent with that determination, the guidance in FAQ question 11 (hereinafter, references to a given ''question'' are to a specific numbered question in the FAQs, unless otherwise noted or the context otherwise requires) is principles-based (question 11 was previously question 13 in the request for comment). As the MSRB believes that its response in question 11 is consistent with the MSRB's approach in Rule G–44, the MSRB has determined not to revise question 11 in response to NAMA's concerns regarding principles-based guidance.

[22] Commenters expressed concerns about recordkeeping as it relates to associated persons' personal social networking pages and to the costs of recordkeeping for small municipal advisors. The MSRB determined that these FAQs were not the appropriate forum to address recordkeeping requirements under the federal securities laws. However, the MSRB may choose to address the issue, as it relates to MSRB rules, in the future.

[23] BDA letter; NAMA letter at 4–5; SIFMA letter at 2; and Wells Fargo letter at 2–3.

[24] RN 10–06 at 4–5.

[25] FINRA Rule 2210(b)(1)(D) excepts from the requirement of principal pre-approval under FINRA Rule 2210(b)(1)(A) retail communications posted on an online interactive electronic form that the firm supervises and reviews in the same manner as correspondence set forth in Rule 3110(b). *See* FINRA Regulatory Notice 12–29 (June 2012) at 7 citing RN 10–06.

[26] *Id.*

[27] RN 10–06 at 5.

[28] SIFMA letter at 3.

[29] Wells Fargo letter at 2.

[30] RN 17–18 at Q9 (''[b]y liking or sharing favorable comments, the representative has adopted them and they are subject to the communications rules . . .'').

[31] RN 17–18 provides:

Q3: If a firm shares or links to specific content posted by an independent third-party such as an article or video, has the firm adopted the content?

A: By sharing or linking to specific content, the firm has adopted the content and would be responsible for ensuring that, when read in context with the statements in the originating post, the content complies with the same standards as

Continued

and FINRA's social media guidance, the FAQs would provide that a regulated entity may adopt the content of a third-party post if the regulated entity explicitly or implicitly approves or endorses the content. Further, based on that guidance, the FAQs would provide that, if a regulated entity ''likes'' or otherwise indicates approval with that third-party post, then the regulated entity has adopted that third-party post. The FAQs would provide non-exclusive factors for a regulated entity to consider when determining whether the regulated entity has adopted third-party content.

The MSRB believes that the FAQs would correctly interpret the theory of adoption as it applies to ''likes'' of third-party content and would promote regulatory consistency with the interpretations of other financial regulations. The MSRB has determined not to modify the FAQs in response to SIFMA's and Wells Fargo's suggestions for ''liking'' a post as doing so would create disharmony among the applicable regulatory interpretations.

Relatedly, NAMA provided three suggestions regarding adoption and entanglement. NAMA suggested that the FAQs' guidance regarding the entanglement or adoption by a municipal advisor of third-party content was inconsistent with the MSRB's guidance in MSRB Notice 2018–24 regarding testimonials. In particular, NAMA expressed concern that by simply allowing third-parties to post on a municipal advisor's social networking page, and specifically, by allowing a municipal advisory client to post positive comments on a municipal advisor's social networking page, the municipal advisor, itself, would be allowing an advertisement that was a testimonial to be posted. As provided in question 8, a municipal advisor would only be posting an advertisement that contains a prohibited testimonial under Rule G–40 if the municipal advisor were to become entangled with or adopt the positive comments of the municipal advisory client. To provide clarity, the MSRB has revised question 8 so that it now asks ''May a municipal advisory client post positive comments about its experience with the municipal advisor on the municipal advisor's social media page without such post being deemed a testimonial within Rule G–40?''

Further, NAMA suggested that the use of the term ''encourage'' when defining entanglement was inconsistent with SEC and FINRA language regarding entanglement.[32] To be responsive to NAMA's concerns, the MSRB has deleted references to ''encourage'' when discussing entanglement.

NAMA also suggested that the MSRB explicitly define the terms ''customer complaint'' and ''municipal advisory client complaint'' when discussing third-party posts on an associated person's social networking page.[33] After considering NAMA's suggestion, the FAQs provide a reference to the definition of those terms in Rule G–8.

Hyperlinks. SIFMA and Wells Fargo recommended that the MSRB align its guidance in question 4 relating to ongoing links with the guidance provided by FINRA in question 5 in RN 17–18.[34] In particular, those commenters suggested that FINRA has provided guidance that the determination of whether an ongoing hyperlink contains misleading information is only made at the time the firm determines to offer a particular hyperlink.[35] SIFMA and Wells Fargo note that a firm would not have the capacity to monitor the third-party website on a continual basis.[36]

Question 4 would provide guidance about ongoing links that would promote regulatory consistency with FINRA's guidance in question 5 of RN 17–18. In particular, the FAQs would define an ongoing link,[37] consistent with FINRA's definition of an ongoing link,[38] and provide guidance that hyperlinked content may not be advertising subject to the advertising rules if the hyperlink containing the independent third-party content is ongoing and the regulated entity has no influence or control over the independent third-party hosting the content. The FAQs then would provide guidance about the factors that a regulated entity may want to consider if the hyperlinked content is advertising subject to the advertising rules. Similar to FINRA's guidance in RN 17–18, question 4 in MSRB's FAQs would not specifically address requirements to monitor an ongoing link under the MSRB's advertising rules.[39] Because the MSRB believes that the FAQs' guidance regarding ongoing hyperlinks would promote regulatory consistency with the relevant guidance of other financial regulators, the MSRB has determined not to expand the guidance regarding ongoing hyperlinks to address commenters' suggestions.

Adoption of FINRA social media guidance. SIFMA suggested that, because FINRA has a long history of rulemaking and guidance with respect to social media issues, it would be helpful if dealers could rely on FINRA's social media or other guidance.''[40] The MSRB appreciates SIFMA's suggestion, and in developing the FAQs, the MSRB was mindful of the potential burden on a regulated entity if there were to be unnecessary inconsistencies between any adopted MSRB social media guidance and similar guidance issued by other regulators that may be applicable to other aspects of the regulated entity's business. To that end, and to the extent practicable, the MSRB

communications created by, or on behalf of, the firm.

[32] NAMA letter at 3.

[33] *Id.*

[34] SIFMA letter at 3; Wells Fargo letter at 3.

[35] *Id.*

[36] SIFMA letter at 3; *see* Wells Fargo letter at 3. Wells Fargo also suggested that it was unclear why it is necessary to review the link's content for testimonial status. The FAQs provide that, if the hyperlinked content on a third-party website from a regulated entity's website is an advertisement under the advertising rules, a regulated entity must consider all applicable provisions of the advertising rules including whether the hyperlinked content would be a testimonial. The need to review a hyperlink's content for testimonial status would stem from any prior determination that the hyperlinked content is advertising under the advertising rules.

[37] Question 4 would provide, in part, as follows:

When a regulated entity links to content that is hosted by an independent third-party that is not controlled by the regulated entity, that content may not be advertising subject to the MSRB's advertising rules if the hyperlink is ''ongoing.''

An ''ongoing'' link is one which: (i) Is continuously available to visitors to the regulated entity's website; (ii) visitors to the regulated entity's site have access to even though the independent third-party site may or may not contain favorable material about the regulated entity; and (iii) visitors to the regulated entity's website have access to even though the independent third-party's website may be revised. (footnote omitted) A regulated entity may not have adopted the content on the independent third-party's website if the link is ''ongoing.''

[38] RN 17–18, question 5, provides, in part, as follows:

Whether a firm has adopted the content of an independent third-party website or any section of the website through the use of a link is fact dependent. Two factors are critical to the analysis: (1) Whether the link is ''ongoing'' and (2) whether the firm has influence or control over the content of the third-party site.

The firm has not adopted the content if the link is ''ongoing,'' meaning:

➢ the link is continuously available to investors who visit the firm's site;

➢ investors have access to the linked site whether or not it contains favorable material about the firm; and

➢ the linked site could be updated or changed by the independent third- party and investors would nonetheless be able to use the link.

[39] For example, a regulated entity cannot post content that it knows or has reason to know contains any untrue statement of material fact or is otherwise false or misleading.

[40] SIFMA stated that ''it would be helpful if dealers could rely on outstanding FINRA enforcement actions or other guidance on social media issues.'' SIFMA letter at 3. The MSRB is not in a position to determine when and whether statements contained in FINRA enforcement actions, whether settled or fully litigated, involving FINRA rules even constitute or reflect official interpretations that are binding on FINRA members.

endeavored to align the FAQs with the social media guidance published by the SEC and FINRA.

The MSRB is aware that the use of social media is an evolving landscape, and recognizes that the MSRB will likely need to continue to issue guidance in this area as practices and technology evolve and as other regulators issue new rules and official guidance regarding social media. The MSRB will continue to monitor developments in this area (including rules and guidance of other regulators and enforcement matters) and to seek input from regulated entities regarding the need to issue additional guidance. In so doing, the MSRB will continue to be mindful of the importance of regulatory certainty for regulated entities as well as avoiding unnecessary discrepancies between the obligations of dealers and municipal advisors, including between municipal advisors that are also registered as dealers and municipal advisors that are not registered as dealers (that may include municipal advisors that are banks).

Related to SIFMA's suggestion about adopting FINRA's social media guidance, are NAMA's questions regarding the MSRB's use of footnotes to reference FINRA's social media guidance and the SEC's social media guidance in the FAQs. Specifically, NAMA questions what the footnotes mean. The MSRB endeavors to promote regulatory consistency with other financial regulators, when appropriate. The MSRB provided certain references to where the MSRB is promoting regulatory consistency with the social media guidance of other regulators. Those footnotes, however, are not intended to suggest that regulated entities that are not already subject to the guidance issued by the SEC and FINRA are now obligated to act consistent with the MSRB's social media guidance as well as with the social guidance published by the SEC or FINRA.

Additional Guidance

The request for comment solicited suggestions where additional guidance regarding social media use would be helpful.[41] Commenters provided suggestions specifically relating to the social media guidance provided by the FAQs as discussed above, as well as to other relevant topics. NAMA suggested that the MSRB provide additional social media guidance specifically relating to disclaimers and hyperlinks. In addition, NAMA suggested that the MSRB provide municipal advisors guidance on the supervisory obligations related to the use of electronic communications technology by a firm's associated persons similar to FINRA's guidance in FINRA Regulatory Notice 07–59.[42] NAMA noted that such guidance could be particularly helpful to small municipal advisors in assessing the compliance costs associated with social media usage.[43] SIFMA also provided suggestions. Specifically, SIFMA provided a list of other issues that would benefit from further clarification that included, among other issues, the definition of advertising and exemptions thereof, and documentation standards.

Any comments that may not have been specifically addressed in the FAQs provide valuable input to inform the MSRB as it considers developing additional guidance.

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[44] and Rule 19b–4(f)(6) thereunder.[45]

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 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–MSRB–2019–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2019–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2019–04 and should be submitted on or before March 27, 2019.

For the Commission, pursuant to delegated authority.[46]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03989 Filed 3–5–19; 8:45 am]

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[41] Request for comment at 2.

[42] FINRA Regulatory Notice 07–59 (Dec. 2007).

[43] NAMA letter at 5–6. In addition, NAMA provided suggestions that were beyond the scope of the social media guidance that related to the fundamental text of Rule G–40 and the economic analysis of the compliance costs associated with Rule G–40.

[44] 15 U.S.C. 78s(b)(3)(A).

[45] 17 CFR 240.19b–4(f)(6).

[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–0017, OMB Control No. 3235–0017]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:
Rules 6a–1 and 6a–2, Form 1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 6a–1 (17 CFR 240.6a–1), Rule 6a–2 (17 CFR 240.6a–2), and Form 1 (17 CFR 249.1) under the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') (15 U.S.C. 78a *et seq.*).

The Exchange Act sets forth a regulatory scheme for national securities exchanges. Rule 6a–1 under the Act generally requires an applicant for initial registration as a national securities exchange to file an application with the Commission on Form 1. An exchange that seeks an exemption from registration based on limited trading volume also must apply for such exemption on Form 1. Rule 6a–2 under the Act requires registered and exempt exchanges: (1) To amend the Form 1 if there are any material changes to the information provided in the initial Form 1; and (2) to submit periodic updates of certain information provided in the initial Form 1, whether such information has changed or not. The information required pursuant to Rules 6a–1 and 6a–2 is necessary to enable the Commission to maintain accurate files regarding the exchange and to exercise its statutory oversight functions. Without the information submitted pursuant to Rule 6a–1 on Form 1, the Commission would not be able to determine whether the respondent has met the criteria for registration (or an exemption from registration) set forth in Section 6 of the Exchange Act. The amendments and periodic updates of information submitted pursuant to Rule 6a–2 are necessary to assist the Commission in determining whether a national securities exchange or exempt exchange is continuing to operate in compliance with the Exchange Act.

Initial filings on Form 1 by new exchanges are made on a one-time basis. The Commission estimates that it will receive approximately one initial Form 1 filing per year and that each respondent would incur an average burden of 880 hours to file an initial Form 1 at an average internal compliance cost per response of approximately $335,984. Therefore, the Commission estimates that the annual burden for all respondents to file the initial Form 1 would be 880 hours (one response/respondent × one respondent × 880 hours/response) and an internal compliance cost of $335,984 (one response/respondent × one respondent × $335,984/response).

There currently are 21 entities registered as national securities exchanges. The Commission estimates that each registered or exempt exchange files nine amendments or periodic updates to Form 1 per year, incurring an average burden of 25 hours to comply with Rule 6a–2. The SEC estimates that the average internal compliance cost for a national securities exchange per response would be approximately $8,365. The Commission estimates that the annual burden for all respondents to file amendments and periodic updates to the Form 1 pursuant to Rule 6a–2 is 4,725 hours (21 respondents × 25 hours/response × 9 responses/respondent per year) and an internal compliance cost of $1,580,985 (21 respondents × $8,365/response × 9 responses/respondent per year).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 27, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–04007 Filed 3–5–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85220; File No. SR–NYSEArca–2019–06]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend Commentary .01 to NYSE Arca Rule 8.600–E Relating to Generic Listing Standards for Managed Fund Shares Applicable To Holdings in Fixed Income Securities

February 28, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 14, 2019, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .01(b)(5) to NYSE Arca Rule 8.600–E relating to a generic listing standards for Managed Fund Shares applicable to holdings in fixed income securities. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Commentary .01 to NYSE Arca Rule 8.600–E sets forth generic listing standards for listing and trading of Managed Fund Shares on the Exchange.[4] The Exchange proposes to amend Commentary .01(b)(5) to Rule 8.600–E, as described below.[5]

Proposed Amendment to Commentary .01(b)(5) to Rule 8.600–E

Commentary .01(b) to NYSE Arca Rule 8.600–E sets forth generic listing standards applicable to fixed income securities included in the portfolio of a series of Managed Fund Shares.[6] Commentary .01(b)(5) provides that non-agency, non- GSE and privately-issued mortgage-related and other asset-backed securities (''ABS'' and, collectively, ''non-agency ABS'') components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. The Exchange proposes to amend Commentary .01(b)(5) by deleting the words ''fixed income portion'' to provide that such 20% limitation would apply to the entire portfolio rather than to only the fixed income portion of the portfolio. Thus, Commentary .01(b)(5) would provide that non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

The Exchange believes this amendment is appropriate because a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. The Exchange notes that application of the 20% limitation only to the fixed income portion of a fund's portfolio may impose a much more restrictive percentage limit on permitted holdings of non-agency ABS for funds that have a more diversified investment portfolio than for funds that hold principally or exclusively fixed income securities. For example, a fund holding 100% of its assets in fixed income securities can hold 20% of its entire portfolio's weight in non-agency ABS. In contrast, a fund holding 25% of its assets in fixed income securities, 25% in U.S Component Stocks, and 50% in cash and cash equivalents is limited to a 5% (25%*20%=5%) allocation to non-agency ABS. The Exchange, therefore, believes application of the 20% limitation to a fund's entire portfolio would be more equitable for Managed Fund Shares issuers with different investment objectives and holdings.

In addition, a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS will be subject to a fund's liquidity risk management program as approved by a fund's board of directors.[7] The liquidity procedures generally include public disclosure by funds of their liquidity and redemption practices. A fund's holdings in non-agency ABS would be encompassed within a fund's liquidity risk management program. To the extent a fund's procedures facilitate its ability to meet its redemption obligations, they may reduce potential manipulation of a fund's shares by promoting an efficient redemption mechanism for exchange-traded funds, including funds that hold non-agency ABS.

The Exchange notes that the Commission has previously approved the listing of actively managed exchange-traded funds that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately issued ABS and mortgage-backed securities (''MBS'').[8] In addition, the Commission has previously approved listing and trading of shares of an issue of Managed Fund Shares where such fund's investments in non-U.S. Government, non-agency, non-GSE and other privately issued ABS will, in the aggregate, not exceed 20% of the total assets of the fund, rather than the weight of the fixed income portion of the fund's portfolio.[9] Therefore, the Exchange believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio in Commentary .01(b)(5) to a fund's total assets.

The Exchange believes the proposed amendments would provide issuers of Managed Fund Shares with additional investment choices for fund portfolios for issues permitted to list and trade on the Exchange pursuant to the Rule 19b–4(e), which would enhance competition among market participants, to the benefit of investors and the marketplace.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[11] in particular,

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Commission approved the generic listing standards in Commentary .01 to NYSE Arca Rule 8.600–E in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 to Adopt Generic Listing Standards for Managed Fund Shares).

[6] Commentary .01(b) provides that fixed income securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (''Treasury Securities''), government-sponsored entity securities (''GSE Securities''), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper.

[7] Rule 22e–4(b) under the 1940 Act requires, among other things, that a fund ''adopt and implement a written liquidity risk management program that is reasonably designed to assess and manage its liquidity risk.'' The rule is ''designed to promote effective liquidity risk management throughout the open-end investment company industry, thereby reducing the risk that funds will be unable to meet their redemption obligations and mitigating dilution of the interests of fund shareholders.'' *See* Release Nos. 33–10233; IC–32315; File No. S7–16–15 (October 13, 2016).

[8] *See, e.g.,* Securities Exchange Act Release Nos. 80946 (June 15, 2017) 82 FR 28126 (June 20, 2017) (SR–NASDAQ–2017–039) (permitting the Guggenheim Limited Duration ETF to invest up to 20% of its total assets in privately-issued, non-agency and non-GSE ABS and MBS); 76412 (November 10, 2015), 80 FR 71880 (November 17, 2015) (SR–NYSEArca–2015–111) (permitting the RiverFront Strategic Income Fund to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR–NYSEArca–2014–107) (permitting the Guggenheim Enhanced Short Duration ETF to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74109 (January 21, 2015), 80 FR 4327 (January 27, 2015) (SR–NYSEArca–2014–134) (permitting the IQ Wilshire Alternative Strategies ETF to invest up to 20% of its total assets in MBS and other ABS, without any limit on the type of such MBS and ABS).

[9] *See* Securities Exchange Act Release No. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in series of Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange notes that the Exchange or Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, would communicate as needed regarding trading in Managed Fund Shares with other markets and other entities that are members of the Intermarket Surveillance Group, and the Exchange or FINRA, on behalf of the Exchange, or both, could obtain trading information regarding trading in Managed Fund Shares from such markets and other entities. In addition, the Exchange could obtain information regarding trading in Managed Fund Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to the proposed amendment to Commentary .01(b)(5), the Exchange believes this amendment is appropriate because a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. As noted above, application of the 20% limitation to only the fixed income portion of a fund's portfolio may impose a much lower percentage limit on permitted holdings of non-agency ABS for funds that have a more diversified investment portfolio than for funds that hold principally or exclusively fixed income securities. The Exchange, therefore, believes application of the 20% limitation to a fund's entire portfolio would be more equitable for Managed Fund Shares issuers with different investment objectives and holdings.

In addition, a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS will be subject to a fund's risk management program as approved by a fund's board of directors, as required by Rule 22e–4 under the 1940 Act, which requires investment companies, including in-kind exchange-traded funds, to adopt a liquidity risk management program.[12] The liquidity procedures generally include public disclosure by funds of their liquidity and redemption practices. A fund's holdings in non-GSE and privately-issued mortgage-related and other ABS would be encompassed within a fund's liquidity risk management program. To the extent a fund's procedures facilitate its ability to meet its redemption obligations, they may reduce potential manipulation of a fund's shares by promoting an efficient redemption mechanism for exchange-traded funds, including those that hold non-agency ABS.

The Exchange notes that the Commission has previously approved the listing of actively managed exchange-traded funds that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately issued ABS and MBS.[13] In addition, the Commission has previously approved listing and trading of shares of an issue of Managed Fund Shares where such fund's investments in non-U.S. Government, non-agency, non-GSE and other privately issued ABS will, in the aggregate, not exceed more than 20% of the total assets of the fund, rather than the weight of the fixed income portion of the fund's portfolio.[14] Therefore, the Exchange believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio in Commentary .01(b)(5) to a fund's total assets.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of Managed Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[15] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would permit Exchange listing and trading under Rule 19b–4(e) of additional types of Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or *within such longer period up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2019–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2019–06. 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/*

[12] *See* note 7, *supra.*

[13] *See* note 8, *supra.*

[14] *See* note 9, *supra.*

[15] 15 U.S.C. 78f(b)(8).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–06 and should be submitted on or before March 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03982 Filed 3–5–19; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85223; File No. SR–MSRB–2019–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule G–21, on Advertising by Brokers, Dealers and Municipal Securities Dealers, Rule G–40, on Advertising by Municipal Advisors, and Rule G–8, on Books and Records

February 28, 2019.

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 February 26, 2019 the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change (the ''proposed rule change'') to amend MSRB Rule G–21, on advertising by brokers, dealers and municipal securities dealers, (''proposed amended Rule G–21'') and MSRB Rule G–40, on advertising by municipal advisors, (''proposed amended Rule G–40'') to exempt interactive content that is an advertisement and that would be posted or disseminated on an interactive electronic forum from the requirement that a municipal securities principal, a general securities principal, or a municipal advisor principal approve that advertisement prior to first use. The proposed rule change would also make a technical amendment to Rule G–8, on books and records to be made by brokers, dealers, and municipal securities dealers and municipal advisors (''proposed amended Rule G–8''). The proposed rule change has been filed for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act [3] and Rule 19b–4(f)(6) thereunder.[4] The effective date of the amendments to Rule G–21 and Rule G–40 will be announced in an MSRB Notice to be published on the MSRB's website following the effectiveness of this proposed rule change. To provide brokers, dealers, municipal securities dealers and municipal advisors (collectively, ''regulated entities'') with sufficient time to develop supervisory and compliance policies and procedures, the effective date to be announced will be no less than 30 days and no more than 180 days following publication of the MSRB Notice.[5] However, proposed amended Rule G–8 will become operative 30 days after the date of filing.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2019-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Act Release No. 83177 (May 7, 2018), 83 FR 21794 (May 10, 2018) (File No. SR–MSRB–2018–01). The amendments to Rule G–21 and new Rule G–40 were to become effective on February 7, 2019. However, to provide the industry with sufficient time to establish supervisory and compliance policies and procedures, the MSRB filed with the SEC for immediate effectiveness an extension of that effective date. The new effective date of the amendments to Rule G–21 and new Rule G–40 will be announced in an MSRB Notice to be published on the MSRB's website. *See* File No. SR–MSRB–2019–01.

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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend Rule G–21 and Rule G–40 (the ''advertising rules'') to exempt interactive content that is an advertisement and that would be posted or disseminated on an interactive electronic forum from the requirement that a municipal securities principal, a general securities principal, or a municipal advisor principal approve that advertisement prior to first use. The proposed rule change also would make a technical amendment to Rule G–8.

Background

Interactive and Static Content

During the development of the recent amendments to Rule G–21 and new Rule G–40, the MSRB received requests for guidance regarding the applicability of those rules to the use of social media by brokers, dealers, and municipal securities dealers (collectively, ''dealers'') and municipal advisors in connection with their municipal securities activities and municipal advisory activities. The MSRB committed to providing that guidance [6] before the effective date of the

[6] Letter from Pamela K. Ellis, Associate General Counsel, Municipal Securities Rulemaking Board, dated April 30, 2018, available at *http://msrb.org/~/media/Files/SEC-Filings/2018/MSRB-2018-01%20MSRB%20Letter%20to%20SEC.ashx?.*

amendments to the advertising rules,[7] and developed draft guidance regarding the use of social media in the format of frequently asked questions (the ''FAQs'').[8]

To receive the benefit of the expertise and experience of market stakeholders, the MSRB requested comment on the draft FAQs.[9] In response, commenters requested [10] that the MSRB adopt the concepts of interactive and static content posted or disseminated in an interactive electronic forum, including the corresponding exemption from the requirement of principal preapproval of interactive content, as provided in connection with FINRA Rule 2210 [11] and the amendments thereto.[12]

Commenters submitted that such guidance would facilitate the use of social media by regulated entities in their municipal securities activities and municipal advisory activities.[13] The proposed rule change is responsive to those requests.

Technical Amendment to Rule G–8

Rule G–27(e)(iii), on supervision, requires, in part, that each dealer retain correspondence of municipal securities representatives ''relating to its municipal securities activities in accordance with Rule[s] G–8(a)(xx).'' However, Rule G–8(a)(xx) omits a cross-reference to the correspondence that is required by Rule G–27(e)(iii) to be kept.[14] The proposed rule change would make a technical amendment to Rule G–8(a)(xx) to provide that cross-reference.

Proposed Amended Rule G–21

To facilitate municipal securities activities for dealers, as well as to promote regulatory consistency with the advertising or communications rules of other financial regulators, proposed amended Rule G–21(g) would exempt interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum from the requirement for municipal securities principal or general securities principal approval prior to first use as set forth in proposed amended Rule G–21(f). However, such interactive content would be subject to the other requirements, as relevant, of proposed amended Rule G–21.

Interactive content refers to content that is posted or disseminated for direct real-time interaction with the audience. Examples of interactive content include, but are not limited to, chats and messaging.[15] Interactive content, however, may become static content under certain circumstances, such as when interactive content is copied and then posted in a static forum.[16]

Static content, by contrast, is content that is posted or disseminated to an audience that does not include direct real-time interaction with that audience.[17] An example of static content includes, but is not be limited to, social media posts.[18] Consistent with other types of advertisements, static content that is an advertisement would be subject to all applicable provisions of proposed amended Rule G–21, including proposed amended Rule G–21(f)'s requirement for approval by a municipal securities principal or general securities principal prior to first use.

Proposed amended Rule G–21(f) would no longer set forth the recordkeeping requirement for advertisements. Instead, such requirement would be set forth in proposed amended Rule G–21(h). By so doing, proposed amended Rule G–21(h) would apply recordkeeping requirements to all advertisements subject to proposed amended Rule G–21, including advertisements that include static or interactive content that are posted or disseminated in an interactive electronic forum.

To address the supervision and review of interactive content, proposed amended Rule G–21 would include Supplementary Material .04 (SM .04). SM .04 would provide that notwithstanding Rule G–21(g), a dealer must supervise and review interactive content in the same manner in which that dealer supervises and reviews correspondence under Rule G–27(e), on review of correspondence.

Proposed Amended Rule G–40

To facilitate municipal advisory activities for municipal advisors, as well as to promote regulatory consistency with the advertising or communications rules of other financial regulators, proposed amended Rule G–40(d), similar to proposed amended Rule G–21, would exempt interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum from the requirement for municipal advisor principal approval prior to first use as set forth in proposed amended Rule G–40(c). However, such interactive content would be subject to the other requirements, as relevant, of proposed amended Rule G–40.

Interactive content refers to content that is posted or disseminated for direct real-time interaction with the audience.

[7] Exchange Act Release No. 83177 (May 7, 2018), 83 FR 21794 (May 10, 2018) (File No. SR–MSRB–2018–01).

[8] Concurrent with the submission of this proposed rule change, the MSRB filed the FAQs with the SEC for immediate effectiveness.

[9] MSRB Notice 2018–19 (Aug. 14. 2018) (the ''request for comment'').

[10] Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America, dated September 14, 2018 (''BDA''); Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated September 17, 2018 at 4–5 (''NAMA''); Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated September 14, 2018 at 2 (''SIFMA''); and Letter from Robert J. McCarthy, Director, Regulatory Policy, Wells Fargo Advisors, dated September 14, 2018 at 4 (''Wells Fargo'') available at *http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2018/2018-19.aspx?c=1.*

[11] *See, e.g.,* FINRA Rule 2210(b)(1)(D)(ii); FINRA Regulatory Notice 17–18 (Apr. 2017) at 1; and FINRA Regulatory Notice 11–39 (Aug. 2011) at 2. The references to FINRA materials set forth in this filing are identified for reference, and such reference is not intended to suggest that regulated entities that are not subject to the guidance issued by FINRA are responsible for compliance with that guidance. In addition, the MSRB does not intend for the guidance provided by this filing to modify or otherwise affect the guidance contained in any of the referenced materials published by FINRA.

[12] Previously, FINRA Rule 2210, FINRA's rule for communications with the public, provided that the definition of a ''public appearance'' included an unscripted participation in an interactive electronic forum (*e.g.,* a non-static real-time communication); nevertheless, such a ''public appearance'' did not require a registered principal to approve in advance the remarks made in that interactive electronic forum. However, those remarks would have to be supervised under National Association of Securities Dealers (NASD) Rule 3010. *See* FINRA Regulatory Notice 10–06 (Jan. 2010) at 4.

Effective in February 2013, FINRA amended FINRA Rule 2210 (the ''2013 FINRA Rule 2210 amendments''). *See* FINRA Regulatory Notice 12–29 (Jun. 2012). The 2013 FINRA Rule 2210 amendments amended FINRA Rule 2210 so that unscripted appearances in interactive electronic forums now are considered retail communications. *See* FINRA Rule 2210(a)(5). Nevertheless, FINRA Rule 2210 provides that such retail communications would not have to be approved by a registered principal before their first use. However, under FINRA rules, those retail communications must be supervised and reviewed in the same manner as required for supervising and reviewing correspondence under FINRA Rule 3110. *See* FINRA Rule 2210(b)(1)(D)(ii).

[13] BDA, NAMA at 4–5, SIFMA at 2, and Wells Fargo at 2–3.

[14] Rule G–8(a)(xx) provides that ''each broker, dealer and municipal securities dealer shall maintain the records required under G–27(c) and G–27(d).''

[15] *See* FINRA Regulatory Notice 10–06 (Jan. 2010) at 4–5 (discussing interactive electronic content that allows for non-static real-time communications). The proposed rule change is aligned with FINRA's guidance in this area.

[16] *See* FINRA Regulatory Notice 11–39 (Aug. 2011) at 5 (providing that interactive content could become static if the interactive content was copied and posted in a static forum). The proposed rule change is aligned with FINRA's guidance in this area.

[17] *See* FINRA Regulatory Notice 10–06 (Jan. 2010) at 4–5 (providing that static content is content that remains posted until it is changed by the firm or individual who established the account). The proposed rule change is aligned with FINRA's guidance in this area.

[18] *Id.*

Examples of interactive content include, but are not limited to, chats and messaging.[19] Interactive content, however, may become static content, under certain circumstances, such as when interactive content is copied and then posted in a static forum.[20]

Static content, by contrast, is content that is posted or disseminated to an audience that does not include direct interaction with that audience.[21] An example of static content includes, but is not limited to, social media posts.[22] Consistent with other types of advertisements, static content that is an advertisement would be subject to all applicable provisions of proposed amended Rule G–40, including proposed amended Rule G–40(c)'s requirement for approval by a municipal advisor principal prior to first use.

Proposed amended Rule G–40(c) would no longer set forth the recordkeeping requirement for advertisements. Instead, such requirement would be set forth in proposed amended Rule G–40(e). By so doing, proposed amended Rule G–40(e) would apply recordkeeping requirements to all advertisements subject to proposed amended Rule G–40, including advertisements that include static or interactive content that are posted or disseminated in an interactive electronic forum.

To address the potential need to supervise and review interactive content, proposed amended Rule G–40 would include Supplementary Material .02 (SM .02). SM .02 would provide that notwithstanding Rule G–40(d), each municipal advisor shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons, including any municipal advisory activities conducted through an interactive electronic forum that involve interactive content, that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules as set forth in Rule G–44(a), on supervisory system.

Interactive Content and FINRA Rule 2210

Commenters requested, as noted above, that the MSRB address interactive content similar to how such content is addressed by FINRA, and proposed amended Rules G–21 and Rule G–40 are responsive to those requests. FINRA addresses interactive content in its communications rule, FINRA Rule 2210, and the structure of proposed amended Rules G–21 and G–40 is consistent with that rule. FINRA Rule 2210:

- Exempts interactive content in retail communications posted on an online interactive electronic forum from the requirement of approval by a principal prior to first use;[23]
- requires that such interactive content (retail communications posted on an online interactive electronic forum) be supervised and reviewed in the same manner as correspondence under FINRA's supervision rule, Rule 3110;[24] and
- requires that records be kept regarding those retail communications posted on an online interactive electronic forum.[25]

Proposed amended Rules G–21 and G–40, as FINRA Rule 2210, would:

- Exempt interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum from the requirement of principal approval prior to first use;[26]
- require that records be kept relating to that interactive content;[27]and
- address the supervision and review of interactive content under applicable MSRB supervisory rules.

Specifically, for dealers, Rule G–27(e) requires that a dealer establish procedures for the review by a designated principal of incoming and outgoing written and electronic correspondence of its municipal securities representatives with the public relating to the municipal securities activities of the dealer. Consistent with FINRA Rule 2210(b)(1)(D), SM .04 would provide that a dealer must supervise and review interactive content in the same manner in which that broker, dealer, or municipal securities dealer supervises and reviews correspondence under Rule G–27(e), on review of correspondence.

For municipal advisors, Rule G–44(a) requires that the municipal advisor establish and implement a supervisory system to supervise the municipal advisory activities of the municipal advisor and its associated persons that is reasonably designed to achieve compliance with applicable securities laws and regulations and Board rules. However, Rule G–44, unlike Rule G–21, does not have a specific element that addresses the supervision of correspondence. As the MSRB has recognized previously, the approach taken to Rule G–44 differs from the approach taken to Rule G–27.[28] Rule G–27 reflects evolving broker-dealer industry practices and many of Rule G–27's more prescriptive elements reflect the fact that many dealers, unlike municipal advisors, hold customer funds and securities for safekeeping.[29] Complete parallelism between Rules G–44 and Rule G–27 is not possible given that broker-dealers do not owe a fiduciary duty, and therefore, are subject to different standards of conduct.[30] Nevertheless, under Rule G–44, depending on the municipal advisor's municipal advisory activities, a municipal advisor's supervisory policies and procedures may include policies and procedures regarding the supervision and review of correspondence to achieve compliance with applicable securities laws and regulations, including MSRB rules.

Consistent with FINRA Rule 2210(b)(1)(D) and to reflect that the review of correspondence is generally conducted as a supervisory control by a municipal advisor, SM .02 would provide each municipal advisor, shall establish, implement, and maintain a system to supervise the municipal advisory activities of the municipal advisor and its associated persons, including any municipal advisory activities conducted through an interactive electronic forum that involve interactive content, that is reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Board rules as set forth in Rule G–44(a), on supervisory system. Thus, proposed amended Rules G–21 and G–40 and FINRA Rule 2210 would be consistent, to the extent practicable, in how interactive content would be addressed under their rules.

Although proposed amended Rules G–21 and G–40 and FINRA Rule 2210 would address interactive content in a consistent manner, to the extent practicable, given the nature of the MSRB's advertising rules and FINRA's communications rule, there are differences between proposed amended Rules G–21 and Rule G–40 and FINRA Rule 2210. Nevertheless, those are not substantive differences in how interactive content would be regulated.[31]

[19] *See* note 15.

[20] *See* note 16.

[21] *See* note 17.

[22] *Id.*

[23] *See* FINRA Rule 2210(b)(1)(D).

[24] *Id.*

[25] *See* FINRA Rule 2210(b)(4).

[26] Proposed amended Rule G–21(g); proposed amended Rule G–40(d).

[27] Proposed amended Rule G–21(h); proposed amended Rule G–40(e).

[28] *See* SR–MSRB–2014–06 (July 24, 2014).

[29] *Id.*

[30] *Id.*

[31] FINRA Rule 2210 divides communications into three categories and depending on the

Continued

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act [32] provides that: [t]he Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act [33] provides that the MSRB's rules shall: 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that the proposed rule change is consistent with Sections 15B(b)(2) [34] and 15B(b)(2)(C) [35] of the Exchange Act. The proposed rule change would foster coordination with persons engaged in regulating transactions in municipal securities.

The proposed rule change would amend the advertising rules to exempt interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum from the requirement that a municipal securities principal, a general securities principal, or a municipal advisor principal, as applicable, approve that content prior to first use. Nonetheless, the advertising rules would continue to require that such interactive content comply with the other provisions of the advertising rules, including the content standards (and the requirement that advertisement not contain a false or misleading statement) and recordkeeping requirements of those rules. Thus, regulated entities would be able to provide such interactive content though an interactive electronic forum on terms that would be consistent with the regulations or guidance of FINRA, as noted under ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,'' to the extent practicable.[36]

Because the MSRB has endeavored to make the proposed rule change consistent with the communications rules and social media guidance published by FINRA, to the extent practicable, FINRA staff should be familiar with the standards for interactive content. In turn, that familiarity should foster efficient examinations by FINRA of the MSRB-regulated entities that FINRA is charged with examining. Further, a regulated entity that is dually registered as a broker or dealer with the SEC and/or is part of an organization that includes one or more SEC-registered broker-dealers (as many regulated entities are) may be able to more easily understand and develop consistent practices across business lines and therefore promote compliance with the proposed rule change. Nevertheless, a regulated entity that is dually registered with the MSRB and with FINRA would be treated the same under the advertising rules as a regulated entity that is registered with the MSRB and not with FINRA. Thus, because the MSRB has endeavored to make the proposed rule change consistent with the communications rules and social media guidance of FINRA, the proposed rule change would help ensure that all regulated entities are subject to consistent advertising regulation.

In addition, the proposed rule change would remove a regulatory impediment regarding the need for principal pre-approval of interactive content in the advertising rules. Nonetheless, the advertising rules still would require that such interactive content comply with the other provisions of the advertising rules including the content standards and recordkeeping requirements of those rules, and generally be subject to the regulated entity's supervisory program. Accordingly, the proposed rule change would continue to require a regulated entity to present a fair statement of the services, products, or municipal securities or municipal advisory services advertised, but would facilitate a method of communication through an interactive electronic forum. Thus, proposed amended Rules G–21 and G–40 would continue to protect investors, municipal entities, obligated persons and the public interest.[37]

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act [38] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In accordance with the MSRB's policy on the use of economic analysis, the MSRB has reviewed the proposed rule change.[39] Proposed amended Rules G–21 and G–40 would specify that interactive content that contains an advertisement and that is posted or disseminated in an interactive electronic forum would not be required to be approved in writing by a principal prior to first use, but still would be subject to recordkeeping requirements and the supervisory requirements of Rule G–27 or Rule G–44, as relevant. The MSRB believes the proposed amended Rules G–21 and G–40 are necessary and appropriate to clarify the requirements which would be consistent with the regulation and guidance provided by other regulators.

The need for proposed amended Rules G–21 and G–40 arises from MSRB's oversight of dealers' and municipal advisors' advertising activities. Since financial service professionals, investors, issuers, and other market participants are increasingly using interactive electronic forums as a part of their social media activities, the MSRB agrees with market participants that it is highly desirable to provide regulatory consistency, to the extent practicable, with the requirements associated with interactive and static content that contains advertisements provided by other financial regulators. Proposed amended Rules G–21 and G–40 are intended to reduce impediments to the use of interactive content that is an advertisement.

The MSRB has evaluated alternatives to proposed amended Rules G–21 and G–40. A reasonable regulatory

communication's category, may require that the communication be filed with FINRA either before or within a set time of first use. By contrast, Rules G–21 and G–40 do not require filing and review by the MSRB. The advertising rules focus, in part, on the advertisement type and the content and the standard of liability for that advertisement type.

[32] 15 U.S.C. 78*o*–4(b)(2).

[33] 15 U.S.C. 78*o*–4(b)(2)(C).

[34] 15 U.S.C. 78*o*–4(b)(2).

[35] 15 U.S.C. 78*o*–4(b)(2)(C).

[36] *See e.g.,* FINRA Rule 2210(b)(1)(D)(ii).

[37] *See* SR–MSRB–2018–01 (Jan. 24, 2018).

[38] 15 U.S.C. 78*o*–4(b)(2)(C).

[39] Policy on the Use of Economic Analysis in MSRB Rulemaking, available at *http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx*. For those rule changes which the MSRB seeks immediate effectiveness, the MSRB's policy on the use of economic analysis limits its applications and focuses exclusively on the burden of competition on regulated entities.

alternative is to subject interactive content posted or disseminated in an interactive electronic forum that contains advertisements to the same requirements as all other advertisements, including advertisements that are posted or disseminated in static forums: namely, content that is an advertisement would require approval in writing from a principal prior to first use. However, the MSRB believes with increased interactive content postings in the marketplace, this alternative is not practical and is less preferable since this would not reflect recent changes in the social media environment and could add significant burden on dealers, municipal advisors and their associated compliance professionals.

A reasonable baseline for evaluating the proposed rule change are the current requirements of Rule G–21 and Rule G–40. The main benefit of proposed amended Rules G–21 and G–40 for dealers and municipal advisors is the explicit elimination of the requirement of receiving prior approval for interactive content that is an advertisement and that will be posted or disseminated in an interactive electronic forum. Proposed amended Rule G–21 should reduce the burden placed on dealers, brokers and municipal securities dealers who presently must request approval to post or disseminate interactive content that is an advertisement on an interactive electronic forum. Proposed amended Rule G–40 should also reduce the potential burden on municipal advisors that otherwise would have to seek approval to distribute interactive advertising content on an interactive electronic forum when Rule G–40 becomes effective.[40]

Effect on Competition, Efficiency and Capital Formation

As noted under ''Statutory Basis,'' a regulated entity that is dually registered with the MSRB and with FINRA would be treated the same under the advertising rules as a regulated entity that is registered with the MSRB and not with FINRA. Thus, because the MSRB has endeavored to make the proposed rule change consistent with the communications rules and social media guidance of FINRA, the proposed rule change would help ensure that all regulated entities are subject to consistent advertising regulation. That consistent regulation should improve competition among regulated entities.

In addition, the MSRB believes that proposed amended Rules G–21 and G–40 would clarify that dealer and municipal advisor responsibility regarding interactive content that is an advertisement and that is posted or disseminated in an interactive electronic forum that is consistent with the regulation and guidance provided by other regulators, to the extent practicable. Since dealers and municipal advisors would now be permitted to distribute advertisements on real-time electronic forums without prior principal approval, it is probable there would be a reduction in burden on dealers and an improvement in their operation efficiency. At present, the MSRB is unable to quantitatively evaluate the magnitude of the efficiency gains or the reduction in burden, but proposed amended Rules G–21 and G–40 would eliminate the requirement that a principal pre-approve interactive content that is an advertisement and that would be posted or disseminated in an interactive electronic forum, and therefore, should improve operation efficiency and capital formation.

Section 15B(b)(2)(L)(iv) of the Exchange Act[41] provides that MSRB rules may ''not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.'' The MSRB believes that proposed amended Rules G–21 and G–40 would not impose an unnecessary or inappropriate regulatory burden on small regulated entities, as the potential reduced burden on dealers and municipal advisors would be applicable to all regulated entities and should be proportionate to each regulated entity's use of interactive content that is an advertisement. The proposed rule change therefore should not affect the competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change. Nevertheless, as discussed under ''Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change,'' the proposed rule change was undertaken in response to the comments that the MSRB received from its request for comment on the draft FAQs.[42]

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[43] and Rule 19b–4(f)(6) thereunder.[44]

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 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–MSRB–2019–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2019–05. 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

[40] Interactive content that contains an advertisement on interactive electronic forums would be subject to the recordkeeping requirements under Rule G–8 for both dealers and municipal advisors.

[41] 15 U.S.C. 78*o*–4(b)(2)(L)(iv).

[42] *See* notes 6–13 and accompanying text.

[43] 15 U.S.C. 78s(b)(3)(A).

[44] 17 CFR 240.19b–4(f)(6).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2019–05 and should be submitted on or before March 27, 2019.

For the Commission, pursuant to delegated authority.[45]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03992 Filed 3–5–19; 8:45 am]

BILLING CODE 8011–01–P

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85219; File No. SR-CboeEDGX–2019–008]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Allow the Addition of New Series of Options on an Individual Stock Until the Close of Trading on the Business Day Prior to Expiration in Unusual Market Conditions

February 28, 2019.

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 February 21, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to allow the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions. The text of the proposed rule change is provided below and in Exhibit 1.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

* * * * *

Rule 19.6 Series of Options Contracts Open for Trading

* * * * *

(c) Additional series of options of the same class may be opened for trading on EDGX Options when the Exchange deems it necessary to maintain an orderly market, to meet Customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until *the close of trading on the* [five (5)] business day[s] prior to expiration.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 19.6(c) to allow for the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions. This is a competitive proposed rule change based on filings submitted by the International Securities Exchange, LLC (''ISE'') and NASDAQ OMX BX (''BX'') to the Securities and Exchange Commission (''Commission'').[5]

Currently, under Rule 19.6(c), when faced with unusual market conditions, the Exchange may add new series of options on an individual stock until five business days prior to expiration. In 2013, the Options Clearing Corporation (''OCC'') implemented a transition for standard option monthly expiration processing from Saturday to Friday. At this time, however, the Exchange did not list series of option contracts with Saturday or non-business day expiration, and accordingly, did not need to update its rules in line with the OCC initiative. Other exchanges amended their rules to reflect the OCC change, differentiating between Friday and Saturday or non-business day expirations during the transitional period. Also at this time, other exchanges specified that additional series of individual stock options may be added during unusual market conditions until the close of trading on the business day prior to expiration in the case of an option contract expiring on a business day (*i.e.,* Thursday for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day until the close of trading on the second business day prior to expiration (*i.e.,* Thursday for Saturday expirations). The Exchange thus proposes to amend Rule 19.6(c) to allow specifically for the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in

[5] *See* Securities Exchange Act Release 34–70900 (November 19, 2013), 78 FR 70382 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Expiration Date for Most Options Contracts to the Third Friday of the Expiration Month Instead of the Saturday Following the Third Friday) (SR–ISE–2013–58); Securities Exchange Act Release 34–70746 (October 23, 2013), 78 FR 64563 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement Transition to Friday Expiration for Most Options Contracts) (SR–BX–2013–055).

unusual market conditions in line with other exchanges' timing requirements for listing series of options prior to expiration.

The Exchange seeks to introduce this proposed change to Rule 19.6(c) to create a uniform expiration date across exchanges for standard options on listed classes. The Exchange believes that keeping its rules consistent with those of the industry will protect all participants in the market by eliminating confusion, reducing the likelihood of rule violations due to discrepant industry rules, and by allowing for a more orderly market. In addition, the Exchange believes that keeping the proposed rule consistent with other exchange rules will foster better cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities by aligning a pivotal part of the options processing to be consistent industry-wide

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.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] 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)[8] 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 that keeping its rules consistent with those of other exchanges and industry practices will protect all participants in the market by eliminating confusion, thus, preventing investor vulnerability to violating different exchange rules. Additionally, the proposed change will foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities by aligning the timing of series of options listing during unusual market conditions to be consistent industry-wide. Further, as the industry-wide transition from Saturday (and non-business day) expiration dates to Friday (or other business days) expiration dates was successful, the Exchange believes the proposed rule change will remove a discrepant industry impediment and allow for a more orderly market by permitting all options markets, including the clearing agencies, to have the same expiration date for series of options listed during periods of unusual market conditions. The proposed rule change also perfects the mechanism of a free and open market by allowing for the Exchange to list additional series of options on an individual stock closer to expiration during unusual market conditions thus better aligning the listed series of options with prices near expiration. Finally, the proposed rule change does not permit unfair discrimination between any Members as it is applied to all Members equally.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to proposals previously filed by ISE and BX with the Commission.[9] The proposed rule change will allow for the Exchange to list additional series of options on an individual stock closer to expiration during unusual market conditions thus better aligning the listed series of options with prices near expiration.

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 pursuant to Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it is substantially similar in all material respects to prior filings from ISE and BX,[14] and does not raise any new or novel issues. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] *See supra* note 5.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See supra* note 5.

[15] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeEDGX–2019–008 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–CboeEDGX–2019–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–008 and should be submitted on or before March 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–03990 Filed 3–5–19; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85218; File No. SR–CboeBZX–2019–013]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Allow the Addition of New Series of Options on an Individual Stock Until the Close of Trading on the Business Day Prior to Expiration in Unusual Market Conditions

February 28, 2019.

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 February 21, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to allow the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions. The text of the proposed rule change is provided below and in Exhibit 1.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe BZX Exchange, Inc.

* * * * *

Rule 19.6. Series of Options Contracts Open for Trading

* * * * *

(c) Additional series of options of the same class may be opened for trading on BZX Options when the Exchange deems it necessary to maintain an orderly market, to meet Customer demand or when the market price of the underlying stock moves more than five strike prices from the initial exercise price or prices. The opening of a new series of options shall not affect the series of options of the same class previously opened. New series of options on an individual stock may be added until the beginning of the month in which the options contract will expire. Due to unusual market conditions, the Exchange, in its discretion, may add a new series of options on an individual stock until *the close of trading on the* [five (5)] business day[s] prior to expiration.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 19.6(c) to allow for the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions. This is a competitive proposed rule change based on filings submitted by the International Securities Exchange, LLC (''ISE'') and NASDAQ OMX BX (''BX'') to the Securities and Exchange Commission (''Commission'').[5]

Currently, under Rule 19.6(c), when faced with unusual market conditions,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release 34–70900 (November 19, 2013), 78 FR 70382 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Expiration Date for Most Options Contracts to the Third Friday of the Expiration Month Instead of the Saturday Following the Third Friday) (SR–ISE–2013–58); Securities Exchange Act Release 34–70746 (October 23, 2013), 78 FR 64563 (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement Transition to Friday Expiration for Most Options Contracts) (SR–BX–2013–055).

the Exchange may add new series of options on an individual stock until five business days prior to expiration. In 2013, the Options Clearing Corporation (''OCC'') implemented a transition for standard option monthly expiration processing from Saturday to Friday. At this time, however, the Exchange did not list series of option contracts with Saturday or non-business day expiration, and accordingly, did not need to update its rules in line with the OCC initiative. Other exchanges amended their rules to reflect the OCC change, differentiating between Friday and Saturday or non-business day expirations during the transitional period. Also at this time, other exchanges specified that additional series of individual stock options may be added during unusual market conditions until the close of trading on the business day prior to expiration in the case of an option contract expiring on a business day (*i.e.,* Thursday for Friday expirations), or, in the case of an option contract expiring on a day that is not a business day until the close of trading on the second business day prior to expiration (*i.e.,* Thursday for Saturday expirations). The Exchange thus proposes to amend Rule 19.6(c) to allow specifically for the addition of new series of options on an individual stock until the close of trading on the business day prior to expiration in unusual market conditions in line with other exchanges' timing requirements for listing series of options prior to expiration.

The Exchange seeks to introduce this proposed change to Rule 19.6(c) to create a uniform expiration date across exchanges for standard options on listed classes. The Exchange believes that keeping its rules consistent with those of the industry will protect all participants in the market by eliminating confusion, reducing the likelihood of rule violations due to discrepant industry rules, and by allowing for a more orderly market. In addition, the Exchange believes that keeping the proposed rule consistent with other exchange rules will foster better cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities by aligning a pivotal part of the options processing to be consistent industry-wide

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.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] 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)[8] 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 that keeping its rules consistent with those of other exchanges and industry practices will protect all participants in the market by eliminating confusion, thus, preventing investor vulnerability to violating different exchange rules. Additionally, the proposed change will foster cooperation and coordination with persons engaged in regulating clearing, settling, processing information with respect to, and facilitating transactions in securities by aligning the timing of series of options listing during unusual market conditions to be consistent industry-wide. Further, as the industry-wide transition from Saturday (and non-business day) expiration dates to Friday (or other business days) expiration dates was successful, the Exchange believes the proposed rule change will remove a discrepant industry impediment and allow for a more orderly market by permitting all options markets, including the clearing agencies, to have the same expiration date for series of options listed during periods of unusual market conditions. The proposed rule change also perfects the mechanism of a free and open market by allowing for the Exchange to list additional series of options on an individual stock closer to expiration during unusual market conditions thus better aligning the listed series of options with prices near expiration. Finally, the proposed rule change does not permit unfair discrimination between any Members as it is applied to all Members equally.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to proposals previously filed by ISE and BX with the Commission.[9] The proposed rule change will allow for the Exchange to list additional series of options on an individual stock closer to expiration during unusual market conditions thus better aligning the listed series of options with prices near expiration.

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 pursuant to Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it is substantially similar in all

[9] *See supra* note 5.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

material respects to prior filings submitted by ISE and BX,[14] and does not raise any new or novel issues. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–013 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–CboeBZX–2019–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–013 and should be submitted on or before March 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–04006 Filed 3–5–19; 8:45 am]

BILLING CODE 8011–01–P

[14] *See supra* note 5.

[15] For purposes only of waiving the 30-day operative delay, the Commission also has 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).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60 Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 6, 2019.

ADDRESSES: Send all comments to Arthur Collins, Director, HUBZone, Small Business Administration, 409 3rd Street NW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Arthur Collins, Director, HUBZone 202–619–6285, *arthur.collins@sba.gov,* or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov:*

SUPPLEMENTARY INFORMATION: The collected information is submitted by small business concerns seeking certification as a qualified HUBZone small business. SBA uses the information to verify a concern's eligibility for the HUBZone programs, to comply a database of qualified small business concerns, as well as for the re-certification and examination of certified HUBZone small business concerns. Finally, SBA uses the information to prepare reports for the Executive and legislative branches.

Title: ''HUBZone Program Electronic Application, Re-certification and Program Examination''.

Description of Respondents: Small business concerns seeking certification as a qualified HUBZone.

Form Number: N/A.

Annual Responses: 2,984.

Annual Burden: 6,552.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–03905 Filed 3–5–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 10694]

Review of the Designation as a Foreign Terrorist Organization of the Kurdistan Workers' Party (and Other Aliases)

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: February 5, 2019.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2019–04064 Filed 3–5–19; 8:45 am]

BILLING CODE 4710–AD–P

SURFACE TRANSPORTATION BOARD

[Docket No. 670 (Sub-No. 2)]

Notice of Rail Energy Transportation Advisory Committee Vacancy

AGENCY: Surface Transportation Board.

ACTION: Notice of vacancy on federal advisory committee and solicitation of nominations.

SUMMARY: The Surface Transportation Board (Board) hereby gives notice of one vacancy on its Rail Energy Transportation Advisory Committee (RETAC) for a representative of the electric utility industry. The Board is soliciting suggestions from the public for candidates to fill the vacancy.

DATES: Suggestions for candidates for membership on RETAC are due April 5, 2019.

ADDRESSES: Suggestions may be submitted either via the Board's e-filing format or in paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-Filing link on the Board's website, at *www.stb.gov.* Any person submitting a filing in paper format should send the original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 670 (Sub-No. 2), 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Kristen Nunnally at 202–245–0312. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board exercises broad authority over transportation by rail carriers, including rates and services (49 U.S.C. 10701–10747, 11101–11124), construction, acquisition, operation, and abandonment of railroad lines (49 U.S.C. 10901–10907), and consolidation, merger, or common control arrangements between railroads (49 U.S.C. 10902, 11323–11327).

The Board established RETAC in 2007 as a federal advisory committee consisting of a balanced cross-section of energy and rail industry stakeholders to provide independent, candid policy advice to the Board and to foster open, effective communication among the affected interests on issues such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, railroads, and users of energy resources. RETAC operates under the Federal Advisory Committee Act (5 U.S.C. App. 2, 1–16).

RETAC's membership is balanced and representative of interested and affected parties, consisting of not less than: Five representatives from the Class I railroads; three representatives from Class II and III railroads; three representatives from coal producers; five representatives from electric utilities (including at least one rural electric cooperative and one state- or municipally-owned utility); four representatives from biofuel refiners, processors, or distributors, or biofuel feedstock growers or providers; one representative of the petroleum shipping industry; and, two representatives from private car owners, car lessors, or car manufacturers. RETAC may also include up to two members with relevant experience but not necessarily affiliated with one of the aforementioned industries or sectors. (The at-large seats are currently occupied by representatives of rail labor and the downstream petroleum production industry.) Members are selected by the Chairman of the Board with the concurrence of a majority of the Board. The Chairman may invite representatives from the U.S. Departments of Agriculture, Energy, and Transportation and the Federal Energy Regulatory Commission to serve on RETAC in advisory capacities as *ex officio* (non-voting) members. The members of the Board serve as *ex officio* members of the Committee.

RETAC meets at least twice per year. Meetings are typically held at the Board's headquarters in Washington, DC, but may be held in other locations. Members of RETAC serve without compensation and without reimbursement of travel expenses. Further information about RETAC is available on the RETAC page of the Board's website at *www.stb.gov/stb/rail/retac.html.*

The Board is soliciting nominations from the public for candidates to fill one vacancy on RETAC for a representative of the electric utility industry for a three-year term ending September 30, 2022. According to revised guidance issued by the Office of Management and Budget, it is permissible for federally registered lobbyists to serve on advisory committees, such as RETAC, as long as they do so in a representative capacity, rather than an individual capacity. *See Revised Guidance on Appointment of Lobbyists to Fed. Advisory Comms., Bds., & Comm'ns,* 79 FR 47,482 (Aug. 13, 2014). Members of RETAC are appointed to serve in a representative capacity.

Nominations for candidates to fill the vacancy should be submitted in letter form and should include: (1) The name of the candidate; (2) the interest the candidate will represent; (3) a summary of the candidate's experience and qualifications for the position; (4) a representation that the candidate is willing to serve as a member of RETAC; and, (5) a statement that the candidate agrees to serve in a representative capacity. Suggestions for candidates for membership on RETAC should be filed with the Board by April 5, 2019. Please note that submissions will be posted on the Board's website under Docket No. EP 670 (Sub-No. 2).

Authority: 49 U.S.C. 1321; 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: February 28, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2019–03981 Filed 3–5–19; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0020; Notice 2]

Volkswagen Group of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Volkswagen Group of America, Inc. (Volkswagen), has determined that certain model year (MY) 2012–2017 Volkswagen motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 126, *Electronic Stability Control Systems for Light Vehicles.* Volkswagen filed a noncompliance report dated March 1, 2017, and later revised it on December 21, 2017. Volkswagen also petitioned NHTSA on March 2, 2017, and amended the petition on December 21, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of this petition.

FOR FURTHER INFORMATION CONTACT: Vince Williams, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–2319, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Volkswagen, has determined that certain MY 2012–2017 Volkswagen motor vehicles do not fully comply with paragraph S5.3.3 of

FMVSS No. 126, *Electronic Stability Control Systems for Light Vehicles* (49 CFR 571.126). Volkswagen filed a noncompliance report dated March 1, 2017, and later revised it on December 21, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen also petitioned NHTSA on March 2, 2017, and amended the petition on December 21, 2017, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556.

Notice of receipt of the petition was published with a 30-day public comment period, on May 18, 2017, in the **Federal Register** (82 FR 22869). No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2017–0020.''

II. Vehicles Involved: Approximately 53,911 MY 2013–2017 Volkswagen CC motor vehicles, manufactured between January 19, 2012, and November 28, 2016, and approximately 176,547 MY 2012–2017 Volkswagen Tiguan motor vehicles, manufactured between January 9, 2012, and February 28, 2017, are potentially involved.

Volkswagen revised its noncompliance report and amended its petition on December 21, 2017, to include approximately 12,541 MY 2015–2017 Audi Q3 motor vehicles, manufactured between April 16, 2014, and June 25, 2015, thus, bringing the new total of potentially affected vehicles to 242,999.

III. Noncompliance: Volkswagen explains that during an electronic stability control (ESC) malfunction in the subject vehicles, the ESC system malfunction telltale illuminates as required by FMVSS No. 126 unless the steering angle sensor is the source of the malfunction. In the instance of a steering angle sensor malfunction, the ESC system malfunction telltale does not re-illuminate immediately after the vehicle ignition is reactivated, as required by paragraph S5.3.3 of FMVSS No. 126. Specifically, the ESC system malfunction telltale will only re-illuminate after the vehicle reaches a speed of 1.2 mph and will remain continuously illuminated thereafter as required by FMVSS No. 126 for the rest of the ignition cycle regardless of vehicle speed.

IV. Rule Requirements: Paragraph S5.3.3 of FMVSS No. 126, includes the requirements that, subject to the exceptions not relevant to this petition, the ESC malfunction telltale must illuminate when an ESC malfunction exists and must remain continuously illuminated as long as the malfunction exists whenever the ignition locking system is in the ''On'' position.

V. Summary of Volkswagen's Petition: Volkswagen stated that the condition described above is inconsequential as it relates to motor vehicle safety because the warning (ESC system malfunction telltale) immediately re-illuminates when the vehicle starts to move and reaches 2 km/h or 1.2 mph.

Furthermore, Volkswagen explained that the condition is limited to an ESC system fault caused by the steering angle sensor. For all other potential ESC system faults, the ESC system malfunction telltale illuminates as required with the next ignition key in the ''On'' (''Run'') position.

Volkswagen concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Volkswagen's petition analyses and supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov* and following the online search instructions to locate the docket number listed in the heading of this notice.

NHTSA's Analysis: NHTSA has reviewed Volkswagen's analyses that the subject noncompliance is inconsequential to motor vehicle safety. Specifically, in the instance of a steering angle sensor malfunction, the ESC system malfunction telltale does not re-illuminate immediately after the vehicle ignition is reactivated as required by paragraph S5.3.3 of FMVSS No. 126.

Volkswagen explained that the ESC system malfunction telltale does not re-illuminate when the ignition is reactivated as required, however, it does illuminate immediately when the vehicle starts to move and reaches 2 km/h or 1.2 mph. Volkswagen stated that this specific condition is limited only to a malfunction caused by the steering angle sensor and that for all other potential ESC system malfunctions, the telltale illuminates as required when the ignition locking system is in the ''On'' (''Run'') position.

On March 28, 2017, and November 16, 2017, NHTSA contacted Volkswagen to request additional information regarding the behavior of the ESC system malfunction telltale. In response to those requests, Volkswagen explained that these vehicles were originally designed with the 2km/h (1.2 mph) threshold to prevent nuisance ESC system malfunction telltale activations during steering component workshop troubleshooting and repairs. Volkswagen clarified that during subsequent ignition cycles, the ESC system malfunction telltale on these vehicles illuminates after the vehicle speed reaches 2 km/h or 1.2 mph and stays illuminated for the entire ignition cycle regardless of vehicle speed (*i.e.,* even if the vehicle speeds falls back down below 2 km/h or 1.2 mph). Volkswagen added that these vehicles are also equipped with a separate Electronic Power Steering (EPS) warning light, on the dashboard in clear view of the driver, that illuminates when the steering angle sensor malfunctions, and is illuminated during the period of time the ESC malfunction telltale is required to illuminate but does not.

The agency believes that the subject noncompliance poses no significant risk to motor vehicle safety as discussed below. If the vehicle is in operation when a steering angle sensor malfunction first occurs, the ESC malfunction telltale will illuminate and stay illuminated as required by the standard until the vehicle's ignition is turned off. It is only upon re-activation of the ignition system that the malfunction telltale does not re-illuminate immediately but then does so very quickly when the vehicle begins to move. After the telltale does re-illuminate, it remains illuminated, regardless of vehicle speed, until the malfunction is corrected or the ignition is deactivated once again. The ESC malfunction telltale will not illuminate for very short periods of time, between when the ignition is activated and the vehicle reaches a speed of 2 km/h. If this condition ever occurs, it will take place for a very short duration of time at very low speeds, conditions under which a vehicle loss of control due to instabilities that require the ESC system to activate will not occur.

Finally, Volkswagen did mention that these vehicles are also equipped with a separate EPS warning light that when activated is on the dashboard in clear view of the driver. The symbol used for the EPS telltale is a vehicle's steering wheel. This telltale will illuminate when the steering angle sensor malfunctions, and is illuminated during

the period-of-time the ESC malfunction telltale is required to illuminate but does not.

NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Volkswagen has met its burden of persuasion that the FMVSS No. 126 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, Volkswagen's petition is hereby granted and Volkswagen is consequently exempted from the obligation to provide notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Michael A. Cole,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–03574 Filed 3–5–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Creating Options for Veterans Expedited Recovery (COVER) Commission Veterans Focus Groups: Mental Health Services Preferences and Utilization Data Collection

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 extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 29, 2019.

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–NEW'' 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: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Creating Options for Veterans Expedited Recovery (COVER) Commission Veterans Focus Groups: Mental Health Services Preferences and Utilization Data Collection.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: The COVER Commission was established under the Comprehensive Addiction and Recovery Act of 2016 (CARA). Pursuant to Section 931(b)(2) of the CARA legislation, the COVER Commission is directed to conduct a patient-centered survey within each of the Veterans Integrated Service Networks. The survey will collect qualitative and demographic information from Veterans seeking and utilizing mental health services through VA and non-VA facilities. The findings will be compiled in a final report to the President, the Committees on Veterans' Affairs of the House of Representatives and the Senate, and the Secretary of Veterans Affairs.

Affected Public: Individuals and households.

Estimated Annual Burden: 400 hours.

Estimated Average Burden per Respondent: 120 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 200.

By direction of the Secretary.

Danny S. Green,

Interim Clearance Officer, Office of Quality, Performance and Risk (QPR), Department of Veterans Affairs.

[FR Doc. 2019–04018 Filed 3–5–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0745]

Agency Information Collection Activity: Request for Certificate of Veteran Status

AGENCY: Loan Guaranty Service, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Loan Guaranty Service, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 6, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue

NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0745, in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Request for Certificate of Veteran Status, VA form 26–8261a.

OMB Control Number: 2900–0745.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8261a is used by VA to determine an applicant's eligibility for a possible reduced down payment when obtaining a loan insured by the Federal Housing Administration (FHA), under the provisions of Section 203(b)(2) or 220(d)(a) of the National Housing Act as amended. FHA actually provides the benefit. However, VA is charged with determining if the veteran-applicant meets the basic eligibility requirements regarding length and character of service. If eligibility is established, VA issues the applicant a Certificate of Veterans Status that is then used when the borrower obtains an FHA insured loan. This certificate gives the borrower the possibility of a reduced down payment on an FHA backed loan.

Affected Public: Individuals and households.

Estimated Annual Burden: 4 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (QPR), Department of Veterans Affairs.

[FR Doc. 2019–03980 Filed 3–5–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0523]

Agency Information Collection Activity: Loan Analysis

AGENCY: Loan Guaranty Service, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Loan Guaranty Service, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 6, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0523'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Loan Analysis, VA form 26–6393.

OMB Control Number: 2900–0523.

Type of Review: Extension of a currently approved collection.

Abstract: The form will be completed by employees of lending institutions partially from information contained on other documents in the loan file. In addition, some items will be completed on the basis of mathematical calculations and underwriting judgement resulting from interpretation of VA credit standards (38 CFR 36.4337). VA employees will also be able to extract data from the completed form in order to expand the amount of information contained in VA's data bases; *i.e.,* income and indebtedness amounts for veteran-borrowers.

Affected Public: Individuals and households.

Estimated Annual Burden: 125,000 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 250,000.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (QPR), Department of Veterans Affairs.

[FR Doc. 2019–03985 Filed 3–5–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Wednesday,

No. 44 March 6, 2019

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 37

Reform of Generator Interconnection Procedures and Agreements; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM17–8–001; Order No. 845–A]

Reform of Generator Interconnection Procedures and Agreements

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission is granting in part and denying in part the requests for rehearing and clarification of its determinations in Order No. 845, which amended the Commission's *pro forma* Large Generator Interconnection Procedures and *pro forma* Large Generator Interconnection Agreement to improve certainty, promote more informed interconnection decisions, and enhance interconnection processes.

DATES: This order on rehearing and clarification is effective May 20, 2019.

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Appendix C: Compilation of Final Rule Changes to the *Pro Forma* LGIA Made by Order No. 845 and Order No. 845–A .....

I. Introduction and Background

1. On April 19, 2018, the Federal Energy Regulatory Commission (Commission) issued Order No. 845.[1] Order No. 845 revised the Commission's *pro forma* Large Generator Interconnection Procedures (LGIP) and *pro forma* Large Generator Interconnection Agreement (LGIA) to improve certainty for interconnection customers, promote more informed interconnection decisions, and enhance the interconnection process.[2] The Commission expected these reforms to provide interconnection customers with better information and more options for obtaining interconnection service and that, as a result, there would likely be fewer interconnection requests overall and fewer interconnection requests that do not reach commercial operation. The Commission also anticipated that, as a result of these reforms, transmission providers would be able to focus on those interconnection requests that are most likely to reach commercial operation.[3]

2. In Order No. 845, the Commission adopted ten different reforms in three general categories. First, in order to improve certainty for interconnection customers, Order No. 845: (1) Removed the limitation that interconnection customers may only exercise the option to build a transmission provider's interconnection facilities[4] and stand alone network upgrades[5] in instances when the transmission provider cannot meet the dates proposed by the interconnection customer; and (2) required that transmission providers establish interconnection dispute resolution procedures that allow a disputing party to unilaterally seek non-binding dispute resolution. Second, to promote more informed interconnection decisions, Order No. 845: (1) Required transmission providers to outline and make public a method for determining contingent facilities; (2) required transmission providers to list the specific study processes and assumptions for forming the network models used for interconnection studies; (3) revised the definition of ''Generating Facility'' to explicitly include electric storage resources; and (4) established reporting requirements for aggregate interconnection study performance. Third, Order No. 845 aimed to enhance the interconnection process by: (1) Allowing an interconnection customer to request a level of interconnection service that is lower than its generating facility capacity; (2) requiring transmission providers to allow for provisional interconnection agreements that provide for limited operation of a generating facility prior to completion of the full interconnection process; (3) requiring transmission providers to create a process for interconnection customers to use surplus interconnection service at existing points of interconnection; and (4) requiring transmission providers to set forth a procedure to allow transmission providers to assess and, if necessary, study an interconnection customer's technology changes without affecting the interconnection customer's queued position. In Order No. 845, the Commission made ''no changes to the variations allowed by Order No. 2003'' and further explained that ''on compliance, transmission providers may argue that they qualify for . . . variations from the requirements of [Order No. 845].''[6]

3. The Commission received twelve requests for rehearing and/or clarification of Order No. 845.[7] The rehearing and clarification requests raise issues related to all but one of the reforms adopted therein.[8] E.ON Climate & Renewables North America, LLC, EDF Renewables, Inc., EDP Renewables North America LLC, and Enel Green Power North America, Inc. (collectively, Generation Developers) also request rehearing of the Commission's decision not to adopt a reform pertaining to congestion and curtailment information as the Commission proposed in the Notice of Proposed Rulemaking (NOPR).[9] Some requests for rehearing and clarification also raised general or process concerns.[10] For the reasons discussed below, we grant in part and deny in part the requests for rehearing and clarification.[11]

[1] *Reform of Generator Interconnection Procedures and Agreements,* Order No. 845, 83 FR 21,342 (May 9, 2018), 163 FERC ¶ 61,043 (2018).

[2] *Id.* P 2. The *pro forma* LGIP and *pro forma* LGIA establish the terms and conditions under which public utilities that own, control, or operate facilities for transmitting energy in interstate commerce must provide interconnection service to large generating facilities. *Id.* P 6. A large generating facility is ''a Generating Facility having a Generating Facility Capacity of more than 20 [megawatts (MW)].'' *See, e.g., pro forma* LGIA Art. 1 (Definitions).

[3] Order No. 845, 163 FERC ¶ 61,043 at P 2.

[4] According to the *pro forma* LGIA:

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Pro forma LGIA Art. 1 (Definitions).

[5] Stand alone network upgrades:

Shall mean Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement.

Id.

[6] Order No. 845, 163 FERC ¶ 61,043 at P 43 (citing *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, 68 FR 49,845 (Aug. 19, 2003), 104 FERC ¶ 61,103, at P 826 (2003), *order on reh'g,* Order No. 2003–A, 69 FR 15,932 (Mar. 26, 2004), 106 FERC ¶ 61,220 (2004), *order on reh'g,* Order No. 2003–B, 70 FR 265 (Jan. 4, 2005), 109 FERC ¶ 61,287 (2004), *order on reh'g,* Order No. 2003–C, 70 FR 37,661 (Nov. 30, 2005), 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied,* 552 U.S. 1230 (2008)).

[7] Appendix A provides the short names of the entities that filed requests for rehearing or clarification.

[8] No entity requested clarification or rehearing regarding the dispute resolution reform adopted in Order No. 845.

[9] *Reform of Generator Interconnection Procedures and Agreements,* 82 FR 4,464 (Jan. 13, 2017), 157 FERC ¶ 61,212 (2016).

[10] ISO New England Inc. (ISO–NE) filed an answer to AWEA's request for clarification. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 CFR 385.713(d) (2018), prohibits answers to requests for rehearing. Although AWEA has styled its pleading as a request for clarification, we consider it to be a request for rehearing and, on that basis, reject ISO–NE's answer. As a result, we also dismiss AWEA's answer to ISO–NE's answer, as well as Ameren and MISO TOs' answer to AWEA's answer.

[11] In Appendices B and C of this order, we provide all the revisions to, and additions of, provisions in the *pro forma* LGIP and the *pro forma* LGIA that the Commission made in Order No. 845 and this order on rehearing and clarification, Order No. 845–A. The underline and strikethrough in these appendices respectively reflect additions to, and deletions from, the *pro forma* LGIP and the *pro forma* LGIA made in Order Nos. 845 and Order No. 845–A. Additionally, these Appendices reflect several non-substantive corrections in these appendices to address stylistic inconsistencies in

Continued

4. In particular, we grant rehearing with regard to the option to build reform to: (1) Require that transmission providers explain why they do not consider a specific network upgrade to be a stand alone network upgrade; and (2) allow transmission providers to recover oversight costs related to the interconnection customer's option to build. We also grant rehearing with regard to the surplus interconnection service reform to explain that the Commission does not intend to limit the ability of RTOs/ISOs to argue that an independent entity variation from the Commission's surplus interconnection service requirements is appropriate. We also grant rehearing in part and find that, with regard to the reform for requesting interconnection service below generating facility capacity, an interconnection customer may propose control technologies at any time in the interconnection process that it is permitted to request interconnection service below generating facility capacity.

5. Additionally, we grant clarification with regard to the option to build by finding that: (1) The Order No. 845 option to build provisions apply to all public utility transmission providers, including those that reimburse the interconnection customer for network upgrades; and (2) the option to build does not apply to stand alone network upgrades on affected systems. We also grant clarification with regard to transparency regarding study models and assumptions to find that: (1) Transmission providers may use the Commission's critical energy/electric infrastructure information (CEII) regulations as a model for evaluating entities that request network model information and assumptions; and (2) the phrase ''current system conditions'' does not require transmission providers to maintain network models that reflect current real-time operating conditions of the transmission provider's system. With regard to the interconnection study deadlines reform, we grant clarification that the date for measuring study performance metrics and the reporting requirements do not require transmission providers to post 2017 interconnection study metrics. With regard to requesting interconnection service below generating facility capacity, we grant clarification that a transmission provider must provide a detailed explanation of its determination to perform additional studies at the full generating facility capacity for an interconnection customer that has requested service below its full generating facility capacity. Finally, in this order, we deny all other requests for rehearing and clarification.

II. Discussion

A. Interconnection Customer's Option To Build

6. In Order No. 845, the Commission adopted a reform revising articles 5.1, 5.1.3, and 5.1.4 of the *pro forma* LGIA to allow interconnection customers to unilaterally select the option to build for stand alone network upgrades and transmission provider's interconnection facilities regardless of whether the transmission provider can complete construction of such facilities by the interconnection customer's proposed in-service date, initial synchronization date, or commercial operation date.[12] Prior to Order No. 845, this option to build was available to an interconnection customer only if the transmission provider did not agree to the interconnection customer's preferred construction timeline. The Commission stated that the revisions adopted in Order No. 845 would ''benefit the interconnection process by providing interconnection customers more control and certainty during the design and construction phases of the interconnection process.'' [13]

1. *Ameren* Decision

7. On January 26, 2018, less than three months prior to Order No. 845's issuance, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) decided *Ameren Services Co.* v. *FERC,*[14] a decision that vacated and remanded prior Commission decisions affecting the Midcontinent Independent System Operator, Inc. (MISO).[15] Several requests for rehearing of Order No. 845 refer to the *Ameren* decision. To explain the context of these arguments, we provide some background regarding the Order No. 2003 interconnection pricing policy [16] and network upgrade cost responsibility in MISO. We also provide a short summary of *Ameren.*

8. In Order No. 2003, the Commission drew a distinction between interconnection facilities, which are ''found between the Interconnection Customer's Generating Facility and the Transmission Provider's Transmission System,'' [17] and network upgrades, which ''include only facilities at or beyond the point where the Interconnection Customer's Generating Facility interconnects to the Transmission Provider's Transmission System.'' [18] Under Order No. 2003, this classification determines which party has ultimate cost responsibility. Interconnection facilities ''[are] paid for solely by the Interconnection Customer'' and network upgrades ''[are] funded *initially* by the Interconnection Customer (unless the Transmission Provider elects to fund them).'' [19]

9. While the Order No. 2003 interconnection pricing policy requires interconnection customers to initially fund network upgrades (unless the transmission provider elects to fund them), Order No. 2003 established a crediting policy to reimburse interconnection customers for these costs.[20] In particular, if the network upgrades necessary for an interconnection are ''funded initially by the Interconnection Customer,'' the interconnection customer ''would then be entitled to a cash equivalent refund . . . equal to the total amount paid for the Network Upgrades.'' [21] Under this policy, the transmission provider must pay the total amount that the interconnection customer paid for network upgrades as ''credits against the Interconnection Customer's payments for transmission services.'' [22] Order No. 2003–B states that ''the period for reimbursement may not be longer than the period that would be required if the Interconnection Customer paid for transmission service directly and received credits on a dollar-for-dollar basis, or 20 years [from the generating

some of the new and revised *pro forma* LGIP and *pro forma* LGIA provisions. For example, in *pro forma* section 3.8, we have replaced the term ''GIA'' with ''Large Generator Interconnection Agreement'' and have capitalized some terms that are defined in the *pro forma* LGIP and/or the *pro forma* LGIA.

[12] Order No. 845, 163 FERC ¶ 61,043 at PP 73–74.

[13] *Id.* P 85.

[14] 880 F.3d 571 (D.C. Cir. 2018) (*Ameren*).

[15] In *Ameren,* the D.C. Circuit referred to the NOPR in this proceeding but only as it pertained to the Commission's original proposal to require agreement between a transmission owner and an interconnection customer before the transmission owner could elect to initially fund network upgrades. *See* Order No. 845, 163 FERC ¶ 61,043 at P 122 (citing *Ameren,* 880 F.3d at 585). The Commission opted to not move forward with that particular proposal in ''light of the [*Ameren*] decision.'' *Id.*

[16] We use this term, consistent with its use in Order No. 2003, to refer to Order No. 2003's policy of distinguishing interconnection facilities and network upgrades for the purpose of assigning ultimate cost responsibility. *See, e.g.,* Order No. 2003, 104 FERC ¶ 61,103 at PP 675–76.

[17] *Id.* P 21.

[18] *Id.*

[19] *Id.* P 22 (emphasis added).

[20] In Order No. 2003, the Commission refers to this policy of reimbursing interconnection customers for the cost of network upgrades as its ''crediting policy.'' *See, e.g., id.* P 683. In this order, we refer to this mechanism as the Order No. 2003 crediting policy.

[21] *Id.* P 22.

[22] *Id.*

facility's commercial operation date], whichever is less.'' [23]

10. MISO sought, and the Commission granted, an independent entity variation for MISO to depart from the Order No. 2003 crediting policy.[24] Instead, MISO directly assigns to interconnection customers 90 percent of the costs for network upgrades rated 345 kV and above (with the remaining 10 percent recovered on a system-wide basis) and 100 percent of the costs for network upgrades rated below 345 kV.[25]

11. In addition, under the interconnection pricing policy that MISO proposed and the Commission accepted, MISO's tariff provides MISO transmission owners two options for recovering network upgrade capital costs from interconnection customers. Under the first option, which we refer to in this order as MISO's interconnection customer initial funding option, the interconnection customer would fund the network upgrades prior to construction, and the MISO transmission owner would not refund the non-reimbursable portion of this capital (the 90 or 100 percent) to the interconnection customer, and would neither include the capital in its rate base nor charge the interconnection customer a return on this capital.[26] Under the second option, the MISO transmission owner would pay for the construction of the network upgrades and then recover the interconnection customer's portion of the cost burden over time through periodic network upgrade charges [27] that include a return on the capital investment.[28] In this order, we refer to this option as MISO's transmission owner initial funding option.

12. On June 18, 2015, in response to a complaint relating to these network upgrade initial funding options, the Commission instituted a proceeding under FPA section 206 to examine MISO's *pro forma* GIA, the *pro forma* Facilities Construction Agreement, and *pro forma* Multi-Party Facilities Construction Agreement.[29] To support this decision, the Commission stated that allowing MISO transmission owners to unilaterally ''select transmission owner [initial] funding may be unjust, unreasonable, unduly discriminatory'' [30] and ''may increase costs of interconnection service . . . with no corresponding increase in service.'' [31]

13. On December 29, 2015, the Commission denied rehearing on the June 2015 order. In particular, it stated that ''because there is the possibility for an increase in costs presented by a transmission owner's unilateral election [of transmission owner initial funding] as compared with [interconnection customer initial funding], and yet there is no increase in interconnection service provided, such unilateral election is unjust and unreasonable.'' [32] For this reason, it directed MISO to revise its tariff ''to remove the ability of a transmission owner to unilaterally elect to initially fund network upgrades.'' [33] In response to a request for rehearing on that order, the Commission again denied rehearing, finding that the December 29, 2015 order did not deprive MISO transmission owners of the opportunity to earn a return ''to which they are entitled'' because pursuant to the interconnection customer initial funding option, ''the [MISO] transmission owner makes no investment of which, or on which, it is entitled to a return.'' [34]

14. The petitioners in *Ameren* challenged these three decisions regarding MISO's options for transmission owners to recover network upgrade capital costs from interconnection customers.[35] The D.C. Circuit vacated and remanded the orders, finding that the Commission had not adequately responded to MISO transmission owner concerns that MISO's interconnection customer initial funding option ''compels [transmission owners] to construct, own, and operate facilities without compensatory network upgrade charges—thus forcing them to accept additional risk without corresponding return as essentially non-profit managers of [network] upgrade facilities.'' [36] Regarding these risks, the D.C. Circuit stated that MISO transmission owners would have to ''assume certain costs that are never compensated'' such as ''liability for insurance deductibles and all sorts of litigation, including environmental and reliability claims.'' [37] Moreover, the D.C. Circuit stated that the MISO orders at issue suggest that the Commission does not believe that MISO transmission owners are entitled ''to earn a return on capital'' for network upgrades funded through MISO's interconnection customer initial funding despite transmission owners' assumption of such costs.[38] For these reasons, the D.C. Circuit stated that the Commission ''must explain how investors could be expected to underwrite the prospect of potentially large non-profit appendages with no compensatory incremental return.'' [39]

a. Requests for Rehearing and Clarification

15. MISO Transmission Owners (MISO TOs),[40] Ameren Services Company (Ameren), and Edison Electric Institute (EEI) argue that Order No. 845's option to build revisions are contrary to (1) the regulatory compact (under which utilities construct facilities, have an obligation to serve, and receive a level

[23] Order No. 2003–B, 109 FERC ¶ 61,287 at PP 3 & 36.

[24] *Midwest Indep. Transmission Sys. Operator, Inc.,* 129 FERC ¶ 61,060, at P 59 (2009), *order denying reh'g,* 154 FERC ¶ 61,073 (2016).

[25] *Id.* P 8.

[26] *See Midcontinent Indep. Sys. Operator, Inc.,* 151 FERC ¶ 61,220, at P 5 (2015).

[27] As noted by the D.C. Circuit, this network upgrade charge ''paid from the incoming generator . . . includes *both* a return *of* capital . . . and a return *on* capital'' and is, according to the D.C. Circuit, ''thus economically equivalent to inclusion in the rate base, with the exception that they are charged specifically to the incoming generator rather than to all of the transmission owner's customers.'' *Ameren,* 880 F.3d at 576 (emphasis in original).

[28] *See Midcontinent Indep. Sys. Operator, Inc.,* 151 FERC ¶ 61,220 at P 8.

[29] *Id.* P 2.

[30] *Id.* P 53.

[31] *Id.* P 48.

[32] *Otter Tail Power Co.* v. *Midcontinent Indep. Sys. Operator, Inc.,* 153 FERC ¶ 61,352, at P 32 (2015).

[33] *Id.* P 65.

[34] *Otter Tail Power Co.* v. *Midcontinent Indep. Sys. Operator, Inc.,* 156 FERC ¶ 61,099, at P 12 (2016). The Commission also stated that its ''task is to allow a public utility the opportunity to offer its investors a return commensurate with the risk associated with their investment, as represented by the utility's business and financial risks'' and that, under the interconnection owner initial funding option, ''the transmission owner does not bear that risk.'' *Id.* P 13.

[35] *Ameren,* 880 F.3d at 573.

[36] *Id.*

[37] *Id.* at 580.

[38] *Id.* at 581.

[39] *Id.*

[40] The MISO transmission owners that participated in MISO TOs' Rehearing Request consist of: Ameren Services Company, as agent for Ameren Missouri, Ameren Illinois, and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; ITC Transmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Vectren Energy Delivery of Indiana; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

of earnings in return) and (2) the D.C. Circuit decision in *Ameren*.[41] EEI argues that Order No. 845 fails to consider that transmission owners should receive compensation for the risk of owning and operating facilities. Additionally, MISO TOs, EEI, and Ameren argue that the Commission should grant rehearing and return to the pre-Order No. 845 option to build provisions.[42]

16. MISO TOs argue that the revised option to build ''could impact the transmission provider's ability to construct, fund, and earn a return on stand alone network upgrades and transmission provider interconnection facilities'' because the ''the transmission provider could not place them into its rate base or otherwise earn a return on those upgrades and facilities.'' [43] In support of their concerns, MISO TOs further state that ''compulsory generator-funded upgrades and facilities raise serious statutory and constitutional concerns'' similar to those addressed in *Ameren,* where the D.C. Circuit determined that, ''the Commission failed to explain why transmission owners should be forced to add 'non-profit appendages' to their transmission system[s].'' [44]

17. If the Commission does not grant rehearing, MISO TOs and Ameren ask the Commission to clarify that the transmission owner may pay interconnection customers for construction costs incurred for the option to build facilities when the interconnection customer transfers them pursuant to article 5.2(9) of the *pro forma* LGIA and then charge the customer a return pursuant to a Facility Service Agreement.[45] They argue that, without this clarification, the option to build would be contrary to the transmission owner's right to earn a return on facilities that are part of its transmission system.[46]

b. Determination

18. We deny MISO TOs', EEI's, and Ameren's requests for rehearing. We find that the concerns identified in *Ameren* pertain solely to unique features of MISO's tariff and precedent that applies in MISO. As such, the *Ameren* decision does not implicate the Commission's revisions to the *pro forma* LGIP and the *pro forma* LGIA as outlined in Order No. 845. Specifically, the D.C. Circuit recognized in *Ameren* that, under MISO's transmission owner initial funding option, a MISO transmission owner can levy a network upgrade charge on interconnection customers after the transmission owner initially finances a network upgrade. The D.C. Circuit recognized that this network charge, which is memorialized in a Facilities Services Agreement, is ''paid [by] the incoming generator'' and ''includes *both* a return *of* capital . . . and a return *on* capital'' and ''is thus economically equivalent to inclusion in the rate base.'' [47] We note that the network upgrade charge and Facilities Services Agreement are unique features of MISO's policy for recovering the cost of network upgrades, and the D.C. Circuit's primary concern was with the Commission's requirement that there be mutual agreement between the MISO transmission owner and the interconnection customer before the MISO transmission owner can elect MISO's transmission owner initial funding option. The D.C. Circuit found that, if the MISO transmission owner must obtain the interconnection customer's agreement to initially fund network upgrades, then the interconnection customer could effectively prevent the MISO transmission owner from assessing a network upgrade charge and receiving a return on its investment.[48]

19. Order No. 845 creates no such concerns. In reaching this conclusion, we first note that the Commission adopted the option to build in Order No. 2003 as part of the *pro forma* LGIA and that it did so in conjunction with the establishment of the Order No. 2003 crediting policy. Viewing the option to build in this context, we find that Order No. 845 does not deprive transmission providers of the ability to earn a return of, and on, network upgrades, including stand alone network upgrades constructed pursuant to the option to build as outlined in the *pro forma* LGIA. On the contrary, Order No. 2003 established the Order No. 2003 crediting policy, a mechanism that explicitly allows transmission providers to earn a return of, and on, the costs of network upgrades. To this end, under the Commission's policy as outlined in Order No. 2003, a transmission provider has the ability to earn a return *of* capital expenditure for network upgrades to the extent that it has reimbursed an interconnection customer with transmission credits.[49] Additionally, when the transmission provider includes in its rate base the cost of a network upgrade, the transmission provider earns a return *on* the costs of this facility.

20. In contrast to the option to build set forth in the *pro forma* LGIA, the concerns the D.C. Circuit identified in *Ameren* are present only in MISO because MISO's interconnection pricing policy is a unique variation from the Order No. 2003 crediting policy under which MISO directly assigns 90 or 100 percent of the network upgrade cost responsibility to interconnection customers. Commission precedent makes clear that, for variations from the Commission's *pro forma* provisions, it is the transmission provider that has the burden to demonstrate that it qualifies for the variation.[50] Thus, we find that the Commission's Order No. 845 option to build revisions, which do not alter the Order No. 2003 crediting policy, do not conflict with the *Ameren* decision because they do not deprive transmission owners of the ability to earn a return on, and of, stand alone network upgrade costs.[51]

21. Finally, we deny MISO's and Ameren's requests for clarification that the transmission owner may pay the interconnection customer for its option to build construction costs when the interconnection customer transfers the facilities to the transmission owner, and then charge the interconnection customer a return pursuant to a Facilities Services Agreement.[52] We deny these requests because they are essentially requests for the Commission

[41] MISO TOs Rehearing Request at 11–12 (citing *Ameren,* 880 F.3d at 581); Ameren Rehearing Request at 3–5; EEI Rehearing Request at 3–4.

[42] MISO TOs Rehearing Request at 14; Ameren Rehearing Request at 14; EEI Rehearing Request at 6.

[43] MISO TOs Rehearing Request at 12–13.

[44] *Id.* at 13 (citing *Ameren,* 880 F.3d at 584).

[45] *Id.* at 14–15; Ameren Rehearing Request at 12–13.

[46] Ameren Rehearing Request at 13.

[47] *Ameren,* 880 F.3d at 576.

[48] *Id.* at 580–81 (stating, among other things, that ''FERC must explain how investors could be expected to underwrite the prospect of potentially large non-profits appendages with no incremental return'' and that ''the answer FERC offered—to cajole consent from the generators [ ]—is a *non sequitur*'').

[49] Order No. 2003–A, 106 FERC ¶ 61,220 at P 657 (finding that a transmission provider ''cannot include the cost of the [interconnection customer-funded] Network Upgrades in its transmission rates until it has provided credits to the Interconnection Customer, and as long as any part of the Network Upgrades remains the responsibility of the Interconnection Customer, that *part* of the cost cannot be recovered in transmission rates''). This is true for all network upgrades, including stand alone network upgrades.

[50] *See S. Cal. Edison Co.,* 141 FERC ¶ 61,100, at P 23 (2012) (''A transmission provider seeking a case-specific deviation from a *pro forma* interconnection agreement bears the burden of justifying and explaining what makes the interconnection unique and what operational concerns or other reasons necessitate the variations.''); *see also PJM Interconnection, L.L.C.,* 111 FERC ¶ 61,098, at P 9 (2005).

[51] Only the transmission provider's interconnection facilities and stand alone network upgrades, as opposed to all network upgrades, are relevant in the option to build discussion.

[52] MISO TOs Rehearing Request at 14–15; Ameren Rehearing Request at 12–13.

to allow MISO to deviate from the requirements outlined in Order No. 845 based on MISO's interconnection pricing policy, which is itself a deviation from Order No 2003. If MISO wishes to make such a request, it should do so when it submits its Order No. 845 compliance filing, and the Commission will consider it then.[53]

2. Justification for the Option To Build Requirements

22. In Order No. 845, the Commission stated that the revisions it adopted to the option to build ''will benefit the interconnection process by providing interconnection customers more control and certainty during the design and construction phases of the interconnection process.'' [54] The Commission also found that ''limiting exercise of the option to build to circumstances where the transmission provider cannot meet the interconnection customer's requested dates is not just and reasonable.'' [55] In support of this conclusion, the Commission stated that this limitation ''restrict[ed] an interconnection customer's ability to efficiently build the transmission provider's interconnection facilities and stand alone network upgrades in a cost-effective manner, which could result in higher costs for interconnection customers.'' [56] Furthermore, the Commission stated that ''in circumstances where an interconnection customer cannot exercise the option to build, it may pay more and/or wait longer for the construction of the transmission provider's interconnection facilities and stand alone network upgrades.'' [57]

a. Requests for Rehearing and Clarification

23. Multiple entities argue that the Order No. 845 revisions to the option to build fail to satisfy the legal requirements of Federal Power Act (FPA) section 206.[58] Ameren and MISO TOs argue that the Commission failed to make a showing of undue discrimination or harm arising from the current *pro forma* LGIA or the option to build provisions under MISO's tariff.[59] MISO TOs further argue that this lack of undue discrimination is especially ''true in [regional transmission operators or independent system operators (RTOs/ISOs)] where the interconnection process is administered by an independent entity.'' [60]

24. Additionally, MISO TOs state that interconnection customers in non-RTOs/ISOs generally receive transmission credits to reimburse them for any network upgrades they fund upfront [61] and that, in a RTO/ISO, an interconnection customer receives transmission rights or other rights in connection with the upgrades they fund.[62] MISO TOs argue that these factors provide ''a level of cost protection to interconnection customers, and may leave them ultimately indifferent as to costs.'' [63] Southern California Edison Company (SoCal Edison) argues that, without oversight for costs incurred, interconnection customers have no incentive to prevent over-spending to accelerate construction.[64]

25. Ameren and EEI argue that the Commission failed to demonstrate that the existing option to build provisions are not just and reasonable.[65] EEI contends that simply because an interconnection customer may build more cheaply and quickly does not mean that charges associated with facilities built by the transmission provider are unjust and unreasonable.[66]

26. EEI further argues that the prior option to build provisions ''ensure that the Transmission Provider would be responsive to the Interconnection Customer's requested dates and provided an option . . . if the Transmission Provider was not responsive.'' [67] EEI goes on to argue that Order No. 845 is unjust and unreasonable because, as more interconnection customers exercise the option the build, the transmission provider's ability to make decisions about its own assets or the location of the assets will ''progressively decline.'' [68]

27. EEI, MISO TOs, and Ameren also assert that Order No. 845 only cites one example where cost and time savings have occurred.[69] MISO TOs contend that the Commission failed to explain why this example justifies the ''across-the-board determination that all existing option to build provisions are not just and reasonable.'' [70] Southern Company Services, Inc. (Southern) argues that ''merely suggesting that changes can occur'' does not provide ''substantial evidence'' of the need for the new Order No. 845 option to build requirements.[71]

28. SoCal Edison seeks clarification regarding the Order No. 845 option to build revisions.[72] Specifically, it argues that the Commission fails to address the cost risk to California ratepayers under the CAISO tariff, which requires that transmission customers, not third party builders or interconnection customers, ultimately bear network upgrade costs.[73] SoCal Edison states that, under the CAISO tariff, the transmission provider would reimburse the interconnection customer over five years for the amount the interconnection customer spent on the stand alone network upgrades.[74] SoCal Edison states, however, that the LGIA does not include a mechanism for ratepayers to challenge the justness and reasonableness of the construction costs that the interconnection customer incurred.[75] For these reasons, SoCal Edison requests that the Commission clarify whether it intended these new rules to apply in instances when the interconnecting customer does not ultimately bear the costs of its construction for network upgrades.[76] Further, SoCal Edison requests that the Commission clarify that it would not prohibit the transmission provider from simply putting the interconnection customer's costs into rates per the CAISO tariff.[77]

[53] We note that, in response to a similar request from MISO about how the requirements of Order No. 845 apply to MISO's specific interconnection process, the Commission stated that it will evaluate each transmission provider's tariff provisions at the time that it submits its compliance filing. Order No. 845, 163 FERC ¶ 61,043 at P 204.

[54] *Id.* P 85.

[55] *Id.*

[56] *Id.*

[57] *Id.* P 86.

[58] 16 U.S.C. 824e (2012).

[59] Ameren Rehearing Request at 7; MISO TOs Rehearing Request at 7.

[60] MISO TOs Rehearing Request at 7–8.

[61] *Id.* at 9.

[62] *Id.*

[63] *Id.*

[64] SoCal Edison Request for Clarification at 3. Under the California Independent System Operator Corporation (CAISO) tariff, there is a limit on refunds of $60,000/MW for the cost of Reliability Network Upgrades, but below that threshold, SoCal Edison does not see any cost containment incentive or mechanism to review costs. CAISO Tariff, Appendix DD, Section 14.3.2.1(1); *see also* Southern Rehearing Request at 7.

[65] Ameren Rehearing Request at 7; EEI Rehearing Request at 3.

[66] EEI Rehearing Request at 5 & 7.

[67] *Id.* at 7.

[68] *Id.*

[69] MISO TOs Rehearing Request at 9 (citing Order No. 845, 163 FERC ¶ 61,043 at P 86); Ameren Rehearing Request at 8.

[70] MISO TOs Rehearing Request at 9.

[71] Southern Rehearing Request at 7 (citing *Nat. Fuel Gas Supply Corp.* v. *Fed. Energy Reg. Comm'n,* 468 F.3d 831, 839 (D.C. Cir. 2006); *Motor Vehicle Mfrs. Assoc. of the U.S.* v. *State Farm Mut. Auto Ins. Co.,* 463 U.S. 29, 43 (1983) (*Motor Vehicle Mfrs.*); *Allentown Mack Sales & Serv., Inc.* v. *Nat. Labor Relations Bd.,* 522 U.S. 359, 374 (1998)).

[72] SoCal Edison Request for Clarification at 2.

[73] *Id.* at 3.

[74] *Id.* (citing CAISO Tariff, Appendix U, Section 3.4.3).

[75] *Id.*

[76] *Id.* at 4.

[77] *Id.*

b. Determination

29. We deny Ameren's, MISO TOs', SoCal Edison's, EEI's, and Southern's rehearing requests. First, in response to Ameren's and MISO TOs' claims that the Commission failed to make a showing of undue discrimination, we note that the Commission did not argue that the Order No. 845 option to build provisions are necessary to address undue discrimination in the pre-Order No. 845 option to build process. Rather, the Commission justified changes to the option to build by stating that the pre-Order No. 845 option to build provisions are not just and reasonable because they restrict ''an interconnection customer's ability to efficiently build the transmission provider's interconnection facilities and stand alone network upgrades in a cost-effective manner, which could result in higher costs for interconnection customers.'' [78] In addition, the Commission found that the pre-Order No. 845 option to build provisions could prevent interconnection customers from reducing construction times.[79]

30. We also disagree with MISO TOs' and SoCal Edison's assertions that interconnection customers that receive transmission credits, transmission rights, or other rights in connection with network upgrades have no economic incentive to reduce network upgrade costs. Although under Order No. 2003 interconnection customers that fund the costs of network upgrades receive network upgrade cost reimbursement through crediting of all their network upgrade costs, interconnection customers still are generally responsible for financing all of their construction costs up front and compete with other developers to meet the substantial requirements to obtain such financing. The need to obtain financing up front and the fact that interconnection customers can wait for years for full reimbursement of their network upgrade costs create an incentive for interconnection customers to keep overall project costs low. Additionally, interconnection customers have emphasized to the Commission that certainty and the ability to control risks are necessary to successfully develop generation.[80] The option to build revisions increase certainty and the ability to control risks by providing interconnection customers with greater control over their up-front construction costs and schedule.

31. These facts support the Commission's conclusion that interconnection customers have incentives to reduce network upgrade costs. In addition, we believe that a transmission provider's incentives to reduce network upgrade costs may not be as significant as an interconnection customer's incentives to reduce such costs. In support of this conclusion, we note that, under the Order No. 2003 crediting policy, where a transmission provider reimburses the interconnection customer for the network upgrade costs, it does so over time through credits rather than funding the costs up front. Moreover, unlike an interconnection customer, a transmission owner is allowed to recover the cost of a transmission credit in its rate base as it reimburses the interconnection customer. By doing so, the transmission provider, unlike the interconnection customer, will be able to earn a return on its cost for providing the transmission credit. Furthermore, although an interconnection customer receives a transmission credit reimbursement for any stand alone network upgrades it pays for upfront, interconnection customers do not receive any form of reimbursement for the costs of the transmission provider's interconnection facilities. Thus, an interconnection customer has an even greater incentive to reduce costs for the transmission provider's interconnection facilities.

32. In response to Ameren's and EEI's contention that the Commission provided insufficient evidence for concluding that the pre-Order No. 845 option to build was unjust and unreasonable, we note the Commission's reliance upon the reasonable economic proposition that interconnection customers would have a significant economic incentive to build the transmission provider's interconnection facilities and stand alone network upgrades in a cost-effective manner.[81] We reiterate the finding that ''in circumstances where an interconnection customer cannot exercise the option to build, it may pay more and/or wait longer for the construction of the transmission provider's interconnection facilities and stand alone network upgrades.'' [82] Additionally, we continue to find that the pre-Order No. 845 option to build provisions were unjust and unreasonable for creating a hurdle that could prevent interconnection customers from reducing their costs and shortening their construction timelines. For these reasons, we disagree with EEI's, MISO TOs', and Ameren's claims that the Commission relied solely on a single example of time and cost savings.

33. Finally, we grant SoCal Edison's request and clarify that the Order No. 845 option to build provisions apply to all public utility transmission providers, including those that reimburse the interconnection customer for network upgrades. In Order No. 845, the Commission's option to build revisions only eliminated the limitation that prevents interconnection customers from exercising the option to build transmission provider's interconnection facilities and stand alone network upgrades unless the transmission provider informs the interconnection customer that it cannot meet dates proposed by the interconnection customer.[83] Order No. 845 made no other modifications relating to the treatment of stand alone network upgrades; nor did it alter the Order No. 2003 crediting policy, which provides a mechanism for an interconnection customer to receive transmission credits in reimbursement for the total amount that the interconnection customer pays for network upgrades, including stand alone network upgrades. Thus, as noted above, pursuant to the Order No. 2003 crediting policy, the transmission provider can recover the costs of such credits in their transmission rate base after it provides the credits to the interconnection customer.[84] Moreover, as noted above, the Commission relied on the reasonable economic proposition that interconnection customers have a greater economic incentive than

[78] Order No. 845, 163 FERC ¶ 61,043 at P 85.

[79] *See id.* P 86 (finding that where ''an interconnection customer cannot exercise the option to build, it may . . . wait longer for the construction of transmission provider's interconnection facilities and stand alone network upgrades'').

[80] *See, e.g.,* 2015 AWEA Petition at 4 (''[t]he key reforms requested in the [AWEA petition] relate to the certainty of . . . the interconnection process'' and include reforms for ''creating more certainty *on network upgrade costs*'') & 8 (''typically the part of the project development process with the greatest uncertainty and risk of delay for developers and the area in which developers often have the fewest opportunities to manage and control . . . risks'') (emphasis added).

[81] *See S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41, 65 (D.C. Cir. 2014) (stating that to meet the FPA section 206 requirements, the Commission must support its findings by ''substantial evidence,'' not ''empirical evidence'' and that its findings need only be based upon ''reasonable economic propositions''); *see also Pub. Serv. Co. of Colo.,* 163 FERC ¶ 61,204, at P 31 (2018) (finding that applying this standard requires ''evidence that 'a reasonable mind might accept'' as ''adequate to support a conclusion'' and that the Commission's findings may be based on ''reasonable economic propositions'' and ''predictive judgments grounded in basic economic principles'').

[82] Order No. 845, 163 FERC ¶ 61,043 at P 86.

[83] *Id.* P 3.

[84] *See* Order No. 2003–A, 106 FERC ¶ 61,220 at P 657.

transmission providers to reduce the cost of stand alone network upgrades.

3. FPA Section 203 Blanket Authorization for Transfer of Facilities From Interconnection Customer to Transmission Provider

34. Article 5.2(9) of the *pro forma* LGIA, which Order No. 845 did not modify, states that ''[u]nless Parties otherwise agree, Interconnection Customer shall transfer ownership of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to Transmission Provider.'' Eversource Energy Service Company (Eversource) submitted comments in response to the NOPR asking the Commission to grant a blanket authorization under FPA section 203 [85] for the transfer of transmission provider's interconnection facilities and/or stand alone network upgrades constructed pursuant to the option to build.[86] Eversource argued, among other things, that where electricity flows over transmission facilities in interstate commerce, such ''facilities are considered to be [Commission-jurisdictional], even if not otherwise in service'' and that the regulatory approval required by FPA section 203 is ''an additional undertaking . . . that would not occur but for the interconnection customer's construction of the transmission owner's transmission facilities.'' [87] In Order No. 845, the Commission did not address this request for a blanket authorization.

a. Requests for Rehearing and Clarification

35. EEI and MISO TOs ask the Commission to grant the request originally made in Eversource's NOPR comments for a FPA section 203 blanket authorization for facilities built pursuant to the option to build if the Commission decides to retain the Order No. 845 revisions to the option to build.[88] In support, EEI states that the Commission provided no reasoning for not granting such a blanket authorization and that the required transfer, coupled with a ''likely increase'' in the need for such transfers, weighs in favor of ''decreasing the regulatory burden'' on transmission providers and interconnection customers.[89] EEI argues that, like other FPA section 203 blanket authorizations, such transactions would not raise concerns under the Commission's traditional analysis.[90] EEI further argues that failure to create such a blanket authorization would require transmission owners to either accept ownership prior to energization or face the task of making an FPA section 203 filing prior to transfer.[91] EEI argues that such issues could delay the transfer of these facilities and cause other complications in the operability of assets where generating assets have obligations to come online on a certain timetable. EEI argues that a blanket authorization would increase the likelihood of timely transfer after the facilities are tested and determined to be safe to operate as part of the transmission system.[92] Finally, EEI argues that granting such a blanket authorization is consistent with the goal of reducing the regulatory burden of FPA sections 203 and 205.

36. MISO TOs argue that FPA section 203 approval is ''sometimes a significant undertaking'' and that the Commission should therefore grant this request for blanket authorization.[93] MISO TOs argue that Eversource raised this issue in comments on the NOPR and that failure to respond to this argument would demonstrate that Order No. 845 is arbitrary and capricious.

b. Determination

37. We deny MISO TOs' and EEI's requests for rehearing. The Commission has established, in its regulations, a number of blanket authorizations that apply to transactions for which specific approval under FPA section 203 would otherwise be necessary. A transaction covered by a blanket authorization is ''pre-approved'' pursuant to the regulation itself rather than requiring an application and specific finding under FPA section 203 that the transaction is consistent with the public interest. Blanket authorizations ''under section 203 cannot be granted lightly, particularly generic authorizations.'' [94] Because a blanket authorization is ''an *ex ante* determination as to the appropriateness of a category of transactions under section 203 and a counterparty is not yet identified, a blanket authorization can be granted only when the Commission can be assured that the statutory standards will be met, including ensuring that the interests of captive customers are safeguarded and that public utility assets are protected under all circumstances.'' [95] The limited hypothetical facts MISO TOs and EEI provide in their rehearing requests regarding facilities constructed pursuant to the option to build do not provide the assurance that such transactions will meet these statutory standards. Thus, we deny rehearing.

4. Requirements Related to Reliability, CIP Standards, Liability, Security, and Posting of Standards and Specifications

38. Order No. 845 made no revisions to article 5.2 of the *pro forma* LGIA, which lays out the general conditions for exercising the option to build. Article 5.2 (1) of the *pro forma* LGIA provides that the interconnection customer ''shall engineer, procure equipment, and construct Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by Transmission Provider.'' Article 5.2(2) of the *pro forma* LGIA requires that the interconnection customer's ''engineering, procurement and construction . . . comply with all requirements of law to which Transmission Provider would be subject.''

39. Article 5.2(7) of the *pro forma* LGIA requires that the interconnection customer ''indemnify Transmission Provider for claims arising from Interconnection Customer's construction . . . under the procedures applicable to Article 18.1 Indemnity.'' In response to Edison Electric Institute's, National Grid's, and Xcel Energy Services, Inc.'s comments on the NOPR taking issue with article 5.2(7) in light of the changes made in Order No. 845, the Commission reiterated the language in this provision and stated that this provision is ''sufficiently broad to address EEI's, Xcel's, and National Grid's concerns.'' [96]

a. Requests for Rehearing and Clarification

40. EEI and MISO TOs argue that the Commission's Order No. 845 revisions to the option to build do not address how the changes will impact transmission providers' ability to maintain system reliability.[97] MISO TOs state that the Commission's revisions to the option to build may substantially increase the number of instances when

[85] 16 U.S.C. 824b.

[86] Eversource 2017 Comments at 17–19 (citing 18 CFR 33.1).

[87] *Id.* at 18.

[88] EEI Rehearing Request at 8; MISO TOs Rehearing Request at 15.

[89] EEI Rehearing Request at 8 & n.23.

[90] *Id.* at 8.

[91] *Id.* at 9.

[92] *Id.*

[93] MISO TOs Rehearing Request at 16.

[94] *FPA Section 203 Supplemental Policy Statement,* 120 FERC ¶ 61,060, at P 33. (2007), *order on clarification and reconsideration,* 122 FERC ¶ 61,157 (2008).

[95] *Id.*

[96] Order No. 845, 163 FERC ¶ 61,043 at P 94.

[97] EEI Rehearing Request at 3; MISO TOs Rehearing Request at 17.

the option to build is elected in, for example, RTOs/ISOs with large generation interconnection queues such as MISO.[98]

41. Arizona Public Service Company (APS) argues that the option to build, as revised by Order No. 845, conflicts with the Critical Infrastructure Protection Reliability Standards (CIP standards). In explanation, APS states that the existing CIP standards require that transmission providers meet specific security and access requirements, which increase as the impact classification increases (from low to high). APS argues that the assets to which interconnection customers would interconnect would be subject to at least one CIP standard and that, while a transmission provider would have ''continued responsibility to meet [its] compliance and security obligations . . . under the . . . [r]eliability [s]tandards,'' an interconnection customer ''may not be similarly obligated.'' [99] APS draws this conclusion because, it argues, although the *pro forma* LGIA requires interconnection customers to comply with ''applicable Reliability Standards for procurement, engineering, and construction'' under the option to build, it addresses neither the reliability standards related to security nor transmission provider obligations related to the existing transmission assets within which the interconnection customer would build.[100] APS contends that requiring transmission providers to manage CIP standard compliance for interconnection customers would already be ''extremely challenging'' and ''[was] rendered impossible'' by the Commission's rejection of requests to require transmission provider approval for the interconnection customers' subcontractors.[101] If the Commission does not grant rehearing, APS asks the Commission to limit option to build construction activities so that they do not include ''those facilities to which the [CIP standards] are applicable, *e.g.,* outside the substation perimeter.'' [102]

42. APS also states that the current *pro forma* LGIA liability and indemnification provisions are insufficient to protect transmission providers that may violate their regulatory requirements as a result of the expanded option to build. In particular, APS states that *pro forma* LGIA articles 5.1 and 18.1 do not explicitly address the need for interconnection customers to cooperate with, and adhere to, transmission provider processes to facilitate compliance with North American Electric Reliability Corporation (NERC) reliability standards.[103] APS also contends that article 18.2 specifically excludes either party from liability that results from ''any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages.'' [104] APS contends, however, that such damages are the types from which transmission providers need to protect themselves to ensure that the appropriate party will be responsible for penalties, required mitigation efforts, and other costs. In light of its interpretation of article 18.2, APS questions who would be liable for ''direct facility damage'' and ''increased costs for the service of load and/or wholesale customers'' if ''during the course of construction, a significant error is made by the Interconnection Customer or its contractor, which . . . results in the loss or destruction of a portion of the Transmission Provider's facilities or equipment.'' [105] For all these reasons, APS asserts that the Commission should withdraw the option to build reform unless it proposes additional revisions that reduce the administrative burden on transmission providers.[106]

43. EEI also asserts that the Commission erred in deciding that interconnection customers exercising the option to build no longer need to post security. EEI argues that the Commission's determination that ''there would be no need for the interconnection customer to provide security . . . for facilities the transmission provider will not construct'' fails to consider scenarios where the interconnection customer is unable to complete the project and the transmission provider must do so.[107] For these reasons, EEI argues that interconnection customers should have to post security for the project at the transmission provider's cost estimate.[108]

44. Generation Developers request rehearing of the Commission's decision not to require that transmission providers post the ''standards and specifications'' required by article 5.2 of the *pro forma* LGIA for the transmission provider's interconnection facilities and stand alone network upgrades on their websites.[109] They reason that interconnection customers cannot decide whether to exercise the option to build without this information and that requiring the posting of this information will fulfill the requirement to provide such information ''in advance.'' [110] Generation Developers also argue that transmission providers already have these standards and specifications ''[s]o far as Generation Developers are aware.'' [111] In addition, Generation Developers argue that granting this request would enhance transparency and certainty.

45. MISO TOs argue that ''[w]ith the potential increase in elections of the option to build, coordination and balkanization are real concerns.'' [112] Even with the safeguards provided by article 5.2(1) of the *pro forma* LGIA, MISO TOs argue that transmission providers will have the burdensome and costly responsibilities of developing sufficiently detailed standards and the responsibility of monitoring and policing the interconnection customer' equipment procurement and construction activities. MISO TOs further state that Order No. 845 does not address the need for coordination among multiple interconnection customers, contractors, or other third parties.[113]

b. Determination

46. We deny rehearing as to the arguments from EEI and MISO TOs that the Commission did not adequately address concerns about reliability related to the expanded option to build. In response to similar arguments made in comments to the NOPR, in Order No. 845, the Commission found that concerns that the option to build will compromise system reliability are misplaced because they ignore the safeguards for reliability already in place for the existing option to build.[114] In particular, the Commission stated

[98] MISO TOs Rehearing Request at 17–18.

[99] APS Rehearing Request at 8–9.

[100] *Id.* at 9 (citing *pro forma* LGIA Art. 5.1).

[101] *Id.* (citing Order No. 845, 163 FERC ¶ 61,043 at P 110).

[102] *Id.* at 10.

[103] *Id.* at 11.

[104] *Id.* at 11. *Pro forma* LGIA Article 18.2 states that:

Other than the Liquidated Damages heretofore described, in no event shall either Party be liable under any provision of this LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

[105] *Id.* at 12.

[106] *Id.* at 12.

[107] EEI Rehearing Request at 12–13.

[108] *Id.* at 13.

[109] Generation Developers Rehearing Request at 3.

[110] *Id.* at 4.

[111] *Id.*

[112] MISO TOs Rehearing Request at 19.

[113] *Id.* at 20.

[114] Order No. 845, 163 FERC ¶ 61,043 at P 91.

that such ''vague reliability concerns about the option to build are misplaced and that articles 5.2.1, 5.2.3, 5.2.5, and 5.2.6 of the *pro forma* LGIA are sufficient to guarantee the reliability of the facilities in question.'' [115] We again find that the safeguards embodied in article 5.2 of the *pro forma* LGIA are adequate.

47. We deny APS's request for rehearing regarding the potential for violations of CIP standards. *Pro forma* LGIA article 5.2(1) requires that interconnection customers ''engineer, procure equipment, and construct'' interconnection facilities and network upgrades using good utility practice and using standards and specifications provided in advance by the transmission provider. We clarify that such standards and specifications under *pro forma* LGIA article 5.2(1) would apply to any necessary contractor access to existing facilities while the interconnection customer exercises the option to build. In addition, Order No. 845 acknowledges that the transmission owner has the option of maintaining a list of contractors available to interconnection customers for the option to build.[116] Accordingly, APS can, if it elects, maintain and make available a list of contractors for the interconnection customer to use for the option to build, thus ensuring that contractors used by the interconnection customer can access existing facilities in accordance with the relevant CIP standards. Furthermore, article 5.2(5) gives transmission providers ''unrestricted access to Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.'' We read these provisions in combination to give transmission providers the security and access necessary to ensure that interconnection customers exercise the option to build in accordance with applicable CIP standards. Therefore, there is no additional need to give transmission providers the ability to approve subcontractors or to further limit the transmission provider's interconnection facilities and stand alone network upgrades for which the interconnection customer may exercise the option to build.

47. We also deny APS's request for rehearing regarding its liability and indemnity concerns, which appears to reflect a misunderstanding of the relationship between the *pro forma* LGIA's indemnification and consequential damages provisions. In Order No. 2003 and its progeny, the Commission explained its reasoning for adopting these provisions and how they relate to one another. To improve clarity, we further explain this reasoning below.

48. In Order No. 2003, the Commission observed that indemnification is defined as ''compensating another for a loss suffered due a third party's act of Default.'' [117] The Commission also stated that ''interconnection presents a greater risk of liability than exists for the provision of transmission service.'' [118] For this reason, article 18.1 (Indemnity) [119] requires that ''the interconnecting generator and the transmission provider each indemnifies the other from all damages to *third parties* arising under the LGIA.'' [120] Article 18.1 ''provide[s] protection for acts of ordinary negligence, but not for acts of gross negligence or intentional wrongdoing.'' [121]

49. Additionally, as noted in Order No. 845,[122] Order No. 2003 created safeguards in *pro forma* LGIA article 5.2 to protect transmission providers when an interconnection customer exercises the option to build. One such safeguard, in *pro forma* LGIA article 5.2(7), is a requirement that the interconnection customer indemnify the transmission provider for specific aspects related to the option to build.[123] This provision ''applies to all work, regardless of the side of the Point of Interconnection on which the work occurs.'' [124] However, this provision (in contrast to the general language of *pro forma* article 18.1) ''protect[s] the *Transmission Provider* from liability arising out of the Interconnection Customer's exercising its right to build.'' [125] That is, while both article 18.1 and article 5.2(7) pertain to indemnification for third party claims, article 5.2(7) only indemnifies the transmission provider for third party claims arising from the interconnection customer's construction under the option to build.

50. Order No. 2003 also adopted a no consequential damages provision in *pro forma* LGIA article 18.2 (Consequential Damages).[126] This provision ''protects either Party from liability for any special, indirect, incidental, consequential, or punitive damages, including profit or revenue.'' [127] The interconnection customer and transmission provider, however, ''remain liable for . . . any damages for which a Party may be liable to the other Party under another agreement.'' [128]

51. In a request for rehearing of Order No. 2003, Central Maine Power Company, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation sought clarity on the relationship between article 18.2 and the *pro forma* LGIA's indemnification provisions. They argued that, because article 18.2 ''does not exclude consequential damages which arise as part of [an indemnification] claim,'' the Commission should ''ensure the full implementation'' of the *pro forma* LGIA indemnity protections by amending article 18.2 ''to exclude consequential damages that arise in conjunction with indemnification.'' [129]

52. The Commission rejected this request in Order No. 2003–A and stated that ''[t]he indemnification of one Party by another must be comprehensive and must include any liability the indemnified Party faces as a result of the indemnifying Party's misdeeds.'' [130] It continued, stating that ''[w]hile Article 18.2 prevents one Party from seeking consequential damages against another

[115] *Id.* (citing Order No. 2003–A, 106 FERC ¶ 61,220 at P 232).

[116] *Id.* P 110.

[117] Order No. 2003, 104 FERC ¶ 61,103 at P 630 (citing Black's Law Dictionary 772 (7th ed. 1999)).

[118] *Id.* P 636.

[119] *Pro forma* LGIA Art. 18.1 reads:

Indemnity. The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this LGIA on behalf of the Indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

[120] *Ne. Utils. Serv. Co.,* 111 FERC ¶ 61,333, at P 28 (2005) (emphasis supplied).

[121] Order No. 2003, 104 FERC ¶ 61,103 at P 636.

[122] Order No. 845, 163 FERC ¶ 61,043 at PP 40 & 91.

[123] *Pro forma* LGIA Art. 5.2 (7) provides that: ''Interconnection Customer shall indemnify Transmission Provider for claims arising from Interconnection Customer's construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity.'' While the Commission modified the *pro forma* LGIA in Order No. 845 to allow interconnection customers to exercise the option to build regardless of whether the transmission provider can meet the interconnection customer's proposed in-service date, initial synchronization date, or commercial operation date, it made no other changes to the requirements that the interconnection customer must abide by, include the indemnity provision *pro forma* LGIA article 5.2 (7). *See id.* P 91 (''[i]n this Final Rule, we make no changes to the requirements in article 5.2'').

[124] Order No. 2003, 104 FERC ¶ 61,103 at P 638.

[125] Order No. 2003, 104 FERC ¶ 61,103 at P 357 (emphasis supplied).

[126] *Supra* n. 103.

[127] Order. No. 2003, 104 FERC ¶ 61,103 at P 906.

[128] *Id.*

[129] Central Maine Aug. 25, 2003 Rehearing Request at 4–5 (Docket No. RM02–1–001).

[130] Order No. 2003–A, 106 FERC ¶ 61,220 at P 455.

Party, the purpose of the indemnification provisions is different; it protects the Party not at fault from liability to third parties (those who are not Parties to the interconnection agreement).'' [131] The Commission stated that ''[r]equiring the indemnifying Party to reimburse the indemnified Party only for, say compensatory damages and not for punitive damages that may be assessed against the indemnified Party would weaken the LGIA's protections and shield the indemnifying Party from full liability.'' [132] Thus, the limitations in article 18.2 (Consequential Damages) apply only to claims by one LGIA party against the other directly, and are not applicable to third party claims under article 18.1 and article 5.2(7) for indemnification for claims.

53. Thus, article 5.2(7) in combination with the *pro forma* LGIA indemnification provisions provide sufficient protection from third party claims against transmission providers for claims arising from the interconnection customer's construction under the option to build. Additionally, because *pro forma* LGIA articles 5.2(7) and 18.1 [133] address an interconnection customer's liability to the transmission provider *only* when there is a third-party claim against the transmission provider, these articles do not preclude a transmission provider from making a direct claim against an interconnection customer. In particular, given the extensive safeguards in *pro forma* LGIA article 5.2, the transmission provider may argue that the interconnection customer has breached the interconnection agreement if the interconnection customer fails to abide by any requirement that results in the transmission provider accruing damages, *e.g.,* through harm to the transmission system.[134]

54. Regarding the Commission's statement in Order No. 845 that *pro forma* LGIA article 5.2(7) is ''sufficiently broad to address'' [135] the concerns expressed in NOPR comments, we reiterate that the Commission made no changes to *pro forma* article 5.2, including the indemnity provision related to the option to build in article 5.2(7).[136] Additionally, the Commission did not interpret *pro forma* LGIA article 5.2(7) to expand the terms of the indemnity provisions to include indemnification by the interconnection customer for activities other than the interconnection customer's option to build construction. The Commission did not expand the applicability of this provision for multiple reasons. First, *pro forma* LGIA article 5.2(7) related to the option to build indemnifies the transmission provider for ''claims arising from Interconnection Customer's construction,'' and this language already provides indemnification for the transmission provider for a significant number of third party claims arising from the interconnection customer's option to build construction. Second, as noted above, even if the indemnity provisions do not apply, the transmission provider may pursue a claim for breach if the interconnection customer's conduct pursuant to the option to build breaches the interconnection agreement. Third, *pro forma* LGIA article 5.2 gives the transmission provider ''significant oversight authority'' over the option to build, which, if exercised properly, gives the transmission provider a significant role in ensuring that the interconnection customer's exercise of the option to build does not expose the transmission provider to liability.[137] For example, the transmission provider has the ability to ''set[ ] the specifications governing construction (Article 5.2.1), approve[ ] the Interconnection [Customer's] construction plans (Article 5.2.3), . . . an unlimited right of inspection (Article 5.2.3), and . . . the right to require the Interconnection Customer to remedy any deficiencies (Article 5.2.6).'' [138]

55. We also deny rehearing as to EEI's contention that the Commission erred by removing the requirement for the interconnection customer to provide security if the interconnection customer fails to complete any option to build facilities. If such a situation arises and the interconnection customer still wants to move forward with the interconnection request, this situation would re-trigger article 11.5 of the *pro forma* LGIA for ''the applicable portion of Transmission Provider's Interconnection Facilities [and] Network Upgrades,'' and the interconnection customer would then have to provide security no later than 30 days prior to the transmission provider recommencing ''procurement, installation, or construction of a discrete portion of a Transmission Provider's Interconnection Facilities [or] . . . Network Upgrades.'' [139] Thus, there is no need to require other revisions to the *pro forma* LGIA to account for EEI's suggested eventuality. In addition, the occurrence of such a scenario may indicate that the interconnection request is no longer viable, in which case, the transmission provider's interconnection facility or stand alone network upgrade would no longer be necessary.

56. We also deny Generation Developers' request for rehearing of the decision not to require transmission providers to post on their websites the ''standards and specifications'' for exercising the option to build. Despite Generation Developers' assertions, there is nothing in the record to suggest that the engineering, procurement, and construction standards and specifications applicable to the transmission provider's interconnection facilities and stand alone network upgrades required for a particular interconnection request would be available prior to the submission of a specific interconnection request. In fact, it might be difficult or impossible to provide such information on a website before an interconnection customer submits its interconnection request and the required technical data. Regardless, pursuant to article 5.2(1) of the *pro forma* LGIA, if an interconnection customer has informed the transmission provider of its decision to exercise the option to build, the transmission provider must provide such standards and specifications ''in advance'' of the interconnection customer ''engineer[ing], procur[ing] equipment, and construct[ing] Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.'' [140]

57. In response to MISO TOs, we find that article 5.2(1) of the *pro forma* LGIA equips the transmission provider with the ability to develop ''standards and specifications'' to avoid concerns about transmission system ''balkanization.'' We also note that, as discussed more fully below, the Commission is granting rehearing to allow transmission providers to recover oversight costs as negotiated between the interconnection customer and the transmission provider and memorialized in the LGIA.

[131] *Id.*

[132] *Id.*

[133] We note, however, that, when indemnification is not pursuant to the option to build indemnification in *pro forma* LGIA article 5.2(7), article 18.1 requires that the interconnection customer and the transmission provider indemnify each other. *See Ne. Utils. Serv. Co.,* 111 FERC ¶ 61,333 at P 28.

[134] If, however, harm to the transmission provider's transmission system results in the transmission provider's liability to a third party, such as an industrial customer, and such harm to the transmission provider's transmission system arises from the interconnection customer's construction pursuant to the option to build, the transmission provider could invoke the indemnity provisions of the *pro forma* LGIA.

[135] Order No. 845, 163 FERC ¶ 61,043 at P 94.

[136] *See, e.g., id.* P 91.

[137] *Id.* P 110.

[138] Order No. 2003–A, 106 FERC ¶ 61,220 at P 232.

[139] *Pro forma* LGIA Art. 11.5.

[140] *Pro forma* LGIA Art. 5.2(1).

58. As to MISO TOs' concerns regarding the lack of guidance about coordination, we note that each interconnection request and each transmission system is unique. The transmission provider and interconnection customer will have an opportunity to work through the relevant details regarding coordination during the negotiation phase of the LGIA. Therefore, we decline to provide detailed instructions to account for a multitude of dissimilar scenarios when transmission providers and interconnection customers are capable of coordinating the option to build process for multiple interconnection requests.

5. Affected Systems

59. The *pro forma* LGIP and *pro forma* LGIA define affected systems as ''electric system[s] other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.'' [141] The interconnection system impact study ''evaluates the impact of the proposed interconnection on the safety and reliability of the Transmission Provider's Transmission System, and, if applicable, an Affected System.'' [142] Impacts on affected systems may require the construction of network upgrades to address the impacts caused by a particular interconnection request.

a. Requests for Rehearing and Clarification

60. MISO TOs state that the Commission did not address whether the option to build extends to upgrades on affected systems. They also state that the burden created by the option to build revisions will be higher if affected systems must allow interconnection customers that do not interconnect with them directly to construct on their systems.[143]

b. Determination

61. We grant MISO TOs' request for clarification and clarify that the option to build does not apply to stand alone network upgrades on affected systems. To make our intent clear, we revise the definition of stand alone network upgrade to read (with additions in italics):

Stand Alone Network Upgrades shall mean Network Upgrades *that are not part of an Affected System* that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement.[144]

6. Cluster Studies

62. Clustering is ''the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Impact Study.'' [145] Transmission providers may ''allocate the cost of . . . common upgrades for clustered Interconnection Requests without regard to Queue Position.'' [146] Transmission providers have the discretion to decide whether to study interconnection requests serially or in clusters.[147]

a. Requests for Rehearing and Clarification

63. APS argues that the expanded option to build provisions are incompatible for transmission providers that conduct cluster studies.[148] Specifically, regarding a cluster study that identifies stand alone network upgrades for which multiple interconnection customers are responsible, APS questions which interconnection customer may exercise the option to build. Further, if multiple interconnection customers want to build a stand alone network upgrade, APS asks who decides which interconnection customer has priority to exercise the option to build.[149]

b. Determination

64. We deny APS's rehearing request on this issue. We disagree that the Order No. 845 option to build revisions are incompatible with a cluster study approach. APS has not pointed to any specific provisions in the *pro forma* LGIA that would preclude customers in a cluster study from exercising the option to build. Moreover, APS has not provided any evidence to indicate that stand alone network upgrades being required by more than one interconnection customer in a cluster will be a common enough occurrence to require *pro forma* LGIA revisions tailored to such a scenario. Additionally, the scenario APS envisions is not tied to the changes adopted in this proceeding because, to the extent that such a circumstance occurs, multiple interconnection customers could have sought to exercise the option to build for the same stand alone network upgrade under the pre-Order No. 845 option to build. However, if a transmission provider that studies interconnection requests in clusters believes this is a concern, it should, on compliance, propose revisions to address how it will process requests by multiple interconnection customers to exercise the option to build for the same stand alone network upgrade.

7. Stand Alone Network Upgrades

65. Stand alone network upgrades are ''Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction.'' [150] Both the transmission provider and the interconnection customer ''must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A'' to the LGIA.[151]

66. In Order No. 845, the Commission denied Generation Developers' request for a requirement that transmission providers explain why they do not think a network upgrade is a stand alone network upgrade. The Commission stated that ''it would be difficult for a transmission provider'' to make this determination ''until it is presented with the results of a system impact study.'' [152]

a. Requests for Rehearing and Clarification

67. Generation Developers claim that the Commission erred by not requiring that transmission providers explain their reasoning when they disagree with an interconnection customer about whether a network upgrade is stand alone.[153] They reason that not requiring such an explanation undermines the interconnection customer's ability to exercise the option to build and increases process opacity.[154] They also disagree with the Commission that providing such an explanation would be difficult before the transmission provider has the system impact study results, as these results will be available prior to the LGIA stage of the

[141] *Pro forma* LGIP Section 1 (Definitions); *Pro forma* LGIA Art. 1 (Definitions).

[142] *Pro forma* LGIP Section 1 (Definitions); *Pro forma* LGIA Art. 1 (Definitions).

[143] MISO TOs Rehearing Request at 21.

[144] This revision is the first of two changes to the definition of a stand alone network upgrade in the *pro forma* LGIP and *pro forma* LGIA. The additional revision is described in the option to build subsection on stand alone network upgrades (II.A.7).

[145] *Pro forma* LGIA Art. 1 (Definitions).

[146] *Pro forma* LGIP Section 4.1

[147] *Pro forma* LGIP Section 4.2.

[148] APS Rehearing Request at 13.

[149] *Id.*

[150] *Pro forma* LGIP Section 1 (Definitions); *Pro forma* LGIA Art. 1 (Definitions).

[151] *Pro forma* LGIP Section 1 (Definitions); *Pro forma* LGIA Art. 1 (Definitions).

[152] Order No. 845, 163 FERC ¶ 61,043 at P 112.

[153] Generation Developers Rehearing Request at 5–6.

[154] *Id.* at 6.

interconnection process, when the interconnection customer can first express its desire to exercise the option to build.[155] Furthermore, Generation Developers argue that, if there is a disagreement, dispute resolution or a complaint filed pursuant to FPA section 206 are not viable options because these options involve costly delays.[156]

b. Determination

68. We grant rehearing and find that the Commission erred by not requiring a transmission provider to explain why it does not consider a particular network upgrade to be a stand alone network upgrade. We recognize that, because of the mutual agreement requirement in the definition of stand alone network upgrade, disagreements may arise regarding whether a network upgrade is a stand alone network upgrade.[157] The Commission, in Order No. 2003, was aware that transmission providers had reliability concerns related to the option to build when the Commission defined stand alone network upgrades to include the mutual agreement requirement.[158] Even though the transmission provider has the ability to disagree when an interconnection customer believes a network upgrade is a stand alone network upgrade, the transmission provider may not unreasonably withhold its agreement because such an outcome would be unjust and unreasonable. That is, the transmission provider must explain why the upgrade in question is not one that an interconnection customer may construct without affecting the transmission system's day-to-day operations during construction. Therefore, we require that, when there is a disagreement, a transmission provider must provide the interconnection customer a written explanation within fifteen days of its determination that outlines the technical reasons why it does not consider a network upgrade to be a stand alone network upgrade. We consider this time period reasonable because it begins at the time of the transmission provider's determination outlining its technical reasons. To effectuate this revised requirement, we revise the definition of stand alone network upgrades in the *pro forma* LGIP and the *pro forma* LGIA to include the following new sentence at the end of the definition (with additions in italics):

Stand Alone Network Upgrades shall mean Network Upgrades *that are not part of an Affected System* that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement. *If the Transmission Provider and Interconnection Customer disagree about whether a particular Network Upgrade is a Stand Alone Network Upgrade, the Transmission Provider must provide the Interconnection Customer a written technical explanation outlining why the Transmission Provider does not consider the Network Upgrade to be a Stand Alone Network Upgrade within 15 days of its determination.*[159]

8. Cost Estimates

69. Section 8.3 of the *pro forma* LGIP provides that transmission providers shall: Use Reasonable Efforts to . . . issue a draft Interconnection Facilities Study report to Interconnection Customer within . . . ninety . . . Calendar Days, with no more than a +/−20 percent cost estimate contained in the report; or one hundred eighty . . . Calendar Days if the Interconnection Customer requests a +/−10 percent cost estimate.

a. Requests for Rehearing and Clarification

70. Southern asks the Commission to grant rehearing with regard to Order No. 845's option to build changes, but, if it does not, it asks the Commission to clarify that the requirement in section 8.3 of the *pro forma* LGIP would apply to interconnection customers that construct stand alone network upgrades.[160] Specifically, it points to the requirement that transmission providers must provide an estimated cost that is ''plus or minus 10 or 20 percent, depending on the length of the study'' to provide some certainty regarding cost exposure to the interconnection customer.[161] Southern argues that interconnection customers exercising the option to build must do the same to provide cost certainty to transmission providers and their native load customers. In particular, Southern argues that the interconnection customer should either be bound by the estimate in the transmission provider's interconnection facilities study report or ''should be required to provide an estimate that complies with the plus or minus 10/20 percent cost estimate.'' [162]

b. Determination

71. We deny rehearing on this issue. Section 8.3 of the pro forma LGIP only requires the transmission provider to make reasonable efforts during the interconnection study process to estimate costs to construct network upgrades, and the *pro forma* LGIP does not impose any consequences on transmission providers that exceed the estimate or accuracy margin.[163] Southern's request would therefore require the Commission to hold the interconnection customer to a higher standard than it holds the transmission provider. We decline to do so.

9. Oversight Costs

72. In Order No. 845, in response to arguments that ''interconnection customers should assume all additional costs that result from exercise of the option to build,'' the Commission stated that it was making ''no changes with regard to cost assignment for transmission provider's interconnection facilities and stand alone network upgrades.'' [164] Additionally, in response to concerns that transmission providers ''will have to expend significant resources to perform oversight functions'' for the option to build, the Commission stated that ''the Final Rule does not alter the role that the transmission provider would play in overseeing the option to build process.'' [165]

a. Requests for Rehearing and Clarification

73. Southern argues that, as a result of Order No. 845, transmission providers will increasingly incur costs to provide additional coordination, oversight, and approval of stand alone network upgrade ''design, equipment specifications, contractors, construction, and commissioning.'' [166] EEI asks the Commission to clarify whether transmission providers can recover such

[155] *Id.* at 8.

[156] *Id.* at 6–7.

[157] *See Duke Energy Florida, LLC,* 163 FERC ¶ 61,174 (2018) (setting for hearing an LGIA that was filed unexecuted because of disagreement as to whether a network upgrade was stand alone).

[158] *See* Order No. 2003, 104 FERC ¶ 61,103 at PP 341, 356–57 (noting that the transmission provider must retain ''adequate control of the engineering and construction of . . . Stand Alone Network Upgrades because of its obligation to protect the safety of the public and maintain the reliability of the Transmission System'').

[159] As noted above in the affected systems section (II.A.5), this is the second of two clarifying revisions that we are making to the definition of stand alone network upgrades in the *pro forma* LGIP and *pro forma* LGIA.

[160] Southern Rehearing Request at 9.

[161] *Id.*

[162] *Id.*

[163] *See Duke Energy Fla., LLC,* 165 FERC ¶ 61,230, at P 22 (2018) (''[t]he Commission's precedent is clear that the costs in an LGIA are simply estimates and that interconnection customers are responsible for paying the actual costs of interconnection facilities and network upgrades'').

[164] Order No. 845, 163 FERC ¶ 61,043 at P 95.

[165] *Id.* P 103.

[166] Southern Rehearing Request at 8.

costs associated with overseeing an interconnection customer's construction when the option to build is exercised.[167] Specifically, it asks the Commission to allow transmission providers to recover the costs for ''providing the coordination, oversight, and approval required for the Interconnection Customer's construction.'' [168] As background, EEI states that, in Order No. 2003–A, the Commission stated that it would ''not require the Transmission Provider [to] be reimbursed for construction oversight cost,'' as the interconnection customer may only exercise the option to build ''as a last resort'' and that the transmission provider ''can avoid the expense[s]'' of oversight by meeting the milestones and avoiding the pre-Order No. 845 option to build trigger.[169] EEI argues that, since this reasoning no longer holds true, the Commission should amend article 5.2 of the *pro forma* LGIA to add the following provision: ''(12) Transmission Provider shall recover all reasonable costs associated with the review, approval, testing, inspection and transfer of the Interconnection Facilities and Stand Alone Network Upgrades constructed by the Interconnection Customer in accordance with this Article 5.2.'' [170]

74. In response to the NOPR, SoCal Edison raised concerns regarding the additional costs and oversight that will result from the exercise of the option to build and sought Commission confirmation that the interconnection customer should bear those costs.[171] SoCal Edison argues on rehearing that, despite the Commission's reliance on its requirement that the interconnection customers and their contractors must use good utility practice, the interconnection customers may have little incentive to rigorously adhere to the transmission provider's standards and specifications.[172]

b. Determination

75. With regard to oversight costs related to the option to build exercised by interconnection customers for the transmission provider's interconnection facilities and stand alone network upgrades, we grant rehearing. We agree with EEI that the rationale that the Commission provided in Order No. 2003 for disallowing collection of oversight costs (namely, that a transmission provider can avoid such costs by agreeing to meet the interconnect customer's schedule) [173] no longer applies as a result of Order No. 845. For this reason, we revise article 5.2 of the *pro forma* LGIA to include a placeholder for transmission providers to recover the costs of executing the responsibilities enumerated for transmission providers in that same article. We expect the transmission provider and interconnection customer to negotiate this amount and clearly state it in the LGIA. The Commission will add the following language at the end of article 5.2 of the *pro forma* LGIA (with new additions in italics):

(12) If Interconnection Customer exercises the Option to Build pursuant to Article 5.1.3, Interconnection Customer shall pay Transmission Provider the agreed upon amount of [$ PLACEHOLDER] for Transmission Provider to execute the responsibilities enumerated to Transmission Provider under Article 5.2. Transmission Provider shall invoice Interconnection Customer for this total amount to be divided on a monthly basis pursuant to Article 12.

B. Identification and Definition of Contingent Facilities

76. In Order No. 845, the Commission added new section 3.8 to the *pro forma* LGIP, which requires that transmission providers publish a method for identifying contingent facilities [174] and that they provide a list of potential contingent facilities to interconnection customers at the close of the system impact study phase. Order No. 845 further requires that transmission providers provide, upon the interconnection customer's request, the estimated network upgrade costs and estimated in-service completion date associated with each identified contingent facility if the transmission provider determines that this information is readily available and not commercially sensitive.

1. Requests for Rehearing and Clarification

77. Generation Developers seek rehearing of the Commission's decision not to exempt interconnection customers from financial responsibility for late-identified contingent facilities.[175] Specifically, Generation Developers state that the Commission did not explain why it is just and reasonable for the interconnection customer to bear unexpected costs in the circumstance where a transmission provider identifies additional contingent facilities after the close of the system impact study phase. Generation Developers add that Order No. 845 provides no incentive for the transmission provider to accurately identify contingent facilities because it shifts all of the consequences of a failure to timely identify all contingent facilities onto the interconnection customer.[176] Generation Developers ask the Commission to state that the interconnection customer will not be financially responsible if the transmission provider only identifies a new contingent facility after the close of the system impact study phase.[177]

2. Determination

78. We deny Generation Developers' rehearing request. To provide increased transparency to interconnection customers regarding the interconnection process, Order No. 845 requires that transmission providers outline a method to identify contingent facilities by the close of the system impact study phase. Thus, the interconnection customer will have notice of any contingent facilities identified by the transmission provider by the close of the system impact study phase. This requirement to identify contingent facilities does not change cost responsibilities. In denying this request, we note that it would be inconsistent with the cost causation principle to exempt an interconnection customer from interconnection facility and network upgrade costs that would not be necessary but for that interconnection request.[178] The principle of cost causation generally requires that costs ''are to be allocated to those [that] cause the costs to be incurred and reap the resulting benefits.'' [179] The Commission did not revisit this principle in Order No. 845, and we decline to do so at this time.

[167] EEI Rehearing Request at 13; *see also* SoCal Edison Rehearing Request at 4.

[168] EEI Rehearing Request at 10.

[169] *Id.* at 11–12 (citing Order No. 2003–A, 106 FERC ¶ 61,220 at PP 218–19).

[170] *Id.* at 13.

[171] SoCal Edison Request for Clarification at 4 (referencing SoCal Edison April 13, 2017 Comments at 4–5).

[172] *Id.* (citing Order No. 845, 163 FERC ¶ 61,043 at P 111).

[173] Order No. 2003–A, 106 FERC ¶ 61,220 at P 218.

[174] Contingent facilities ''shall mean those unbuilt interconnection facilities and network upgrades upon which the interconnection request's costs, timing, and study findings are dependent, and if delayed or not built, could cause the need for restudies of the interconnection request or a reassessment of the interconnection facilities and/or network upgrades and/or costs and timing.'' Order No. 845, 163 FERC ¶ 61,043 at P 218.

[175] *Id.* P 201.

[176] Generation Developers Rehearing Request at 11.

[177] *Id.* at 10.

[178] *See* Order No. 2003, 104 FERC ¶ 61,103 at P 694 (''it is appropriate for the Interconnection Customer to pay the initial full cost for Interconnection Facilities and Network Upgrades that would not be needed but for the interconnection'').

[179] *S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d at 87 (quoting *Nat'l Assoc. of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d at 1285).

C. Transparency Regarding Study Models and Assumptions

79. In Order No. 845, the Commission revised section 2.3 of the *pro forma* LGIP to require transmission providers to maintain network models and underlying assumptions on either an Open Access Same-Time Information System (OASIS) site or a password-protected website. These revisions allow transmission providers to require interconnection customers, OASIS site users, and password-protected website users to sign a confidentiality agreement before the release of commercially sensitive information or CEII. The revisions also require that the network model information and underlying assumptions ''reasonably represent those used during the most recent interconnection study and be representative of current system conditions.'' [180]

1. Protection of Network Model Information

a. Requests for Rehearing and Clarification

80. American Public Power Association, Large Public Power Council, and National Rural Electric Cooperative Association (collectively, Non-Profit Utility Trade Associations) request that the Commission clarify that its intention is to permit transmission providers ''to protect data that would qualify for CEII treatment if [they] were submitted'' to the Commission.[181] They note that, under the Commission's regulations, an entity may submit information to the Commission and request that it be treated as CEII, but this information will not formally be designated as CEII until there is a request to access the information and the Commission has granted CEII status. Non-Profit Utility Trade Associations state that revised section 2.3 of the *pro forma* LGIA implicates a large amount of modeling and assumption information that meets the substantive definition of CEII but that the Commission has not designated such information as CEII. Non-Profit Utility Trade Associations contend that this technicality limits a transmission provider's ability to protect sensitive data, and they ask the Commission to clarify that information ''may be protected under [*pro forma*] LGIP section 2.3 if the Transmission Provider determined that it would meet the substantive criteria for CEII had it been submitted to the Commission for that determination.'' [182] According to Non-Profit Utility Trade Associations, when there are questions regarding the transmission provider's judgment, the Commission's complaint procedures should be adequate to provide resolution.[183]

81. Non-Profit Utility Trade Associations also allege that the language of revised section 2.3 of the *pro forma* LGIP is broad enough to allow any entity to obtain network models and underlying assumptions for any reason. Non-Profit Utility Trade Associations further allege that offering a confidentiality agreement to all OASIS site users without further limitation could include unknown entities that pose a security risk. For this reason, Non-Profit Utility Trade Associations ask the Commission to clarify that the Commission intended to permit transmission providers to apply reasonable standards to requests from entities to enter into such confidentiality agreements. Non-Profit Utility Trade Associations suggest that the Commission's CEII regulations could provide a useful framework for standards because they require that requesters provide a name, contact information, and a statement of need. If the request is made on behalf of an organization, the requester must state that it is authorized to make the request on behalf of the organization and that all individuals in the organization will be bound by executed non-disclosure agreements.[184]

82. Non-Profit Utility Trade Associations expect that transmission providers would limit their review to ascertaining that the entity is a recognized industry participant or has a legitimate commercial, academic, or governmental interest in accessing the data. Further, Non-Profit Utility Trade Associations contend that the potential for anti-competitive behavior in this review seems limited and manageable through the Commission's complaint procedures or enforcement hotline.[185]

83. If the Commission does not grant these clarifications, Non-Profit Utility Trade Associations request rehearing of Order No. 845's revisions to section 2.3 of the *pro forma* LGIP, asserting that the Commission erred in requiring transmission providers to post network models and underlying assumptions without permitting the transmission providers to adequately protect information that may be used to threaten critical infrastructure.[186]

b. Determination

84. Order No. 845 did not revise the Commission's existing CEII requirements.[187] As Non-Profit Utility Trade Associations note, information is not CEII unless the Commission has designated it as CEII through its CEII designation process. Accordingly, we deny Non-Profit Utility Trade Associations' request for clarification that transmission providers may designate as CEII information that they believe should be treated as such. We also reiterate that neither the Commission's CEII regulations [188] nor Order No. 845 precludes a transmission provider from taking necessary steps to protect information within its custody or control to ensure the safety and security of the electric grid.[189]

85. We grant Non-Profit Utility Trade Associations' request for clarification that transmission providers may apply reasonable standards to requests to enter into confidentiality agreements before information is released. Specifically, we grant clarification to the extent that Non-Profit Utility Trade Associations would like to use the Commission's CEII regulations as a model for evaluating entities that request network model information and assumptions (prior to signing a non-disclosure agreement), they may do so.[190]

2. Requirement To Post Network Model Information

a. Requests for Clarification

86. APS asks the Commission to clarify that the requirement that network models and underlying assumptions ''reasonably represent those used during the most recent interconnection study and be representative of current system conditions'' in revised section 2.3 of the *pro forma* LGIP does not require transmission providers to modify the network models and underlying assumptions utilized for evaluating interconnection requests so that they are representative of ''current system

[180] Order No. 845, 163 FERC ¶ 61,043 at P 236.

[181] Non-Profit Utility Trade Associations Rehearing Request at 5.

[182] *Id.* at 6.

[183] *Id.* at 4–6.

[184] *Id.* at 6–7.

[185] *Id.* at 7.

[186] *Id.* at 7–8.

[187] Under the Commission's CEII regulations, 18 CFR 388.113, an entity may submit information to the Commission requesting that it be treated as CEII. 18 CFR 388.113 (2018).

[188] Section 388.113 of the Commission's regulations does not govern the transmission provider's handling, sharing, and disseminating of information that the transmission provider submitted for CEII designation, including how it disseminates that information on its OASIS site or password-protected website. *Id.*

[189] Order No. 845, 163 FERC ¶ 61,043 at P 241.

[190] *See* 18 CFR 388.113(g)(5)(i).

conditions.'' [191] APS also asks the Commission to clarify that such language simply requires that the posted network models and underlying assumptions reasonably represent those anticipated future system conditions that the transmission provider utilizes to evaluate interconnection requests.[192]

87. APS notes that there are often significant differences between ''current system conditions'' and those conditions utilized in the base cases and models to evaluate interconnection requests. More specifically, APS states that current system conditions would not include those facilities, equipment, configurations, relay settings, etc., unless they are built and operating. Conversely, APS states that ''models and base case data utilized to evaluate Interconnection Request[s] incorporate planned, future facilities, equipment, configurations, relay settings, etc.'' [193] For this reason, APS argues that the network models and underlying assumptions utilized to evaluate interconnection requests will, and should, always differ from those models and assumption utilized to ''approximate or evaluate 'current system conditions,' which do not, and should not, incorporate, or rely upon, planned, future facilities, equipment, configurations, [and] relay settings.'' [194]

b. Determination

88. We grant APS' request for clarification. In Order No. 845, the Commission did not require that transmission providers modify the network models and the underlying assumptions used in interconnection studies. Rather, the purpose of the revisions to section 2.3 of the *pro forma* LGIP is to make transparent the base case data, network models, and underlying assumptions that transmission providers use to conduct interconnection studies. Therefore, we clarify that the phrase ''current system conditions'' does not require transmission providers to maintain network models that reflect current real-time operating conditions of the transmission provider's system. Instead, the network model information should reflect the system conditions currently used in interconnection studies.

D. Congestion and Curtailment Information

89. In the NOPR, the Commission proposed to require that transmission providers post congestion and curtailment information in one location on their OASIS sites so that interconnection customers could more easily access information that may aid in their decision making.[195] In Order No. 845, however, the Commission declined to adopt this proposal after considering the comments on the NOPR. The Commission stated that it found ''persuasive those comments that assert that, in some instances, generating information on the causes of congestion or on unit-specific or constraint-specific curtailment information is technically infeasible or would require significant additional effort.'' [196] The Commission also noted that many transmission providers already publish congestion and curtailment data and that other pertinent information is otherwise available.[197]

1. Request for Rehearing

90. Generation Developers seek rehearing of the Commission's decision not to require the posting of congestion and curtailment information. They assert that transmission providers should want to post this information to improve siting decisions, but few transmission providers do so, and, even when they do, there is a lack of uniformity. Generation Developers add that non-disclosure agreements would address any confidentiality concerns.[198]

91. Generation Developers also assert that the Commission did not explain why it concluded that posting the information is ''technically infeasible'' when the transmission provider already knows this information.[199] Generation Developers argue that the need for additional effort on the part of the transmission provider should not outweigh the need for making this information available. Finally, Generation Developers state that posting the information furthers the Commission's goal for improving transparency, and failure to do so increases uncertainties in the interconnection process.[200]

2. Determination

92. We deny Generation Developers' request for rehearing. First, we reiterate that many transmission providers already publish some congestion and curtailment data such as locational marginal price data and dispatch reports.[201] Furthermore, we again note that a significant amount of publicly available information for the Eastern Interconnection is contained in the NERC Transmission Loading Relief (TLR) Logs, including the duration, direction, and MW of curtailments.[202] We also note that multiple commenters made a credible argument that imposing the proposed requirements would not provide information that would be useful for interconnection customers.[203] We disagree with Generation Developers that the Commission did not explain why providing such information is technically infeasible. As noted in Order No. 845, PJM Interconnection L.L.C. (PJM), for example, explained that it lacked the software capability to determine congestion causes.[204] The Commission decided not to proceed with its proposal in light of the limited usefulness, difficulty, and technical infeasibility of complying with the proposed requirements. For these reasons, we continue to believe that it was not appropriate to proceed with the proposed requirement. Additionally, we note that, in a rulemaking proceeding, the agency is ''accorded considerable deference in evaluating information presented and reaching decisions based upon its expertise,'' and ''the agency's decision to refrain from amending the elaborate, established regulatory scheme cannot be disturbed absent a strong showing that such action was unreasonable.'' [205]

E. Definition of Generating Facility in the Pro Forma LGIP and Pro Forma LGIA

93. In Order No. 845, the Commission revised the definition of ''Generating Facility'' to include electric storage resources and to allow electric storage resources to interconnect pursuant to large generator interconnection processes. Specifically, the Commission revised the definition of a generating facility in the *pro forma* LGIP and *pro forma* LGIA as follows (with additions in italics): ''Generating Facility shall mean Interconnection Customer's device for the production *and/or storage for later injection* of electricity identified in the Interconnection Request, but shall not include the

[191] APS Rehearing Request at 17.

[192] *Id.*

[193] *Id.*

[194] *Id.*

[195] Order No. 845, 163 FERC ¶ 61,043 at P 247.

[196] *Id.* P 270.

[197] *Id.* P 271.

[198] Generation Developers Rehearing Request at 15–16.

[199] *Id.* at 16.

[200] *Id.*

[201] Order No. 845, 163 FERC ¶ 61,043 at P 271.

[202] *Id.*

[203] *See id.* P 264.

[204] *Id.* PP 258, 270.

[205] *Professional Drivers Council* v. *Bureau of Motor Safety,* 706 F.2d 1216, 1220–21 (D.C. Cir. 1983); *see also New York* v. *FERC,* 535 U.S. 1, at 28 (2002) (finding the Commission's choice not to assert jurisdiction represents a statutorily permissible policy choice).

interconnection customer's Interconnection Facilities.'' [206]

1. Requests for Rehearing and Clarification

94. APS requests that the Commission revise the definition of ''Generating Facility'' to recognize the load characteristics of electric storage resources.[207] APS's concern is that the definition adopted by Order No. 845 could narrow the scope of studies that a transmission provider will perform, create ambiguity regarding the upgrades necessary to accommodate the load characteristics of electric storage resources, and create inconsistencies with the definition of ''electric storage resource'' in Order No. 841.[208] APS also states that neither the *pro forma* LGIP nor the *pro forma* LGIA allow the transmission provider to study the load characteristics of electric storage resources and are not specific as to how the transmission provider should recover the costs for those studies or how the transmission provider should classify the upgrades needed to accommodate the load characteristics of electric storage resources for cost allocation purposes.[209]

2. Determination

95. We deny APS' rehearing request. We reiterate that the definition change in Order No. 845 allows electric storage resources that wish to interconnect pursuant to the *pro forma* LGIP and *pro forma* LGIA to do so, and the revised definition is consistent with Order No. 792's revisions to the definition of ''small generating facility'' in the *pro forma* Small Generator Interconnection Procedures (SGIP) and *pro forma* Small Generator Interconnection Agreement (SGIA).[210] While Order No. 845 revised the definition of generating facility, it did not define ''electric storage resource.''

96. Moreover, we find it is not necessary to impose requirements regarding the scope of studies needed to account for the load characteristics of electric storage resources and the upgrades required to accommodate those load characteristics here. In Order No. 845, the Commission did not take a position regarding, or impose requirements pertaining to, the load characteristics of electric storage resources. Instead, the Commission observed that transmission providers have the flexibility to address the load characteristics of electric storage resources and that electric storage resources have already interconnected pursuant to Commission-jurisdictional LGIPs and LGIAs.[211] The Commission also stated that, if a transmission provider finds that the terms of its *pro forma* LGIA are insufficient to accommodate a particular resource, ''the LGIP permits a transmission provider to enter into non-conforming LGIAs when necessary.'' [212] Because the requirement in Order No. 845 is to allow electric storage resources to interconnect under the *pro forma* LGIP and *pro forma* LGIA, APS's request and discussion of the load characteristics of electric storage resources are beyond the scope of Order No. 845.

F. Interconnection Study Deadlines

97. In Order No. 845, the Commission modified the *pro forma* LGIP to institute quarterly reporting requirements for transmission providers to report interconnection study performance data on their OASIS sites or public websites. The Commission also adopted requirements for transmission providers to file informational reports with the Commission if a transmission provider exceeds its interconnection study deadlines for more than 25 percent of any study type for two consecutive calendar quarters (Filed Report Requirement).

98. In adopting these reporting requirements, the Commission found that the reporting requirements provide increased transparency and information to interconnection customers and do not unduly burden transmission providers.[213] It also found that the increased transparency resulting from these new requirements should provide for ''improved queue management and better informed interconnection customer planning—results that may be important enough to support some corresponding burden on transmission providers.'' [214]

1. Adoption of Order No. 845 Interconnection Study Metric Reporting Requirements

a. Requests for Rehearing and Clarification

99. Southern requests rehearing, arguing that the Commission failed to account for events outside of a transmission provider's control and that the Filed Report Requirement could subject transmission providers to additional reporting requirements and penalties for circumstances beyond their control.[215] Southern contends that ''this failure to make a rational connection between the facts and the requirement[s] adopted'' is arbitrary and capricious and in violation of the law.[216] Southern contends that the Commission has adopted skewed metrics that inappropriately suggest that delays are the fault of the transmission provider without regard to possible interconnection customer action. Southern contends that this approach could lead to a determination that a transmission provider is not using reasonable efforts and result in a possible penalty.[217]

100. Southern also seeks rehearing on the start date for measuring interconnection study performance metrics. It asserts that the date that a transmission provider receives an executed study agreement from the interconnection customer is not the appropriate start date. In support of this argument, it points out that the transmission provider may not receive additional items required for an interconnection request, such as study deposits and technical data, for some time after the execution of the study agreement. Southern states that, if the Commission does not adopt ''a revised start date that commences with the receipt of the study deposit and provision of complete and valid data, then . . . [it] should clarify that an Interconnection Customer is required to provide the study deposit and complete and valid technical data before the Transmission Provider is required to begin the study.'' [218]

b. Determination

101. We deny Southern's rehearing request that the Commission reconsider the requirement for transmission providers to quarterly post interconnection study metrics. The purpose of the study reporting requirements is to improve

[206] Order No. 845, 163 FERC ¶ 61,043 at P 273.

[207] APS Rehearing Request at 18.

[208] *Id.* (citing *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 841, 83 FR 9,580 (Mar. 6, 2018), 162 FERC ¶ 61,127 (2018)). Order No. 841 defines an electric storage resource as ''a resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid.'' Order No. 841, 162 FERC ¶ 61,127 at n.1.

[209] APS Rehearing Request at 19.

[210] Order No. 845, 163 FERC ¶ 61,043 at P 273.

[211] *Id.* P 285.

[212] *Id.*

[213] *Id.* P 307.

[214] *Id.*

[215] Southern Rehearing Request at 3, 10–11.

[216] *Id.* at 10–11.

[217] *Id.*

[218] *Id.* at 12.

interconnection customer planning, transmission provider queue management, and Commission oversight. As noted in Order No. 845, we believe that the increased transparency provided through the reported study information could ''allow interconnection customers to assess whether a transmission provider is using 'reasonable efforts' to process interconnection studies'' and allow them ''to develop informed expectations about how long the interconnection study portion of the process actually takes'' within a particular transmission system.[219] The Commission has acknowledged that interconnection study delays may not be the result of the transmission provider's actions, and, in recognition of this possibility, it declined to implement automatic penalties for study delays.[220] While we understand that Southern has concerns that posting data on transmission providers' consistency with tariff study timeframes may result in parties attempting to place blame on transmission providers, we note that the reported metric data in itself does not determine drivers for possible study data variance. The reported metrics are simply a transparency tool into the results, but not the drivers, of study completion. The posted study metrics indicate the proportion of interconnection studies a transmission provider is able to complete in the time frames established in its LGIP. We note that transmission providers are able to provide the rationale for and details regarding interconnection study delays to relevant interconnection customers under the provisions of sections 6.3, 7.4, and 8.3 in the *pro forma* LGIP and to other stakeholders as part of the information in the reports submitted under the Filed Report Requirement.

102. As the Commission noted in Order No. 845, the detailed information provided to the Commission through the Filed Report Requirement should be particularly beneficial in identifying process deficiencies and the causes of delays in regions that persistently experience significant delays.[221] This requirement also creates some consistency in the process for interconnection customers to obtain certain interconnection study information from transmission providers, and they will create a record that will allow the Commission to better assess the reasons for interconnection study delays.

103. We also deny Southern's request for rehearing regarding the start date for measuring interconnection study performance metrics, which Order No. 845 specifies as beginning with the execution of the relevant interconnection study agreement. Pursuant to the study performance metrics established in Order No. 845, the Commission uses the period between the execution of an interconnection study agreement and the date that the transmission provider provides the completed interconnection study to the interconnection customer as a time period for comparison [222] against the study time frame specified for that interconnection study in the *pro forma* LGIP, as established in Order No. 2003.[223] For purposes of consistency, the Commission chose to use the execution of an interconnection study agreement as the starting point for this comparison period because the *pro forma* LGIP uses the execution of an interconnection study agreement as the starting point for determining the time frame for completing an interconnection study.[224] In response to Southern's expressed concern, we note, however, that, as established in Order No. 2003, an executed interconnection study agreement is submitted concurrently with a study deposit and the provision of technical data called for in the interconnection study agreement.[225] As such, the timing for these components and their relationship with submission of an executed interconnection agreement has already been established and was not changed by Order No. 845.

2. Interconnection Study Data Posting Requirements

a. Requests for Rehearing and Clarification

104. EEI requests clarification on two issues related to reporting interconnection study metrics. First, EEI requests clarification that the interconnection study metric reporting requirement begins with data for 2018, because Order No. 845 became effective on July 23, 2018.[226] EEI notes that Order No. 845 adopts the NOPR language requiring the posting of quarterly metrics beginning with 2017. In response, EEI expresses concern that the study data required may not be available retroactively to the beginning of calendar year 2017 in the detail required by Order No. 845.

105. Second, EEI seeks clarification on the timing for filing reports if a transmission provider triggers the Filed Report Requirement.[227] Specifically, EEI asks how to comply with the Filed Report Requirement to submit a report ''within 45 days of the end of the calendar quarter'' if posted data from 2017 indicate that the Filed Report Requirement was triggered even though Order No. 845 ''did not go into effect until Q2 2018.'' [228]

106. To clarify that the events that would trigger the Filed Report Requirement begin after Order No. 845 became effective, EEI recommends that the Commission revise section 3.5.3 of the *pro forma* LGIP as follows (with proposed deletions in brackets from and proposed additions in italics):

> 3.5.3 Transmission Provider is required to post on OASIS or its website the measures in paragraph 3.5.2.1(A) through paragraph 3.5.2.4(F) for each calendar quarter within 30 days of the end of the calendar quarter. Transmission Provider will keep the quarterly measures posted on OASIS or its website for three calendar years with the first required [reporting year to be 2017] *quarterly report to be for the first calendar quarter after the effective date of Order No. 845.* If Transmission Provider retains this information on its website, a link to the information must be provided on Transmission Provider's OASIS site.[229]

b. Determination

107. We grant EEI's request for clarification and confirm that the date for measuring study performance metrics and the reporting requirements do not require transmission providers to post 2017 interconnection study metrics. EEI requested that the posting requirement begin in the 2018 calendar quarter after Order No. 845 becomes effective.[230] However, in light of the Commission's granting of a compliance

[219] Order No. 845, 163 FERC ¶ 61,043 at P 306 (quoting *Pro forma* LGIP Section 1 (Definition)).

[220] *Id.* P 309.

[221] *Id.* PP 308, 310.

[222] *See Pro Forma* LGIP, Sections 3.5.2.1(D), 3.5.2.2(D), & 3.5.2.3(D).

[223] *See Pro Forma* LGIP, Section 6.3, 7.4, & 8.3.

[224] *See, e.g., Pro Forma* LGIP, Section 6.3: ''The Transmission Provider shall use Reasonable Efforts to complete the Interconnection Feasibility Study no later than forty-five (45) Calendar Days after the Transmission Provider receives the fully executed Interconnection Feasibility Study Agreement.'' *See also Pro Forma* LGIP, Sections 7.4 & 8.3.

[225] *See, e.g., Pro Forma* LGIP, Section 6.1: ''The Interconnection Customer shall execute and deliver to the Transmission Provider the Interconnection Feasibility Study Agreement along with a $10,000 deposit no later than thirty (30) Calendar Days after its receipt. On or before the return of the executed Interconnection Feasibility Study Agreement to the Transmission Provider, the Interconnection Customer shall provide the technical data called for in Appendix 1, Attachment A.'' *See also Pro Forma* LGIP, Sections 7.2 & 8.1.

[226] EEI Rehearing Request at 18.

[227] *Id.*

[228] *Id.* at 19.

[229] *Id.*

[230] As noted below in Section J.1. Compliance and Effective Dates, EEI requested an extension of the Order No. 845 Compliance deadline.

extension to a date 90 days after issuance of this order,[231] we likewise extend the commencement of the retention and posting requirements. The reporting requirement shall commence in the first calendar quarter of 2020. This applies to both the study metrics reporting requirement and the Filed Report Requirement. To effectuate this clarification, we revise section 3.5.3 of the *pro forma* LGIP as follows (with deletions from and additions to the language from Order No. 845 in brackets and in italics, respectively):

> Transmission Provider is required to post on OASIS or its website the measures in paragraph 3.5.2.1(A) through paragraph 3.5.2.4(F) for each calendar quarter within 30 days of the end of the calendar quarter. Transmission Provider will keep the quarterly measures posted on OASIS or its website for three calendar years with the first required [reporting year to be 2017] *report to be in the first quarter of 2020.* If Transmission Provider retains this information on its website, a link to the information must be provided on Transmission Provider's OASIS site.

G. Requesting Interconnection Service Below Generating Facility Capacity

108. In Order No. 845, the Commission modified the *pro forma* LGIP to allow interconnection customers to request interconnection service that is lower than the proposed generating facility capacity,[232] recognizing the need for proper control technologies and flexibility for transmission providers to propose penalties to ensure that the generating facility does not inject energy above the requested level of service.[233] The Commission also clarified that interconnection customers may either request interconnection service below generating facility capacity in their interconnection requests, or reduce their levels of requested interconnection service by up to 60 percent and 15 percent, respectively, at two subsequent points in the interconnection process: (1) Prior to returning an executed system impact study agreement; and (2) prior to returning an executed facilities study agreement.[234]

109. With respect to the need to enforce limits on energy injection through monitoring and control technologies, and the related issue of penalties for over-generation, the Commission largely relied on existing provisions of the *pro forma* LGIA to address these needs. These include any provisions related to system protection facilities and any provisions that allow a transmission provider to curtail service or terminate an LGIA in response to an interconnection customer exceeding its energy injection limit.[235]

110. The Commission also required transmission providers to study interconnection requests at the level of interconnection service requested by the interconnection customer for purposes of identifying interconnection facilities and network upgrades. Furthermore, the Commission stated that transmission providers may, if determined necessary to ensure safety and reliability, perform studies at the full generating facility capacity. The Commission clarified that, in such circumstances, the transmission provider must provide a detailed written explanation for such a determination to the interconnection customer.[236] The Commission also required that, if the transmission provider determines that additional network upgrades are necessary based on these studies, it must specify which additional network upgrade costs are based on which studies and provide a detailed explanation of why the additional network upgrades are necessary.

1. Requests for Rehearing and Clarification

111. APS argues that the indemnification and liability provisions of the *pro forma* LGIA would not protect transmission providers where the action or inaction of an interconnection customer resulted in damage to or loss of use of the transmission provider's equipment or facilities or where such damage resulted in increased costs or loss of revenue for transmission providers. APS asks the Commission to clarify that transmission providers may propose stronger indemnification provisions in their LGIPs or LGIAs for interconnection service that is less than a generating facility's generating facility capacity. According to APS, operational controls can fail, and without explicit provisions addressing interconnection customer liability, the reform inequitably allocates consequential risk (which is directly attributable to a generating facility's operation) to transmission providers. For these reasons, APS requests clarification that transmission providers may propose LGIP/LGIA provisions to protect themselves from these risks or costs. APS also asks the Commission to explicitly define the interconnection customer's responsibilities for security, liability, indemnification, and overall reliability if an interconnection customer is interconnecting at a capacity lower than the full generating facility capacity.[237]

112. AWEA requests clarification regarding the timing of when a transmission provider must inform the interconnection customer of its election to perform additional studies at the full generating facility capacity. Specifically, AWEA argues that the transmission provider should inform the interconnection customer before performing these additional studies so that the interconnection customer can provide additional information or otherwise alleviate transmission provider concerns without the loss of time and money it may otherwise spend on additional studies. AWEA notes that the interconnection customer may bear the cost of additional studies and may seek to pursue dispute resolution if there is no agreement on the adequacy of control technologies or the need for additional study at the full generating facility capacity.[238]

113. AWEA also asks the Commission to clarify that there should be flexibility for the interconnection customer to wait until a facilities study is complete before the interconnection customer has to specify any required control technologies. It argues that this clarification is necessary to reconcile ambiguity in Order No. 845 concerning whether it is the interconnection customer's or transmission provider's responsibility to propose control technologies for a generating facility seeking service below generating facility capacity. In particular, AWEA is unable to reconcile two statements made by the Commission: (1) ''any control technologies proposed by the interconnection customer to restrict the generating facility's output to the requested interconnection service levels must be identified in the project description at the beginning of the study process,'' and (2) the Commission sees ''no reason to preclude a customer from relying on the transmission provider to identify protection and control technologies in the first instance.'' [239]

2. Determination

114. We deny APS's request for clarification because existing provisions in the *pro forma* LGIA are sufficient to

[231] Notice of Extension of Compliance Date, Docket No. RM17–8–000 (Oct. 3, 2018).

[232] The term generating facility capacity means ''the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.'' *Pro forma* LGIA Art. 1.

[233] Order No. 845, 163 FERC ¶ 61,043 at P 367.

[234] *Id.* PP 405–06.

[235] *Id.* PP 369–72, 396, 416–17.

[236] *Id.* PP 383–84.

[237] APS Rehearing Request at 15–16.

[238] AWEA Request for Clarification at 6–7.

[239] *Id.* at 7 (quoting Order No. 845, 163 FERC ¶ 61,043 at P 396).

address APS's concerns. More specifically, we find that article 18.1 of the *pro forma* LGIA in combination with articles 9.3 (Transmission Provider Obligations) and 9.4 of the *pro forma* LGIA (Interconnection Customer Operations), are adequate to address APS's concerns. Article 18.1 indemnifies a party from ''any and all damages, losses, claims . . . , demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, *arising out of or resulting from the other Party's action or inactions of its obligations under this LGIA*'' [240] and covers ''the amount of such Indemnified Person's actual loss, net of any insurance or other recovery.'' [241] *Pro forma* LGIA article 9.4 requires the interconnection customer ''to operate, maintain and control the Large Generating Facility . . . in a safe and reliable manner . . . in accordance with this LGIA'' and ''all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this LGIA.'' The phrase ''action or inactions of its obligations under this LGIA'' in article 18.1 would include failure by the interconnection customer to abide by article 9.4 and Appendix C to the LGIA. Therefore, if the interconnection customer requests interconnection service below generating capacity, it commits to operate consistent with such a request under section 3.1 of the *pro forma* LGIP, which states that ''[t]he necessary control technologies and protection systems . . . for exceeding the level of Interconnection Service established in the executed, or requested to be filed unexecuted, LGIA shall be established in Appendix C of that executed, or requested to be filed unexecuted, LGIA.'' [242] Moreover, Appendix C of the LGIA, which contains interconnection details specific to the interconnection request, must memorialize the interconnection customer's commitment to operate consistent with its request for interconnection service below generating facility capacity. We note that the Commission has previously required the inclusion of such operating requirements in Appendix C.[243]

115. It is the transmission provider's responsibility to ensure that Appendix C of the LGIA includes these operational requirements. More specifically, under *pro forma* LGIA article 9.3 (Transmission Provider Obligations), the transmission provider ''has the responsibility for establishing the Interconnection Customer's operating instructions and operating protocols and procedures'' and because ''these instructions, protocols, and procedures . . . include reliability requirements, article 9.3 . . . gives the Transmission Provider responsibility for modifications to Appendix C.'' [244]

116. Accordingly, we find the existing indemnification provision in *pro forma* LGIA article 18.1 would cover an action or inaction by the interconnection customer related to overgeneration because the interconnection customer would have failed to operate its generating facility consistent with its LGIA obligations. Because of this finding, we revise the last sentence of section 3.1 of the *pro forma* LGIP to now read ''[t]he necessary control technologies and protection systems shall be established in Appendix C of the executed, or requested to be filed unexecuted, LGIA.'' [245] In Order No. 845, the Commission declined to generically adopt into the *pro forma* LGIP any additional financial penalties for exceeding the limitations for interconnection service established in the interconnection agreements. However, the Commission did allow a transmission provider to propose and justify a need for additional penalties in a section 205 filing. We note that, if a transmission provider were to propose additional penalties, then information on the additional penalties should also be included in Appendix C of the LGIA. On a different but related note, it is worth pointing out that an interconnection customer's failure to abide by the operating requirements contained in Appendix C may constitute a breach of the LGIA and may trigger the default and termination provisions in articles 17.1.1 and 17.1.2 of the *pro forma* LGIA, respectively.

117. In response to AWEA's request to require a transmission provider to inform the interconnection customer before performing additional studies at the full generating facility capacity, we grant clarification and clarify that a transmission provider must provide a detailed explanation of its determination to perform additional studies at the full generating facility capacity to an interconnection customer prior to performing the additional studies. This explanation will allow the interconnection customer to understand the transmission provider's reasoning for determining that additional studies are necessary before the studies are conducted. We also reiterate Order No. 845's requirement that, if after the additional studies are complete, the transmission provider determines that additional network upgrades are necessary, then the transmission provider must: (1) Specify which additional network upgrade costs are based on which studies; and (2) provide a detailed explanation of why the additional network upgrades are necessary.[246] Accordingly, we revise the paragraph at the end of section 3.1 in the *pro forma* LGIP to include the following sentence (with new additions from Order No. 845 in italics):

> These requests for Interconnection Service shall be studied at the level of Interconnection Service requested for purposes of Interconnection Facilities, Network Upgrades, and associated costs, but may be subject to other studies at the full Generating Facility Capacity to ensure safety and reliability of the system, with the study costs borne by the Interconnection Customer. *If after the additional studies are complete, Transmission Provider determines that additional Network Upgrades are necessary, then Transmission Provider must: (1) Specify which additional Network Upgrade costs are based on which studies; and (2) provide a detailed explanation of why the additional Network Upgrades are necessary.*

118. We deny AWEA's request for clarification to allow an interconnection customer the flexibility to propose control technologies to the transmission provider after the completion of the facilities study because allowing such flexibility could cause delays in the processing of the transmission provider's queue. However, we reiterate that the interconnection customer may propose control technologies when it submits its interconnection request at the beginning of the interconnection process, or, if it chooses not to, then it may rely on the transmission provider to identify the necessary control technologies. Additionally, Order No. 845 stated that an interconnection customer may request to reduce its interconnection service by up to 60 percent before it returns an executed system impact study agreement to the transmission provider and by up to an additional 15 percent prior to the return of an executed facilities study

[240] *Pro forma* LGIA Art. 18.1.

[241] *Id.* Art. 18.1.2 (emphasis added).

[242] *See Pro Forma* LGIP Section 3.1.

[243] *See, e.g., Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response,* Order No. 842, 83 FR 9,636 (Mar. 6, 2018), 162 FERC ¶ 61,128, at P 180 (2018) (requiring interconnection customer and transmission providers to establish in Appendix C of an LGIA the operating range for an interconnecting electric storage resource that considers the system needs for primary frequency response and the physical limitations of the electric storage resource).

[244] *Bonneville Power Admin.,* 112 FERC ¶ 61,195, at P 20 (2005), *order on reh'g,* 113 FERC ¶ 61,005 (2005).

[245] *Pro Forma* LGIP Section 3.1.

[246] Order No. 845, 163 FERC ¶ 61,043 P 384.

agreement.[247] Because Order No. 845 permits the interconnection customer to reduce its interconnection service below generating facility capacity at these two other points in the generator interconnection process,[248] we grant rehearing in part to find that an interconnection customer may propose control technologies at both of these points as well. We note that this clarification still preserves the transmission provider's ability to ensure system protection under the existing *pro form* LGIA.[249]

H. Utilization of Surplus Interconnection Service

119. In Order No. 845, the Commission adopted *pro forma* LGIP and *pro forma* LGIA provisions to enable a new interconnection customer to utilize the unused portion of an existing interconnection customer's interconnection service within specific parameters. The intent was to reduce costs for interconnection customers and improve wholesale market competition by increasing the utilization of existing interconnection facilities and network upgrades rather than requiring new ones. These reforms were also intended to improve capabilities at existing generation facilities, to prevent stranded costs, and to improve access to the transmission system.[250]

120. As relevant to the requests for rehearing and clarification, in Order No. 845, the Commission modified the *pro forma* LGIP and *pro forma* LGIA to: (1) Add a definition for ''Surplus Interconnection Service'' to section 1 of the *pro forma* LGIP and to article 1 of the *pro forma* LGIA; [251] and (2) add a new section 3.3 to the *pro forma* LGIP that requires the transmission provider to establish a process for the use of surplus interconnection service.[252]

121. Also relevant to the requests for rehearing, Order No. 845 required ''transmission providers to provide an expedited process for interconnection customers to utilize or transfer surplus interconnection service at a particular point of interconnection. This process would be expedited in the sense that it would take place outside of the interconnection queue.'' [253] It also clarified that the use or transfer of surplus interconnection service does not entail queue jumping.[254] Finally, Order No. 845 permitted a limited, continuation of surplus interconnection service for up to one year following the retirement and permanent cessation of commercial operations of the original interconnection customer's generating facility.[255] Below, we address the issues raised in requests for rehearing or clarification.

1. Original Interconnection Customer's Ability To Utilize or Transfer Surplus Interconnection Service

a. Requests for Rehearing and Clarification

122. Non-Profit Utility Trade Associations state that the Commission's surplus interconnection service decision builds on the premise that transmission providers, when considering interconnection applications, must study the implications of generation output at full capacity, and assume that each interconnection customer is fully using its interconnection service when studying new requests. Non-Profit Utility Trade Associations note that, on that basis, the Commission then built a ''right'' under the tariff for interconnection customers to market surplus interconnection capacity.[256]

123. However, Non-Profit Utility Trade Associations allege that Order No. 845 fails to account for the ''dynamic nature of the transmission planning and operating environment.'' [257] In particular, they argue that the Commission explicitly recognized that transmission planners build certain assumptions into their models when it stipulated that studies for the use of surplus interconnection capacity will focus on available reactive power studies, short circuit fault duty analyses, stability analyses, and any other appropriate studies.[258] Non-Profit Utility Trade Associations argue that, for planning models, assuming that interconnection customers may at any time market capacity that has long been idle alters the planning environment and will likely require additional investment.[259]

124. According to Non-Profit Utility Trade Associations, while ''the interconnection capacity needed by any interconnection customer may be effectively free . . . when initially secured,'' it may later become valuable when a subsequent interconnection customer submits an interconnection request. Non-Profit Utility Trade Associations argue, however, that permitting an interconnection customer an ongoing opportunity to remarket interconnection service permits the value of the associated capacity to be set at the cost of system expansion, regardless of the cost to the interconnection customer. According to Non-Profit Utility Trade Associations, such a result would be an unearned windfall for the initial interconnection customer, and holds the potential for it to assess monopoly rent meaningfully in excess of its cost. Non-Profit Utility Trade Associations further contend that, if the original interconnection customer does not release ''its capacity,'' a transmission provider would have ''to build out the grid for an ensuing customer,'' with the resulting cost to be borne ultimately by the system as a whole as costs are rolled into system-wide rates under the Commission's generic interconnection pricing policy.[260]

125. Furthermore, Non-Profit Utility Trade Associations argue that, under Order No. 2003, all system customers are ultimately responsible for network upgrade costs associated with interconnection applications on a rolled-in cost basis.[261] Non-Profit Utility Trade Associations assert that this fact ''undermines any equitable claim that interconnection customers may have to the financial benefit of transmission capacity associated with network upgrades for which they have provided initial funding.'' [262] For this reason, Non-Profit Utility Trade Associations argue that the Commission should withdraw the surplus interconnection service provisions because they will drive up system-wide costs, permit interconnection process gaming, and will not increase system efficiency.[263] Non-Profit Utility Trade Associations

[247] *Id.* P 396.

[248] *Id.* P 406; *see also pro forma* LGIP Sections 4.4.1 & 4.4.2.

[249] Order No. 845, 163 FERC ¶ 61,043 at P 372; *see also pro forma* LGIA Section 9.7.4.1.

[250] *See* Order No. 845, 163 FERC ¶ 61,043 at P 467.

[251] *Id.* (''Surplus Interconnection Service shall mean any unneeded portion of Interconnection Service established in a Large Generator Interconnection Agreement, such that if Surplus Interconnection Service is utilized the total amount of Interconnection Service at the Point of Interconnection would remain the same.'').

[252] *Id.* (''Utilization of Surplus Interconnection Service—Transmission Provider must provide a process that allows an Interconnection Customer to utilize or transfer Surplus Interconnection Service at an existing Point of Interconnection. The original Interconnection Customer or one of its affiliates shall have priority to utilize Surplus Interconnection Service. If the existing Interconnection Customer or one of its affiliates does not exercise its priority, then that service may be made available to other potential interconnection customers.'').

[253] *Id.* P 486.

[254] *Id.* PP 487.

[255] *Id.* PP 505–06.

[256] Non-Profit Utility Trade Associations Rehearing Request at 9.

[257] *Id.* at 9.

[258] *Id.* at 9–10 (citing Order No. 845, 163 FERC ¶ 61,043 at P 461).

[259] *Id.*

[260] *Id.* at 9–11.

[261] *Id.* at 10–11 (citing Order No. 2003, 104 FERC ¶ 61,103 at PP 130–33).

[262] *Id.* at 11.

[263] *Id.* at 11–12.

concede that, after an interconnection is complete, some surplus capacity may exist. For this reason, Non-Profit Utility Trade Associations do not oppose modifications to permit the transfer of surplus capacity for a period of five years after the interconnection's energization.

b. Determination

126. We deny Non-Profit Utility Trade Associations' request for rehearing. First, we disagree with Non-Profit Utility Trade Associations that the establishment of surplus interconnection service fails to account for the ''dynamic nature of the transmission planning and operating environment.'' [264] While transmission planners may make reasonable assumptions as to future transmission system use to plan for transmission system maintenance, the transmission provider has no right to assume in all circumstances that unused interconnection service will remain unused indefinitely. In fact, Order No. 845 explained that, ''even if a generating facility only operates a few days a year, or routinely operates at a level below its maximum capacity, the remaining, unused interconnection service is assumed to be unavailable to other prospective interconnection customers.'' [265] As long as the original interconnection customer remains in compliance with its LGIA, it retains the right to make full use of its contracted for interconnection service, and, so long as any necessary transmission service has been obtained, it may inject at the full level contracted for under its LGIA.[266]

127. As to the remainder of Non-Profit Utility Trade Associations' arguments, while we agree that, where transmission providers follow the Commission's Order No. 2003 crediting policy, transmission customers ultimately pay for interconnection-related network upgrades,[267] this fact does not undermine the rationale for surplus interconnection service. The amount of interconnection service that was granted to the original interconnection customer remains the same throughout the term of its LGIA, whether or not that original interconnection customer ultimately receives credits for the cost of any network upgrades that may have been needed to accommodate its original interconnection request. Accordingly, the amount of surplus interconnection service that can be offered by the original interconnection customer likewise does not depend on whether the original interconnection customer receives or received credits for the cost of any network upgrades that may have been needed to accommodate its original interconnection request.

128. In addition, we continue to find that these surplus interconnection service requirements serve to ''enhance access to the transmission system at [a specific] point of interconnection'' and are necessarily ''limited in nature,'' as stated in Order No. 845.[268] These requirements are consistent with the fact that, once an original interconnection customer commences operation, nothing in its LGIA prohibits it from operating at the full amount of interconnection service established in its LGIA,[269] taking into account any curtailment for temporary reliability reasons, even if it has not historically done so.[270] In other words, rather than encouraging the withholding of interconnection capacity as asserted by Non-Profit Utility Trade Associations, the surplus interconnection service requirements make it easier for the original interconnection customer to utilize or transfer surplus interconnection service at a particular point of interconnection.

129. Similarly, we disagree with Non-Profit Utility Trade Associations' argument that ''[p]ermitting an original interconnection customer an ongoing opportunity to remarket interconnection service'' may allow it ''to assess monopoly rent meaningfully in excess of its cost.'' [271] As noted in Order No. 845, new interconnection customers retain the ''ability to submit an interconnection request for any requested point of interconnection directly with the transmission provider, rather than seeking surplus interconnection service with respect to an original interconnection customer's point of interconnection.''[272] Furthermore, as also explained in Order No. 845, surplus interconnection service is, by definition, more limited in nature than new interconnection service provided by the transmission provider because: (1) The total output of the original interconnection customer plus the surplus interconnection service customer behind the same point of interconnection will be limited to the maximum total amount of interconnection service granted to the original interconnection customer; (2) the original interconnection customer will be able to stipulate the amount of surplus interconnection service that is available, to designate when that service is available, and to describe any other conditions under which surplus interconnection service at the point of interconnection may be used; and (3) it will only be available at the preexisting point of interconnection of the original interconnection customer.[273] Thus, surplus interconnection service is an inherently more limited service than non-surplus interconnection service. For these reasons, the original interconnection customer cannot assess monopoly rents through the sale of surplus interconnection service because a potential purchaser of surplus interconnection service can always opt instead for non-surplus interconnection service from the transmission provider. That said, we note that making surplus interconnection service available when it was not available before provides a new option for interconnection customers that are willing to accept the limitations associated with surplus interconnection service.

2. Effect of Expedited Surplus Interconnection Service Process on the Queue and on Transmission Planning

a. Requests for Rehearing and Clarification

130. Some rehearing requests argue that the Commission has not adequately addressed the impact that the expedited surplus interconnection service process may have on the non-surplus interconnection queue. APS argues that the studies associated with surplus interconnection service must compete

[264] *Id.* at 9.

[265] Order No. 845, 163 FERC ¶ 61,043 at P 468.

[266] *See id* PP 468–72.

[267] Specifically, under the *pro forma* LGIA of Order No. 2003, an interconnection customer only provides up-front financing of network upgrades that enable interconnection service. After the interconnection customer enters commercial operation, the transmission provider reimburses the interconnection customer through transmission service credits and rolls the cost of the network upgrades into its transmission rates over time. Order No. 2003, 104 FERC ¶ 61,103 at PP 693–96. See also LGIA Art. 11.4.1 (''Interconnection Customer shall be entitled to a cash refund, equal to the total amount paid to Transmission Provider and Affected System Operator, if any, for the Network Upgrades, including any tax gross-up or other tax-related payments, and not refunded to Interconnection Customer pursuant to Article 5.17.8 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Large Generating Facility'').

[268] Order No. 845, 163 FERC ¶ 61,043 at PP 480–81.

[269] For purposes of this argument, we assume that any necessary transmission service has been obtained to allow such operation of the generation facility at the full amount of interconnection service established in its LGIA.

[270] *Id.* P 480.

[271] Non-Profit Utility Trade Associations Rehearing Request at 9.

[272] *See, e.g.,* Order No. 845, 163 FERC ¶ 61,043 at P 482; *see also id.* PP 490 & 507.

[273] *See, e.g., id.* P 481.

for the same transmission provider resources, including personnel, as other interconnection studies. Further, APS states that ''where interim facilities are necessary . . . it is not clear how and when such facilities would become 'contingent facilities' in the normal interconnection study process.'' [274] APS adds that, where studies from a request for surplus interconnection service identify additional impacts, those impacts could affect interconnection customers that are already in the queue.[275] As a result, APS asks the Commission to clarify that transmission providers may incorporate into their *pro forma* LGIAs and LGIPs provisions that are necessary to ensure that these issues, when they arise, can be resolved.

131. Similarly, EEI and Southern argue that the Commission's rationale for the surplus interconnection service provisions fails to consider the impact to the transmission planning process if more than two customers seek to use the same interconnection service. They argue that, while the transmission provider can study the original interconnection customer and the surplus interconnection customer for a safe and reliable interconnection, transmission providers may find it increasingly difficult to reliably study subsequent interconnection requests and plan for future transmission system expansion.[276]

132. EEI also argues that, in all transmission planning studies, when considering safety and reliability evaluations such as breaker duty, grounding, or stability, the transmission provider considers all other transmission system components at full load even though most of these components do not operate at full capacity all the time. It argues that this methodology allows transmission providers to efficiently plan the transmission system to operate safely and reliably under stressed conditions and that the Commission should account for this planning consideration when implementing Order No. 845.[277] Finally, EEI seeks guidance to address these implementation and operational issues and requests a technical conference or workshop to address these issues.[278]

b. Determination

133. We deny the requests by EEI, Southern, and APS for clarification and technical conference with respect to the potential impact on the queue of the expedited surplus interconnection service process, both with respect to interconnection requests and to transmission planning. While the Commission agrees with APS that, for a given transmission provider, the same personnel that would be responsible for processing the non-surplus interconnection queue would likely also be responsible for administering the surplus interconnection service process, this fact does not justify granting the requests for clarification. As noted in Order No. 845, transmission providers routinely conduct similar studies outside of the interconnection process without causing significant delays to other interconnection customers.[279] None of the rehearing requests provided evidence refuting this assertion. We find it reasonable to assume that transmission providers will be able to similarly study surplus interconnection service requests without creating significant delays in the non-surplus interconnection process.

134. Additionally, we are not persuaded by the argument that transmission providers may find it increasingly difficult to reliably study later interconnection requests and plan for future transmission system expansion due to the need to assess multiple scenarios for surplus interconnection service at the same point of interconnection. This issue exists irrespective of whether surplus interconnection service is an available option, as there are always uncertainties and complexities surrounding transmission system modeling. These uncertainties require making assumptions as to future conditions that, by their very nature, cannot be predicted in the present with 100 percent accuracy.[280] Considering all of the limitations associated with surplus interconnection service described elsewhere in this section, particularly the fact that it cannot be granted if it would require new network upgrades, we see no evidence that the mere existence of surplus interconnection service would fundamentally or significantly increase the difficulty of making assumptions as to future conditions in connection with transmission system modeling.

135. APS requests clarification as to how and when interim facilities would become ''contingent facilities'' in the normal interconnection study process. APS also requests clarification concerning additional impacts identified in surplus interconnection service studies affecting the determination of what upgrades are necessary for interconnection customers that are already in the queue. As discussed in more detail in the next section below, surplus interconnection service cannot be granted if doing so would require new network upgrades. Accordingly, surplus interconnection service should have no additional impacts affecting the determination of what upgrades are necessary for interconnection customers that are already in the queue. Similarly, because surplus interconnection service will not be granted if it requires new network upgrades, there should be no interim facilities that need to be considered contingent facilities in the normal interconnection study process. Accordingly, we find no basis to grant clarification.[281]

3. Impact of Differences in Electrical Characteristics Between the Surplus and Original Interconnection Customers

a. Requests for Rehearing and Clarification

136. EEI states that where two generators with different electrical characteristics (*e.g.,* short circuit contribution, fault current, harmonic profile) share a point of interconnection, if the transmission provider receives a third interconnection request on the same transmission line, the transmission provider will have to either (1) choose one of the two original generators to include for the third generator's interconnection evaluation or (2) perform multiple evaluations to consider all potential generator operation scenarios. Under the first scenario, according to EEI, it is possible that the study could miss potential upgrades that could be necessary, and under the second scenario, the transmission provider's study and the transmission planning process become more complex. As a result, EEI requests that the Commission convene a

[274] APS Rehearing Request at 14.

[275] *Id.* at 13–15. APS raises the same issues with respect to provisional interconnection service.

[276] EEI Rehearing Request at 15; Southern Rehearing Request at 15.

[277] EEI Rehearing Request at 15.

[278] *Id.* at 15–16.

[279] Order No. 845, 163 FERC ¶ 61,043 at P 488 (citing, *e.g.,* MISO FERC Electric Tariff, Attachment X (76.0.0), Section 11.5).

[280] For example, it will always be difficult for a given transmission provider to know with certainty how much unaffiliated generation will retire in the future and how much new unaffiliated generation may ultimately be built to replace it, and making reasonable assumptions in order to address these and other uncertainties is a necessary and intrinsic part of transmission system modeling.

[281] Similarly, APS raised this issue in regards to provisional interconnection service, and we deny clarification with respect to provisional interconnection on the same basis. Furthermore, provisional interconnection is only available when available studies or additional studies as necessary indicate that there is a level of interconnection that can occur without any additional interconnection facilities and/or network upgrades. *See id.* P 441.

technical conference or staff-led workshop to address these issues prior to requiring implementation.[282]

137. For similar reasons, Southern asks the Commission to clarify that transmission providers are only obligated to provide surplus interconnection service up to the amount that can be provided without building new network upgrades.[283]

b. Determination

138. We clarify that, by definition, surplus interconnection service is only available up to the level that can be accommodated without requiring the construction of new network upgrades. We agree that a surplus interconnection service customer may have significantly different electrical characteristics (*e.g.,* short circuit contribution, fault current, harmonic profile) than the original interconnection customer, and that those differences may sometimes result in the need to take actions up to and potentially including the construction of new network upgrades to maintain the reliable operation of the system in order to accommodate the new surplus interconnection request. This could be true even if the total injections of energy from the original and surplus interconnection customers are limited to the level of interconnection service contracted for by the original interconnection customer. Thus, in recognition of the Commission's stated objective of increasing efficiency in the interconnection process through this reform, we clarify that surplus interconnection service is only available up to the amount that can be accommodated without requiring new network upgrades.[284] This clarification should address concerns regarding the potential impact of differences in electrical characteristics, and therefore, no additional technical conference or staff-led workshop is necessary.

4. Independent Entity Variations

a. Requests for Rehearing and Clarification

139. New York Independent System Operator, Inc. (NYISO) asks the Commission to clarify that Order No. 845 does not limit the manner in which RTOs/ISOs demonstrate independent entity variations with respect to surplus interconnection service. Specifically, NYISO cites paragraph 477 of Order No. 845, which appears to create highly prescriptive surplus interconnection service requirements with regard to RTO's/ISO's interconnection procedures. However, NYISO argues that the assumptions concerning the need for, and benefits of, surplus interconnection service are not applicable to NYISO, whose rules are ''fundamentally different'' from other transmission providers' rules.[285]

b. Determination

140. We grant NYISO's request for rehearing because the Commission did not intend to limit the manner in which RTOs/ISOs may seek independent entity variations with respect to surplus interconnection service. Order No. 845 states that:

> for a process to be consistent with or superior to, *or an independent entity variation from,* the Final Rule's surplus interconnection service requirements, the transmission provider must demonstrate, at a minimum, that its tariff: (1) Includes a definition of surplus interconnection service consistent with the Final Rule; (2) provides an expedited interconnection process outside of the interconnection queue for surplus interconnection service, consistent with the Final Rule; (3) allows affiliates of the original interconnection customers to use surplus interconnection service for another interconnecting generating facility consistent with the Final Rule; (4) allows for the transfer of surplus interconnection service that the original interconnection customer or one of its affiliates does not intend to use; and (5) specifies what reliability-related studies and approvals are necessary to provide surplus interconnection service and to ensure the reliable use of surplus interconnection service.[286]

141. Upon further consideration, we find that it was not appropriate to limit the flexibility of independent entities to request independent entity variations. This passage from the preamble of Order No. 845 should have been limited to discussing whether a process is ''consistent with or superior to'' Order No. 845 requirements and should not have referred to independent entity variations. Therefore, we modify this portion of the preamble of Order No. 845 to eliminate the phrase ''or an independent entity variation from.'' As NYISO correctly notes, requesting an independent entity variation provides more flexibility than requesting a variation that is ''consistent with or superior to'' a final rule's requirements.[287] Nevertheless, we will not otherwise address any specific independent entity variation arguments in NYISO's request for clarification at this time. Such arguments are more appropriate in a proceeding on a particular transmission provider's Order No. 845 compliance filing.

5. Additional Requests for Clarification Regarding Surplus Interconnection Service

a. Requests for Rehearing and Clarification

142. Some of the rehearing requests argue more narrowly that the surplus interconnection service requirements are inconsistent with particular Commission-approved provisions in transmission providers' own tariffs. In this regard, Southern argues that no LGIA to which Southern is a party obligates it to maintain an interconnection customer's capability to be designated as a network resource after the original generating facility's commercial operation date. It explains that any preservation of capacity would instead ''be done under an appropriate transmission delivery service arrangement.'' [288] Therefore, Southern asks for clarification that the statement ''that if the original LGIA is for [Network Resource Interconnection Service (NRIS)], the surplus interconnection customer could be either [Energy Resource Interconnection Service (ERIS)] or NRIS'' does not apply to Southern.[289]

143. AWEA requests clarification on two issues regarding the implementation of the surplus interconnection service requirements. First, AWEA seeks clarification that the Commission intends to accommodate a ''Multi-Phase model,'' which according to AWEA differs from the MISO Net Zero Interconnection Service Model. AWEA describes the Multi-Phase Model as a situation where a developer that planned to build a plant with a higher generating facility capacity enters a contract for a lower capacity during its development process. It argues that this situation could ''leave[] excess capacity in the interconnection service that is not immediately used,'' and the developer ''may wish to build an additional generating plant at that same site,'' or ''may wish to sell the excess capacity to

[282] EEI Rehearing Request at 14–15.

[283] Southern Rehearing Request at 16.

[284] We note that surplus interconnection service will likely require new directly assignable interconnection facilities to connect the surplus interconnection service customer to the original interconnection customer's interconnection facilities. However, interconnection facilities are always the sole cost responsibility of the relevant interconnection customer, so requiring more of those for a surplus interconnection request will not impact others in the interconnection queue.

[285] NYISO Request for Rehearing at 6–19. NYISO provides examples of these regional rules that it asserts are incompatible with the surplus interconnection service requirements.

[286] Order No. 845, 163 FERC ¶ 61,043 at P 477 (emphasis added).

[287] Order No. 2003, 104 FERC ¶ 61,103 at P 26.

[288] Southern Rehearing Request at 16 (citing to a portion of Attachment J–1 to Southern's tariff).

[289] *Id.* at 17.

another party.'' [290] AWEA contends that this Multi-Phase model would fit under the Commission's definition of surplus interconnection capacity.[291] AWEA also states that some RTOs/ISOs have procedures that allow the initial party to reassign or transfer surplus interconnection capacity to another party consistent with this Multi-Phase model.[292] AWEA therefore requests clarifications that the situations ''similar to that of the Multi-Phase model described above, in addition to the Net Zero model, are . . . an intended use of surplus interconnection capacity, and that transmission providers should also provide a process by which the Multi-Phase model can allow the efficient use of existing interconnection capacity.'' [293] It argues that both approaches to the use of surplus capacity could be accomplished through the same process or in two different processes.[294]

144. Second, regarding retirement of the original generator associated with a surplus interconnection service agreement, AWEA requests that the Commission clarify that, during the one-year grace period prior to the retirement of the original generator, a new generator can apply for repowering or replacement at the point of interconnection, with the agreement of the original interconnection customer, under the RTO/ISO's existing rules. Further, AWEA requests that the Commission clarify that, if the retirement and replacement process is successful, the surplus interconnection customer could continue to operate after that one-year grace period.[295] AWEA also asks the Commission to clarify that the rules and processes that exist for replacement or repowering are also available to surplus interconnection service customers.[296]

b. Determination

145. We deny the requests for clarification by Southern and AWEA, as discussed further below. We deny Southern's request for clarification regarding whether the statement ''that if the original LGIA is for NRIS, the surplus interconnection customer could be either ERIS or NRIS'' applies to Southern. Southern argues that, under its tariff, it is not obligated under any LGIA to maintain an interconnection customer's capability to be designated as a network resource after the original generating facility's commercial operation date because of a certain provision it added to its tariff. However, Southern fails to acknowledge the concerns the Commission identified when Southern first proposed this provision. Specifically, the Commission stated that ''[a]lthough Southern states on rehearing that it was 'not trying to nullify, avoid, or evade the requirements of Order Nos. 2003 and 2003–A in adopting Attachment J–1,' we continue to find that, without the conditions discussed below, revised Attachment J–1 has not been shown to be consistent with or superior to the *pro forma* LGIA and LGIP.'' [297] Among the referenced conditions was that Southern must add language stating that ''other provisions of these sections notwithstanding, [the relevant analyses and studies] will be conducted in a manner that preserves the NRIS status of existing generators.'' [298] Accordingly, we deny Southern's request for clarification on this issue. Where a particular original interconnection customer's interconnection service is NRIS, if a surplus interconnection customer seeks to interconnect at the same point of interconnection, then it may seek either ERIS or NRIS.

146. We find that AWEA's description of the Multi-Phase model is inconsistent with the surplus interconnection service described in Order No. 845. In Order No. 845, the Commission described the use of surplus interconnection service as appropriate when interconnection customers do not use the full generating facility capacity of their interconnection service due to the nature of their operations.[299] The Commission also agreed with CAISO's argument that ''where the original interconnection customer . . . reduces the generating facility capacity of its facility from what was originally proposed for interconnection, it would not retain rights indefinitely to any excess interconnection capacity thus created.'' [300] Furthermore, in finding that there are no significant concerns regarding the potential for hoarding interconnection service, we relied on the fact that, currently, an original interconnection customer can only secure interconnection service based on the generating facility capacity of the generating facility that it constructs and continues to operate.[301] In light of these findings, because AWEA's proposed ''Multi-Phase'' model is based on the idea that the original interconnection customer would intentionally secure an amount of interconnection service in excess of the size of the generating facility that it constructs and continues to operate, we find that this concept would not be consistent with surplus interconnection service as defined in Order No. 845.

147. We also deny clarification with respect to AWEA's requests related to repowering or replacement. To the extent that a particular transmission provider has repowering/replacement provisions in its tariff, nothing in Order No. 845 would alter those provisions.[302] Furthermore, if a particular repowering/replacement process is successful, any continued operation from that point forward would then be under a new interconnection agreement associated with the outcome of the successful repowering/replacement process.

I. Material Modification Definition and Incorporation of Advanced Technology

148. In the *pro forma* LGIP, section 4.4 states that an interconnection customer that has requested a modification in writing to a transmission provider ''shall retain its Queue Position if the modifications are in accordance with [*pro forma*] Sections 4.4.1, 4.4.2 or 4.4.5, or are determined not to be Material Modifications pursuant to 4.4.3.'' [303] In Order No. 845, the Commission modified section 4.4.2(c) of the *pro forma* LGIP to allow an interconnection customer to incorporate certain technological changes to its interconnection request without risking the loss of its queue positon. In addition, the Commission modified section 4.4.4 of the *pro forma* LGIP to require transmission providers to include a technological change procedure that includes the requisite information and process that the transmission provider will follow to assess whether an interconnection customer's proposed technological change is a material modification. Further, Order No. 845 required that transmission providers develop a definition of permissible technological advancement that would define a category of technological changes that will not result in the loss of queue

[290] AWEA Request for Clarification at 3.

[291] *Id.*

[292] *Id.* at 4.

[293] *Id.*

[294] *Id.*

[295] *Id.* at 5.

[296] *Id.*

[297] *See Southern Company Services, Inc.,* 109 FERC ¶ 61,014, at P 18 (2004).

[298] *See id.* P 19.

[299] Order No. 845, 163 FERC ¶ 61,043 at P 480.

[300] *Id.* P 493.

[301] *Id.* P 490.

[302] Similarly, to the extent that a particular transmission provider lacks such provisions, nothing in Order No. 845 creates a new obligation for the transmission provider to add them.

[303] *Pro forma* LGIP Section 4.4 (Modifications). Material modification ''shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.'' *Pro forma* LGIP Section 1 (Definitions); *pro forma* LGIA Art. 1 (Definitions).

position pursuant to the *pro forma* material modification provision.[304]

1. Requests for Rehearing and Clarification

149. EEI requests that the Commission clarify that it is not changing the definition of material modification established in Order No. 2003. It argues that the material modification procedure focuses on the entire interconnection queue, while the process for determining if a technological change is a material modification would only focus on electrical performance, even though improved or increased electrical performance ''can and will have an impact on lower-queued resources.'' [305] EEI states that this issue is a concern because transmission providers must focus on grid reliability, and not all technological changes will have the same impact on the grid.[306]

150. EEI also asks whether the Commission created a new standard for evaluating what constitutes a material modification.[307] EEI requests that the Commission clarify that the intent is not to change the definition of material modification as defined in Order No. 2003, which is related to one interconnection customer's impact on another customer in the queue.[308]

151. Southern argues that, because the NOPR did not indicate that the Commission was proposing to revise the definition of material modification, this failure would contravene the notice and comment requirements of the Administrative Procedure Act.[309]

2. Determination

152. In response to Southern and EEI, Order No. 845 did not change the existing material modification definition, which determines whether an interconnection customer's proposed change will cause it to lose its queue position based on whether it has a material impact on the cost or timing of any interconnection request with a later queue priority date.[310] Order No. 845's requirement that transmission providers develop a definition of permissible technological advancement does not alter the definition of a material modification in the *pro forma* LGIP or conflict with the existing construct. Rather, Order No. 845 requires transmission providers to develop a definition of permissible technological advancements that the interconnection process will accommodate without triggering the loss of queue position pursuant to the material modification provision of the *pro forma* LGIP.[311] For purposes of clarity, we explain further how this revision will fit in with the existing provisions. Permissible technological advancements, as determined by the transmission provider, will be added to the existing list of modifications in section 4.4.2 of the *pro forma* LGIP that do not require a material modification assessment and thus do not result in the loss of an interconnection customer's queue position.[312] While the Commission included the correct *pro forma* LGIP language in section 4.4.2 of Appendix B, in the text, the Commission neglected to include the word ''permissible.'' Therefore, we clarify that section 4.4.2 of the *pro forma* LGIP should include the following language as subpart (c) (with emphasis supplied in italics):

> a *Permissible* Technological Advancement for the Large Generating Facility after the submission of the interconnection request. Section 4.4.4 specifies a separate technological change procedure including the requisite information and process that will be followed to assess whether the Interconnection Customer's proposed technological advancement under Section 4.4.2(c) is a Material Modification. Section 1 contains a definition of Permissible Technological Advancement.

153. It is noteworthy that existing interconnection customer modifications permitted under section 4.4.2 of the *pro forma* LGIP may affect lower-queued customers but do not result in loss of queue position.[313] Thus, this requirement is similar to the existing exemptions laid out in section 4.4.2 of the *pro forma* LGIP, which allow for the identification in the tariff of specific changes to an interconnection request that do not result in the interconnection customer losing its queue position.

154. We deny rehearing regarding Southern's assertion that the Commission did not provide notice of its proposal to revise the definition of material modification. The NOPR did not propose, and Order No. 845 did not adopt, any revisions to the definition to material modification.

155. In response to EEI's and Southern's arguments that the requirements for a new technological change procedure and definition of permissible technological advancement are inconsistent with the definition of material modification, we clarify that the requirement that transmission providers develop a definition for permissible technological advancement is distinct from the other Order No. 845 requirement that transmission providers develop a technological change procedure for determining whether or not a proposed technological change is a material modification. In particular, we note that a transmission provider's technological change procedure must specify the conditions under which a study will or will not be necessary to determine whether a proposed technological change is a material modification.[314] When studies are necessary, the interconnection customer's technological change request must demonstrate that the proposed incorporation of the technological change would result in electrical performance that is equal to or better than the electrical performance expected prior to the technological change and would not cause any reliability concerns (*i.e.,* materially impact the transmission system with regard to short circuit capability limits, steady-state thermal and voltage limits, or dynamic system stability and response).[315] If the interconnection customer cannot demonstrate in its technological change request that the proposed technological change would result in equal or better electrical performance, the change will be assessed pursuant to the existing material modification *pro forma* LGIP

[304] Order No. 845, 163 FERC ¶ 61,043 at P 518.

[305] EEI Rehearing Request at 17; *see also* Southern Rehearing Request at 13.

[306] EEI Rehearing Request at 17. To illustrate its point, EEI argues that two different interconnection customers in different areas of the electric system may propose to incorporate the same technology changes. However, it contends that one technological change may not affect other interconnection customers in the queue (if, for example, no other interconnection requests are related to the same line or substation bus), while the other interconnection customer may impact the cost and timing for others in the queue (if, for example, other interconnection requests are related to the same line or substation bus). Thus, the latter would be considered a material modification, while the former would not. As another example, Southern offers that an interconnection customer may ''replace [its] inverters to decrease a generating facility's short circuit contribution . . . which could be considered 'greater or equal electrical performance' '' but that this change could result in a breaker upgrade originally identified for this interconnection request to be triggered instead by a later-queued interconnection request. Thus, Southern reasons, this change would be a material modification. Southern Rehearing Request at 13–14.

[307] *Id.* at 17.

[308] *Id.*

[309] Southern Rehearing Request at 14 (citing 5 U.S.C. 553 (2012); *Chocolate Mfrs. Ass'n of U.S.* v. *Block,* 744 F.2d 1098, 1104 (1985)).

[310] Sections 4.4.1, 4.4.2, and 4.4.5 of the *pro forma* LGIP enumerate modifications that an interconnection customer may make without losing its queue position.

[311] Order No. 845, 163 FERC ¶ 61,043 at P 530.

[312] *See id.* App. B at Section 4.4.2.

[313] For example, the modifications listed in section 4.4.2 of the *pro forma* LGIP include a 15 percent decrease of electrical output (MW) that could have a material impact on the cost of a lower-queued interconnection request. *Pro forma* LGIP Section 4.4 (Modifications).

[314] Order No. 845, 163 FERC ¶ 61,043 at P 519.

[315] *Id.* P 520.

provisions. We clarify that information regarding electrical performance submitted by the interconnection customer is an input into the technological change study and that this factor alone is not determinative of whether a proposed technological change is a material modification. We also clarify that the determination of whether a proposed technological change (that the transmission provider does not otherwise include in its definition of permissible technological advancements) is a material modification should include an analysis of whether the proposed technological change materially impacts the timing and costs of lower-queued interconnection customers.[316] Accordingly, the final decision as to whether or not a proposed technological change is a material modification will remain with the transmission provider. Consistent with Order No. 845, the transmission provider must make such a determination no more than 30 days after an interconnection customer submits a formal technological change request.[317]

J. Process Concerns

1. Compliance and Effective Dates

156. Order No. 845 was issued in the **Federal Register** on May 9, 2018, and its effective date was seventy-five days after that, or July 23, 2018. In Order No. 845, the Commission stated that all public utility transmission providers were to submit compliance filings to adopt the requirements of Order No. 845 ''as revisions to the LGIP and LGIA in their [Open Access Transmission Tariffs (OATT)] no later than 90 days after the issuance of'' Order No. 845 in the **Federal Register**.[318]

a. Motions for Extension of Time

157. The ISO/RTO Council[319] and Southern filed motions to extend the compliance date of Order No. 845. The ISO/RTO Council requested that the Commission extend the compliance deadline by seventy days to October 16, 2018.[320] The New England Power Pool Participants Committee filed comments in support of this motion. Southern requested that the Commission extend the compliance period to a total of 180 days so that the compliance filing deadline would be November 5, 2018.[321] On June 1, 2018, the Office of the Secretary issued a notice extending the compliance deadline to November 5, 2018.[322]

158. On September 24, 2018, EEI submitted a motion requesting an extension of the compliance deadline for Order No. 845 up to and including ninety (90) days after the Commission's issuance of an order addressing the pending requests for rehearing of Order No. 845. On September 26, 2018, AWEA filed an answer in opposition to EEI's motion. On October 3, 2018, the Office of the Secretary issued a notice granting EEI's motion and requiring that transmission providers submit the compliance filings directed in Order No. 845 within ninety days of the Commission's issuance of this order.[323]

b. Requests for Rehearing and Clarification

159. Duke Energy Corporation (Duke) and EEI request rehearing of the Commission's decision to establish an effective date seventy-five days after publication in the **Federal Register** and a compliance deadline ninety days after publication. Duke argues that Order No. 845 ''represents the most significant change to the generator interconnection process . . . since Order No. 2003'' and that the Commission should therefore grant rehearing and establish an effective date and compliance deadline of November 5, 2018, 180 days after publication in the **Federal Register**.[324]

160. Duke and EEI also argue that the Commission erred by failing to justify the variation in the compliance and effective date, arguing that this failure to align the dates is arbitrary and capricious because it departs from the NOPR proposal and past precedent.[325] EEI argues that having an effective date in advance of the compliance date creates regulatory uncertainty as to the provisions that are in effect.[326] Duke states that the NOPR proposed to require each public utility to submit a compliance filing ''within 90 days of the effective date of the final rule'' but that it was silent with regard to a proposed effective date.[327]

c. Determination

161. We deny rehearing regarding the compliance deadline for Order No. 845. Duke and EEI's arguments as to the original compliance filing set forth in Order No. 845 are moot in light of the October 3, 2018 notice, which extended the compliance deadline until ninety days after the issuance of this order. We also deny Duke's and EEI's requests for rehearing regarding the effective date. In response to the arguments that the compliance date and effective date should align, we note that there is no such statutory or regulatory requirement and that the Commission has previously required effective dates that do not coincide with compliance deadlines.[328] Further, we remind Duke and EEI that the effective date is the effective date of Order No. 845 itself.

162. Nonetheless, in light of the confusion created by the multiple motions and rehearing requests that pertain to the compliance deadline and effective dates, we provide guidance regarding the compliance process and the effective dates of the LGIP/LGIA and *forma* LGIP/LGIA revisions required by Order No. 845 and Order No. 845–A. The effective date of Order No. 845 was July 23, 2018 (75 days after its publication in the **Federal Register**). The effective date of this order (Order No. 845–A) will be 75 days after the publication of this order in the **Federal Register**. Each public utility transmission provider must submit a single compliance filing within 90 days of the issuance of this order that includes revisions to its *pro forma* LGIP and *pro forma* LGIA necessary to comply with Order Nos. 845 and 845–A. Order No. 845 was silent regarding the effective date of the required tariff revisions, so we address such effective dates here. In doing so, we find that it is appropriate to follow the approach taken with regard to Order No. 2003 and its progeny as closely as possible. We describe that approach and the

[316] Order No. 2003, 104 FERC ¶ 61,103 at P 166.

[317] Order No. 845, 163 FERC ¶ 61,043 at P 535.

[318] *Id.* P 555.

[319] The ISO/RTO Council is comprised of the Alberta Electric System Operator (AESO), CAISO, the Electric Reliability Council of Texas, Inc. (ERCOT), the Independent Electricity System Operator (IESO), ISO–NE, MISO, NYISO, PJM, and Southwest Power Pool, Inc. AESO, ERCOT, and IESO are not Commission-jurisdictional public utilities and did not join in this motion.

[320] ISO/RTO Council May 17, 2018 Motion to Extend the Time Period to Comply at 1.

[321] Southern May 22, 2018 Motion to Extend the Period of Time to Comply at 1.

[322] Notice of Extension of Compliance Date, Docket No. RM17–8–000 (June 1, 2018).

[323] Notice of Extension of Compliance Date, Docket No. RM17–8–000 (Oct. 3, 2018). On October 15, 2018, AWEA requested rehearing of this notice, which the Commission dismissed in a November 13, 2018 order. *Reform of Generator Interconnection Procedures and Agreements,* 165 FERC ¶ 61,090 (2018).

[324] Duke Rehearing Request at 8–9; *see also* EEI Rehearing Request at 21. EEI also states that it does not object to the ISO/RTO Council's request for an additional 70 days for the compliance period.

[325] Duke Rehearing Request at 10; EEI Rehearing Request at 21.

[326] EEI Rehearing Request at 21.

[327] Duke Rehearing Request at 9.

[328] *See, e.g.,* Order No. 841, 162 FERC ¶ 61,127 at P 344 (effective date within 90 days of publication in the **Federal Register** and compliance deadline within 270 days of publication in the **Federal Register**); *see also Standards of Conduct for Transmission Providers,* 125 FERC ¶ 61,291, at P 1 (2008) (stating that Order No. 717 would become effective 30 days after publication in the **Federal Register** and that transmission providers must be in full compliance no later than 60 days from publication in the **Federal Register**).

approach we are taking with regard to Order No. 845 and Order No. 845–A below.

163. The Commission issued Order No. 2003 on July 24, 2003. In response to requests to do so, the Commission extended the Order No. 2003 compliance deadline for RTOs/ISOs and non-RTO/ISO transmission providers to January 20, 2004.[329] On January 8, 2004, the Office of the Secretary issued a notice clarifying the compliance procedures in the Order No. 2003 proceeding. The notice stated that all non-RTO/ISO transmission providers' tariffs were ''deemed to include [the *pro forma* LGIP and the *pro forma* LGIA] on'' the date of the compliance deadline and ''directed [the non-RTO/ISO transmission providers] to make ministerial filings reflecting those revisions to their OATT[s] in their next filings with the Commission.'' [330] For RTOs/ISOs, the Commission stated that ''[u]ntil the Commission acts on [their] compliance filings, the [RTOs'/ISOs'] existing Commission-approved interconnection standards and procedures will remain in effect.''[331]

164. In Order No. 2003–A, the Commission deemed the non-RTO/ISO transmission providers' OATTs to ''be revised to adopt [the revised] *pro forma* LGIA and LGIP on [Order No. 2003–A's] effective date'' and directed all such transmission providers to make ministerial filings reflecting such revisions ''upon their next filing(s) with the Commission.'' [332] For RTOs/ISOs, the Commission required each RTO/ISO to file ''on or before the effective date of [the] Order on Rehearing either (1) a notice that it intends to adopt the [revised] *pro forma* LGIP and LGIA, or (2) new standard interconnection procedures and agreements developed according to Order No. 2003's 'independent entity variation' standard.'' [333] The Commission stated that, in ''either event, the [RTOs'/ISOs'] currently effective OATT will remain in effect pending any necessary Commission action.'' [334]

165. For Order No. 2003–B, however, the Commission, in recognition that ''it has taken longer than anticipated for all [non-RTO/ISO transmission providers] to make the necessary changes,'' adopted a ''different procedure.'' [335] The Commission once again deemed each non-RTO/ISO transmission provider's tariff ''to be amended to adopt the revisions . . . contained [in Order No. 2003–B] on the effective date of [that] order,'' but the Commission required each non-RTO/ISO transmission providers to file an amendment to include such revisions within 60 days of Order No. 2003–B's issuance.[336] The Commission also required each RTO/ISO to submit revised tariff sheets with 60 days of Order No. 2003–B's issuance.[337] For Order No. 2003–C, the Commission deemed each non-RTO/ISO transmission provider's tariff ''to be amended to adopt the [Order No. 2003–C revisions] 30 days after the issuance of [that] order'' and required each non-RTO/ISO transmission provider to ''amend its OATT to include the [new] clarifications . . . within 60 days after issuance of'' Order No. 2003–C.[338]

166. Because the Commission is only requiring a single compliance filing from transmission providers to comply with the combined requirements of Order Nos. 845 and Order No. 845–A, the effective date for each compliance filing's proposed tariff revisions should be the same date. Consistent with the distinction made by Order No. 2003 and its progeny regarding the compliance requirements for non-RTO/ISO transmission providers and RTOs/ISOs, we will deem the tariff provisions to be effective for non-RTO/ISO transmission providers on the effective date of this order (seventy-five days from publication in the **Federal Register**) or the compliance deadline (ninety days from the issuance of this order), *whichever is later,* and we require each non-RTO/ISO transmission provider to file an amendment to their tariffs to include such provisions by the compliance deadline (ninety days from the issuance of this order). For each RTO/ISO, the effective date of the proposed revisions shall be the date established in the Commission's order accepting that RTO's/ISO's compliance filing, which will be no earlier than the issuance date of such an order.

K. Interconnection Request Withdrawals

167. In Order No. 845, the Commission recognized that, in addition to significant interconnection queue backlogs and long timelines, in some regions, there is a ''recurring problem of late-stage interconnection request withdrawals that lead to interconnection restudies and consequent delays for lower-queued interconnection customers.'' [339] The Commission stated, however, that the reforms adopted in Order No. 845 ''will benefit both interconnection customers and transmission providers.'' [340]

1. Requests for Rehearing and Clarification

168. Southern contends that Order No. 845 fails to address delays and inefficiencies caused by ''speculative'' interconnection requests.[341] It argues that, currently, a speculative interconnection customer can ''sit in the queue for years'' and withdraw ''at the last moment.'' [342] Southern asserts that this is a cause for concern because, since 2014, interconnection customers have suspended or terminated (at their request) half the interconnection agreements executed under Southern's OATT. Southern asserts, however, that, while the Commission acknowledges this concern, Order No. 845 ''fails to address solutions on the customer side.'' [343] Southern further objects to Order No. 845's imposition of requirements on transmission providers to provide additional information and flexibility, because such revisions ''do little to nothing to address'' the problem of speculative generation.[344] Southern states further that Order No. 845 therefore ''fails to make a rational connection with the underlying problem caused not by transmission providers, but by speculative interconnection customers'' and that is therefore ''arbitrary and capricious.'' [345] Similarly, MISO TOs argue that, with regard to the option the build, the Commission failed to ''meaningfully respond'' to assertions that the main reason for increased costs, delays, and cost uncertainty are late-stage withdrawals and that this omission renders the Commission's findings ''arbitrary, capricious, and inconsistent with reasoned decision-making.'' [346]

2. Determination

169. We deny Southern's and MISO TOs requests for rehearing on this issue. Regarding the issue of speculative projects, we note that the Commission designed some of the Order No. 845 reforms to provide more and better information so that interconnection

[329] Notice Clarifying Compliance Procedures, 69 FR 2,135 (Jan. 14, 2004), Docket Nos. RM02–1–000 & RM02–1–001, at P 1.

[330] *Id.* P 2.

[331] *Id.* P 3.

[332] Order No. 2003–A, 106 FERC ¶ 61,220 at P 43.

[333] *Id.* P 49.

[334] *Id.* P 51.

[335] Order No. 2003–B, 109 FERC ¶ 61,287 at P 139.

[336] *Id.* P 4.

[337] *Id.* P 139.

[338] Order No. 2003–C, 111 FERC ¶ 61,401 at P 3.

[339] Order No. 845, 163 FERC ¶ 61,043 at P 24.

[340] *Id.* P 2.

[341] Southern Rehearing Request at 3–6.

[342] *Id.* at 3–4.

[343] *Id.* at 5.

[344] *Id.*

[345] *Id.* at 5–6.

[346] MISO TOs Rehearing Request at 11 (citing *Motor Vehicle Mfrs.,* 463 U.S. at 41, 43; *Ameren,* 880 F.3d at 581; *PSEG Energy & Trade LLC* v. *FERC,* 665 F.3d 203, 208, 210 (2011)).

customers will be more likely to submit interconnection requests that achieve commercial operation. For instance, the purpose of the reform on transparency regarding study models and assumptions is to reduce the likelihood that interconnection customers will submit multiple interconnection requests to figure out which request has the most suitable point of interconnection. Thus, this reform will likely result in more accurate and informed decision-making by the interconnection customer, which will, in turn, reduce the likelihood of late-stage withdrawals.[347] For this reason, we continue to find that, on balance, the reforms adopted by Order No. 845 will improve the interconnection process for both interconnection customers and transmission providers. We also disagree with Southern's argument that the Commission's exercise of its discretion in developing Order No. 845's requirements was arbitrary and capricious. As the Commission has noted on other occasions, it has ''broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities'' and therefore, the Commission is not required to expand this rulemaking proceeding to impose additional requirements upon interconnection customers.[348]

L. Wholesale Distribution Tariffs

1. Requests for Rehearing and Clarification

170. Pacific Gas & Electric Company (PG&E), SoCal Edison, and San Diego Gas & Electric Company (collectively, California Utilities) request that the Commission clarify, as it did for the SGIA and SGIP, that the new requirements in Order No. 845 do not apply to wholesale distribution access tariffs (WDAT).[349] California Utilities comment that the Commission did not directly address these issues as raised in comments by Pacific Gas & Electric Company (PG&E) and SoCal Edison filed in response to the NOPR.[350] In support of their request, California Utilities comment that, under their respective WDATs, they process a very small number of requests to interconnect wholesale generation projects to distribution facilities, which are radial in nature and not part of the CAISO-controlled grid.[351]

171. California Utilities state that the interconnection of wholesale generation to the distribution system may trigger the need for upgrades to the distribution system considered to be distribution facilities for purposes of the WDATs.[352] California Utilities note that the interconnection of wholesale generation to the distribution grid could also trigger an upstream need for reliability network upgrades on the CAISO-controlled grid but contend that there could not be stand alone network upgrades as defined under Order No. 845 for generation connected to the distribution system.[353] Therefore, the California Utilities argue, these limited projects should not subject the WDATs to these requirements, such as OASIS site postings, which do not exist for the California Utilities' distribution systems.[354] California Utilities maintain that the administrative burden and costs of complying outweigh any benefits. Moreover, many of the proposed new requirements concern transmission information that is available on CAISO's website.[355] Alternatively, California Utilities suggest that any potential reforms to the WDATs should be considered together in a separate rulemaking.[356]

2. Determination

172. We clarify that the requirements of Order No. 845 will not apply to WDATs at this time. We find that the distinct engineering and jurisdictional implications of an interconnection with a distribution system should be further evaluated before requiring California Utilities or other entities with a WDAT to apply the requirements of Order No. 845 to their WDATs.

III. Information Collection Statement

173. The Paperwork Reduction Act (PRA) provides that an agency may not conduct or sponsor the collection of information unless the agency has published an estimate of the burden that shall result from the information collection in advance of adopting or revising such collection. The Office of Management and Budget (OMB) requires that OMB approve certain information collection and data retention requirements imposed by agency rules.[357] However, this order on rehearing contains no additional reporting requirements, and is, therefore, not subject to OMB approval. Moreover, the Commission submitted to OMB the information collection requirements arising from Order No. 845, and OMB approved those requirements. In this order, the Commission is making no substantive changes to those requirements, but has provided clarifications that requires no additional information. Therefore, the Commission does not find it necessary to make a formal submission to OMB for review and approval under section 3507(d) of the PRA. This order will be submitted to OMB for informational purposes only.

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

175. Comments concerning the collection of information and the associated burden estimate(s) in Order No. 845 should be sent to the Commission in this docket and may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

176. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov.* Comments submitted to OMB should refer to Docket No. RM17–8–001.

IV. Regulatory Flexibility Act Certification

177. The Regulatory Flexibility Act of 1980 (RFA)[358] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of regulatory alternatives that accomplish the stated objectives of a rule and that minimize any significant economic impact on a substantial number of small entities. The Commission has determined that Order No. 845 will not have a significant impact on a substantial number of small entities;

[347] *See* Order No. 845, 163 FERC ¶ 61,043 at P 239.

[348] *See, e.g., Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719–A, 74 FR 37775 (Jul. 29, 2009), 128 FERC ¶ 61,059, at P 118 (2009) (responding to a rehearing request arguing that the Commission ''shirk[ed] its duty under the FPA in confining the scope of [the] proceeding to four specific areas of reform'') (citing *Chevron U.S.A.* v. *Nat. Res. Def. Council,* 467 U.S. 837, 842–45 (1984)), *order on reh'g,* Order No. 719–B, 129 FERC ¶ 61,252 (2009).

[349] California Utilities Request for Clarification at 2.

[350] *Id.*

[351] *Id.*

[352] *Id.*

[353] *Id.*

[354] *Id.*

[355] *Id.*

[356] *Id.* at 4.

[357] 5 CFR 1320.11(b) (2018).

[358] 5 U.S.C. 601–12 (2012).

therefore these requirements under the RFA do not apply.[359]

V. Document Availability

178. 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 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

179. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

180. 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.*

VI. Effective Date

181. This order on rehearing and clarification is effective May 20, 2019.

By the Commission. Commissioner McNamee is not participating.

Issued: February 21, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: Appendices A, B, and C do not publish in the **Federal Register**. These appendices can be found on FERC's eLibrary System.[360]

[FR Doc. 2019–03402 Filed 3–5–19; 8:45 am]

BILLING CODE 6717–01–P

[359] *See* Order No. 845, 163 FERC ¶ 61,043 at PP 564–65.

[360] Go to *http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=14746111* and select the file link to view the document.

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104464–18]

RIN 1545–BO55

Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance to determine the amount of the deduction for foreign-derived intangible income and global intangible low-taxed income. This document also contains proposed regulations coordinating the deduction for foreign-derived intangible income and global intangible low-taxed income with other provisions in the Internal Revenue Code.

DATES: Written or electronic comments and requests for a public hearing must be received by May 6, 2019.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–104464–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–104464–18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (REG–104464–18).

FOR FURTHER INFORMATION CONTACT: Concerning proposed §§ 1.250(a)–1 through 1.250(b)–6, 1.962–1, 1.6038–2, 1.6038–3, and 1.6038A–2, Kenneth Jeruchim at (202) 317–6939; concerning proposed §§ 1.1502–12, 1.1502–13 and 1.1502–50, Michelle A. Monroy at (202) 317–5363 or Austin Diamond-Jones at (202) 317–6847; concerning submissions of comments and requests for a public hearing, Regina L. Johnson, (202) 317–6901 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 250, 962, 1502, 6038, and 6038A (''proposed regulations''). Section 14202(a) of the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the ''Act''), added section 250 to the Internal Revenue Code (the ''Code'').[1] The new section provides a domestic corporation with a deduction (''section 250 deduction'') for its foreign-derived intangible income (''FDII'') and its global intangible low-taxed income (''GILTI'') and the amount treated as a dividend under section 78 which is attributable to its GILTI. Section 14202(c) of the Act provides that section 250 and the conforming amendments in section 14202(b) apply to taxable years beginning after December 31, 2017.

Section 14201(a) of the Act (codified in section 951A) requires a United States shareholder (''U.S. shareholder'') of any controlled foreign corporation (''CFC'') for any taxable year to include in gross income the shareholder's GILTI for the year. The Department of the Treasury (''Treasury Department'') and the IRS published a separate notice of proposed rulemaking that provides guidance to U.S. shareholders on how to determine the amount of GILTI to include in gross income. See 83 FR 51072 (Oct. 10, 2018).

Section 14302(a) of the Act also added a new foreign tax credit category for foreign branch income (defined in section 904(d)(2)(J)), which is cross-referenced in section 250(b)(3)(A)(i)(VI). The Treasury Department and the IRS published a separate notice of proposed rulemaking that provides rules for determining a corporation's foreign branch income for purposes of section 904. See 83 FR 63200 (Dec. 7, 2018).

Explanation of Provisions

I. Overview of Proposed Regulations

In general, income earned directly by a U.S. person on foreign business income is subject to U.S. tax on a current basis. Before the Act, foreign business income earned indirectly by a U.S. person through a foreign corporation was not generally subject to U.S. tax until such income was distributed as a dividend to the U.S. person. Certain anti-deferral regimes could cause the U.S. owner to be taxed on a current basis in the United States regardless of whether the income had been distributed as a dividend to the U.S. owner. Sections 951 through 965 of the Code (generally referred to as the ''subpart F'' provisions), applicable to certain passive and mobile categories of income earned by CFCs, is the main anti-deferral regime of relevance to U.S.-based corporate groups. However, because subpart F does not generally apply to active foreign business income of a CFC (as defined in section 957(a)), U.S. shareholders before the Act could indefinitely defer U.S. taxation with respect to their foreign business income—in particular, mobile income arising from the exploitation of intangible property—by allocating such income to its CFCs operating in low- or zero-tax jurisdictions. This system of deferral, in turn, resulted in a ''lock-out effect,'' whereby U.S. shareholders that had allocated income to CFCs formed in low- or zero-tax jurisdictions could not repatriate such income to the United States without incurring significant U.S. tax.

In order to facilitate the efficient redeployment of foreign earnings in the United States, the Act established a participation exemption system under which certain earnings of a foreign corporation can be repatriated to a corporate U.S. shareholder without U.S. tax. See section 14101(a) of the Act and section 245A. However, Congress recognized that, without any base protection measures, the participation exemption system could further incentivize taxpayers to allocate intangible income to CFCs formed in low- or zero-tax jurisdictions because the earnings related to such intangible income could now be repatriated to the United States without incurring any U.S. tax. See Senate Committee on the Budget, 115th Cong., ''Reconciliation Recommendations Pursuant to H. Con. Res. 71,'' at 370 (Comm. Print 2017) (''Senate Explanation''). Therefore, Congress enacted section 951A, which subjects a U.S. shareholder's ''global intangible low-taxed income'' or ''GILTI'' (a new term created by the Act) derived through its CFCs to U.S. tax on a current basis, similar to the taxation of such CFCs' subpart F income under section 951(a)(1)(A).

Most member countries of the Organisation for Economic Co-operation and Development (''OECD'') provide a full or partial (*e.g.,* 95 percent) participation exemption with respect to income of foreign subsidiaries distributed to domestic shareholders. See OECD (2018), *Tax Policy Reforms 2018: OECD and Selected Partner Economies,* at 73, OECD Publishing, Paris (Sept. 2018). While some countries also have CFC inclusion regimes similar to subpart F that subject certain narrow classes of income of foreign subsidiaries to current tax in the home country, many countries do not subject active foreign business income of foreign subsidiaries to current tax. Congress recognized that taxing such income at the full U.S. corporate tax rate could hurt the competitive position of U.S. corporations relative to their foreign peers, and therefore determined that GILTI earned by such corporations

[1] Except as otherwise stated, all section references in this preamble are to the Internal Revenue Code.

should be subject to a reduced effective U.S. tax rate. See Senate Explanation, at 370. Accordingly, Congress enacted section 250, which provides corporate U.S. shareholders a deduction of 50 percent for taxable years beginning after December 31, 2017, and before January 1, 2026, with respect to their GILTI, and the amount treated as a dividend under section 78 which is attributable to their GILTI (''section 78 gross-up''). In contrast, a domestic corporation's inclusion of its CFCs' subpart F income is not eligible for the section 250 deduction, and is therefore generally subject to U.S. tax at the full corporate rate.

After the Act, income earned directly by a domestic corporation is subject to a 21 percent rate. Absent a deduction with respect to intangible income attributable to foreign market activity earned directly by a domestic corporation, the lower effective tax rate applicable to GILTI by reason of the section 250 deduction would perpetuate the pre-Act incentive for domestic corporations to allocate intangible income to CFCs formed in low- or zero-tax jurisdictions. Therefore, to neutralize the effect of providing a lower U.S. effective tax rate with respect to the active earnings of a CFC of a domestic corporation through a deduction for GILTI, section 250 provides a lower effective U.S. tax rate with respect to ''foreign-derived intangible income'' or ''FDII'' (a new term created by the Act) earned directly by the domestic corporation through a deduction of 37.5 percent for taxable years beginning after December 31, 2017, and before January 1, 2026. The result of the section 250 deduction for both GILTI and FDII is to help neutralize the role that tax considerations play when a domestic corporation chooses the location of intangible income attributable to foreign-market activity, that is, whether to earn such income through its U.S.-based operations or through its CFCs.

The proposed regulations provide guidance for determining the amount of the section 250 deduction allowed to a domestic corporation for its FDII and GILTI. Proposed § 1.250(a)–1 provides rules for determining the amount of the deduction, including rules for applying the taxable income limitation of section 250(a)(2). Proposed § 1.250(b)–1 provides general rules for computing a domestic corporation's FDII. Proposed § 1.250(b)–2 provides rules for determining a domestic corporation's qualified business asset investment (''QBAI''), which is a component of the computation of FDII. Proposed § 1.250(b)–3 provides general rules for determining gross income included in gross foreign-derived deduction eligible income (''gross FDDEI''), which is a component of the computation of FDII. Proposed § 1.250(b)–4 provides rules for determining gross FDDEI from sales of property. Proposed § 1.250(b)–5 provides rules for determining gross FDDEI from the provision of a service. Proposed § 1.250(b)–6 provides rules relating to the sale of property or the provision of a service to a related party.

II. Amount of Deduction Allowed Under Section 250(a)

Proposed § 1.250(a)–1 provides general rules to determine the amount of a domestic corporation's section 250 deduction and associated definitions that apply for purposes of the proposed regulations. The section 250 deduction is available only to domestic corporations. See section 250(a)(1) and proposed § 1.250(a)–1(b)(1). For this purpose, the term ''domestic corporation'' has the meaning set forth in section 7701(a)—an association, joint-stock company, or insurance company created or organized in the United States or under the law of the United States or of any State—but does not include a regulated investment company (as defined in section 851), a real estate investment trust (as defined in section 856), or an S corporation (as defined in section 1361). See proposed § 1.250(a)–1(c)(1). The section 250 deduction is not available to individuals except in certain cases where an individual makes an election under section 962. See part IV of this Explanation of Provisions section for more information about that provision.

As discussed in part I of this Explanation of Provisions section, the deduction under section 250 is generally intended to reduce the effective rate of U.S. income tax on FDII and GILTI in order to help neutralize the role that tax considerations play when a domestic corporation chooses the location of intangible income attributable to foreign-market activity. There is no indication that Congress intended the section 250 deduction to reduce the effective rate of tax imposed by non-income tax provisions outside of chapter 1 of the Internal Revenue Code. Accordingly, for purposes of the excise tax imposed by section 4940(a), the proposed regulations provide that a section 250 deduction is not treated as an ordinary and necessary expense paid or incurred for the production or collection of gross investment income within the meaning of section 4940(c)(3)(A). See proposed § 1.250(a)–1(b)(4).

The section 250 deduction is subject to a taxable income limitation. If, for any taxable year, the sum of a domestic corporation's FDII and GILTI exceeds its taxable income, the excess is allocated pro rata to reduce the corporation's FDII and GILTI solely for purposes of computing the amount of the section 250 deduction. See section 250(a)(2) and proposed § 1.250(a)–1(b)(2). For this purpose, a domestic corporation's taxable income is determined without regard to the section 250 deduction. See section 250(a)(2)(A)(ii) and proposed § 1.250(a)–1(c)(4). The Code does not otherwise define ''taxable income'' for purposes of applying the taxable income limitation of section 250(a)(2).

In general, a taxpayer's taxable income is based, in part, upon the availability, and proper calculation, of deductions. However, multiple Code provisions simultaneously limit the availability of a deduction based, directly or indirectly, upon a taxpayer's taxable income, including sections 163(j)(1) (limiting a deduction for business interest) and 172(a)(2) (limiting a net operating loss deduction). Sections 163(j)(2) and 172(b) also provide that any deduction not allowed to a taxpayer for a taxable year by reason of the limitation in section 163(j)(1) or 172(a)(2), respectively, may be allowed to the taxpayer, subject to the same limitation, in its succeeding taxable year. A taxpayer's net operating loss for a taxable year is determined without regard to the section 250 deduction (see section 172(d)(9)), and a taxpayer's adjusted taxable income is determined without regard to section 172. See section 163(j)(8)(A)(iii). However, neither section 163(j) nor section 250 prescribes an ordering rule with respect to the other provision.

The Treasury Department and the IRS considered proposing computations requiring the use of simultaneous equations in lieu of an ordering rule but determined that an approach that requires such computations would result in undue administrative and compliance burdens. Therefore, the proposed regulations provide an ordering rule for applying sections 163(j) and 172 in conjunction with section 250 that the Treasury Department and the IRS have determined is consistent with the statutory language for each provision. Specifically, the proposed regulations provide that a domestic corporation's taxable income for purposes of applying the taxable income limitation of section 250(a)(2) is determined after all of the corporation's other deductions are taken into account. See proposed § 1.250(a)–1(c)(4). Accordingly, a domestic

corporation's taxable income for purposes of section 250(a)(2) is its taxable income determined without regard to section 250, but taking into account the application of sections 163(j) and 172(a), including amounts permitted to be carried forward to such taxable year by reason of sections 163(j)(2) and 172(b).

Proposed regulations issued under section 163(j) provide guidance on the interaction of sections 163(j) and 250 that the Treasury Department and the IRS consider to be consistent with these proposed regulations under section 250. See 83 FR 67490 (Dec. 28, 2018). Specifically, the proposed regulations under section 163(j) provide that, for purposes of determining the limitation under section 163(j), a deduction under section 250(a)(1) that is properly allocable to a non-excepted trade or business is taken into account in determining a taxpayer's taxable income and thus its adjusted taxable income. See proposed § 1.163(j)–1(b)(37)(ii). However, for this purpose, the taxpayer's deduction under section 250(a)(1) is determined without regard to the limitations under sections 250(a)(2) and 163(j). See id.

As a result of these proposed regulations under section 250 and the proposed regulations under section 163(j), a domestic corporation's allowable business interest under section 163(j), its net operating loss deduction under section 172(a), and its section 250 deduction are determined in the following manner: First, a domestic corporation computes the tentative amount of its FDII and the tentative amount of its section 250 deduction (''tentative section 250 deduction'') taking into account all deductions, but without regard to any carryforwards or disallowances under section 163(j), the amount of any net operating loss deduction under section 172(a), or the taxable income limitation of section 250(a)(2) and proposed § 1.250(a)–1(b)(2). Second, the corporation computes the amount of its business interest allowed after the application of section 163(j), for this purpose taking into account the amount of its tentative section 250 deduction but without regard to the amount of any net operating loss deduction under section 172(a). See section 163(j)(8)(A)(iii) and proposed § 1.163(j)–1(b)(1)(i)(B) and (b)(37)(ii). Third, the corporation computes the amount of its net operating loss deduction under section 172(a), for this purpose taking into account the amount of its business interest allowed after application of section 163(j) and the taxable income limitation of section 172(a)(2), but without regard to the amount of its section 250 deduction (including its tentative section 250 deduction). See section 172(d)(9). Fourth, the corporation computes the amount of its FDII, for this purpose taking into account the amount of its business interest allowed after application of section 163(j) and the amount of its net operating loss deduction under section 172(a) (determined in steps two and three, respectively). See part III(A)(2) of this Explanation of Provisions section for a discussion on the allocation of deductions to gross DEI and gross FDDEI. Fifth, the corporation computes the amount of its section 250 deduction after the application of the taxable income limitation of section 250(a)(2) and proposed § 1.250(a)–1(b)(2), for this purpose taking into account the amount of its business interest allowed after application of section 163(j) and the amount of its net operating loss deduction under section 172(a). See proposed § 1.250(a)–1(f)(2) (*Example 2*), which illustrates the interaction of sections 163(j), 172, and 250.

The Treasury Department and the IRS request comments on the proposed ordering rule, as well as how the section 250 deduction should be accounted for in determining adjusted taxable income at the partnership level under section 163(j)(4)(A).

III. Determination of FDII

A. General Computational Rules

1. In General

A domestic corporation's FDII is the corporation's deemed intangible income (''DII'') multiplied by the corporation's foreign-derived ratio. Proposed § 1.250(b)–1(b). A domestic corporation's DII is the excess (if any) of the corporation's deduction eligible income (''DEI'') over its deemed tangible income return (''DTIR''). Proposed § 1.250(b)–1(c)(3). A domestic corporation's DTIR is 10 percent of the corporation's QBAI. Proposed § 1.250(b)–1(c)(4). The foreign-derived ratio is the domestic corporation's ratio of foreign-derived deduction eligible income (''FDDEI'') to DEI. Proposed § 1.250(b)–1(c)(13).

2. Determination of DEI and FDDEI

A domestic corporation's DEI is the excess of its gross income without regard to certain excluded items (''gross DEI'') over the deductions properly allocable to gross DEI. See proposed § 1.250(b)–1(c)(2). Gross DEI excludes six categories of gross income: any amount included in gross income under section 951(a), GILTI, financial services income, dividends from CFCs, domestic oil and gas extraction income, and foreign branch income. See proposed § 1.250(b)–1(c)(14). The proposed regulations clarify that, for this purpose, a dividend includes any amount treated as a dividend under any other provision of subtitle A of the Internal Revenue Code, including the section 78 gross-up attributable to inclusions under sections 951(a) and 951A(a). See proposed § 1.250(b)–1(c)(5). In addition, the proposed regulations define foreign branch income by reference to proposed § 1.904–4(f), except that it also includes the sale, directly or indirectly, of any asset (other than stock) that produces gross income attributable to a foreign branch, including by reason of the sale of a disregarded entity or partnership interest. See proposed § 1.250(b)–1(c)(11). The result is that income from the sale of any such asset is not included in gross DEI.

For purposes of calculating the foreign-derived ratio, FDDEI is the excess of gross FDDEI over deductions properly allocable to gross FDDEI. See proposed § 1.250(b)–1(c)(12). The proposed regulations define gross FDDEI as the portion of a corporation's gross DEI that is derived from all of its ''FDDEI sales'' and ''FDDEI services'' (collectively, ''FDDEI transactions''). See proposed § 1.250(b)–1(c)(8), (9), (10), and (15). The determination of whether a sale of property or a provision of a service is a FDDEI sale or a FDDEI service, respectively, is made under the provisions of proposed §§ 1.250(b)–3 through 1.250(b)–6. See part III(B) through (F) of this Explanation of Provisions section. The portion of a corporation's gross DEI that is not gross FDDEI is referred to as gross non-FDDEI. See proposed § 1.250(b)–1(c)(16). Therefore, all income included in gross DEI is included in either gross FDDEI or gross non-FDDEI, and all income included in either gross FDDEI or gross non-FDDEI is included in gross DEI.

In the case of property produced or acquired for resale, gross income is generally determined by subtracting cost of goods sold from gross sales receipts. In determining the amount of gross income included in gross DEI or gross FDDEI, cost of goods sold is attributed to gross receipts with respect to gross DEI and gross FDDEI using any reasonable method. See proposed § 1.250(b)–1(d)(1). The proposed regulations clarify that cost of goods sold that is associated with activities undertaken in an earlier taxable year cannot be segregated into component costs and attributed disproportionately to amounts excluded from gross FDDEI or to amounts excluded from gross DEI. See id. This is similar to the

clarification in proposed § 1.199–4(b)(2)(iii)(A) and is intended to preclude a method that attributes cost of goods sold of an inventory item to gross receipts other than gross receipts included in the computation of gross DEI or gross FDDEI if the gross receipts from the sale of that item are included in the computation of amounts included in the computation of gross DEI or gross FDDEI, respectively. See 80 FR 51978, 51990 (Aug. 27, 2015). The Treasury Department and the IRS request comments on whether there are alternative approaches for dealing with timing issues, and whether additional rules should be provided for attributing cost of goods sold in determining gross DEI and gross FDDEI. Cf. § 1.199–4(b)(2) through (6).

Section 250(b)(3)(A) defines DEI as the excess of a domestic corporation's gross income (excluding certain items) over ''the deductions (including taxes) properly allocable to such gross income.'' FDDEI is defined as ''any deduction eligible income'' of the taxpayer generated through foreign-market sales and services. See section 250(b)(4). Therefore, a taxpayer's deductions that are ''properly allocable'' to gross DEI and gross FDDEI must be determined for purposes of calculating its DEI and FDDEI. The statute does not specify how deductions should be allocated for purposes of determining DEI and FDDEI. However, the rules set forth in §§ 1.861–8 through 1.861–14T and 1.861–17 apply for purposes of several other provisions in the Code which require the determination of taxable income from specific sources or activities, for example, for purposes of determining the foreign tax credit limitation under section 904 or qualified production activities income under former section 199. See generally §§ 1.199–4 and 1.861–8(f)(1). Accordingly, the proposed regulations provide that the rules set forth in §§ 1.861–8 through 1.861–14T and 1.861–17 apply for purposes of determining DEI and FDDEI. See proposed § 1.250(b)–1(d)(2)(i). In order to avoid circularity, in applying those rules for purposes of determining DEI and FDDEI, the section 250 deduction is not treated as giving rise to exempt income or assets. See proposed § 1.861–8(d)(2)(ii)(C)(*4*). Comments are requested on whether alternative approaches should be considered or additional rules are needed for purposes of allocating and apportioning a net operating loss deduction to gross DEI and gross FDDEI.

In certain circumstances, as a result of expense apportionment or attribution of cost of goods sold, a domestic corporation's FDDEI could exceed its DEI. For example, a domestic corporation could have $80x of DEI and $100x of FDDEI, with losses attributable to domestic market sales accounting for the $20x difference between DEI and FDDEI. However, it would be inconsistent with the statutory language to treat a domestic corporation as having a foreign-derived ratio in excess of one, and therefore FDII in excess of DII. In particular, section 250(b)(4) defines FDDEI as a subset of DEI, that is, ''any deduction eligible income of such taxpayer which is derived in connection with'' certain transactions. Therefore, the proposed regulations clarify that the foreign-derived ratio cannot exceed one. See proposed § 1.250(b)–1(c)(13).

3. Treatment of Partnerships

Section 250(a)(1) allows a deduction to a domestic corporation, but does not provide any rules for domestic corporations that are partners in a partnership. However, the conference report accompanying the Act (''Conference Report'') suggests that Congress intended that a domestic corporate partner of a partnership receive the benefit of a section 250 deduction for its FDII and GILTI. See H. Rept. 115–466, at 623, fn. 1517 (2017) (Conf. Rep.) (''The Committee intends that the deduction allowed by new Code section 250 be treated as exempting the deducted income from tax. Thus, for example, the deduction for global intangible low-taxed income could give rise to an increase in a domestic corporate partner's basis in a domestic partnership under section 705(a)(1)(B).'').

The proposed regulations give effect to this legislative intent by adopting an aggregate approach to partnerships for determining a domestic corporate partner's FDII attributable to the income and assets of a partnership. Specifically, the proposed regulations provide that a domestic corporate partner of a partnership takes into account its distributive share of a partnership's gross DEI, gross FDDEI, and deductions in order to calculate the partner's FDII. See proposed § 1.250(b)–1(e)(1). In addition, for purposes of determining a domestic corporate partner's DTIR, a domestic corporation's QBAI is increased by its share of the partnership's adjusted basis in partnership specified tangible property. See proposed § 1.250(b)–2(g).

Under the proposed regulations, the section 250 deduction is computed and allowed solely at the level of a domestic corporate partner. The Conference Report in footnote 1517 suggests that the section 250 deduction could give rise to an increase in a domestic corporate partner's basis in a domestic partnership under section 705(a)(1)(B) because some of the partnership's income may be treated as exempt income by reason of section 250. However, regardless of whether the deduction gives rise to exempt income in other contexts, because the section 250 deduction is computed and allowed solely at the level of a domestic corporate partner, the section 250 deduction does not exempt the deducted income from tax for purposes of applying section 705(a)(1)(B). As a result, a basis adjustment to a domestic corporate partner's interest in a domestic partnership is not appropriate to account for a section 250 deduction.

4. Treatment of Tax-Exempt Corporations

A domestic corporation that is subject to the unrelated business income tax under section 511 may claim a section 250 deduction. However, the proposed regulations clarify that such corporation's FDII for this purpose is determined only with respect to the corporation's items of income, gain, deduction, or loss, and adjusted bases in property, that are taken into account in computing its unrelated business taxable income. See proposed § 1.250(b)–1(g). The proposed regulations also clarify how a tax-exempt corporation subject to the unrelated business income tax under section 511 computes the dual use ratio with respect to property used in the production of gross DEI and income that is not gross DEI for purposes of determining its QBAI. See id.

5. Determination of QBAI

Section 250(b)(2)(B) provides that QBAI for purposes of section 250 is defined under section 951A(d), and is determined by substituting ''deduction eligible income'' for ''tested income'' and without regard to whether the corporation is a CFC. Accordingly, the determination of QBAI for purposes of FDII is similar to the determination of QBAI for purposes of GILTI. Compare proposed § 1.951A–3 with proposed § 1.250(b)–2. A domestic corporation's QBAI for FDII is equal to its aggregate average adjusted bases in specified tangible property, which is defined as tangible property used in the production of gross DEI. See proposed § 1.250(b)–2(b) and (c). The proposed regulations also provide rules for dual use property, calculating QBAI in a short taxable year, and calculating a domestic corporate partner's share of partnership QBAI. See proposed § 1.250(b)–2(d), (f), and (g).

In order to prevent the avoidance of the purposes of QBAI, the proposed regulations disregard certain transfers of specified tangible property by a domestic corporation to a related party where the corporation continues to use the property in production of gross DEI. See sections 250(c) and 951A(d)(4). Specifically, for purposes of calculating a domestic corporation's QBAI, the proposed regulations disregard a transfer of specified tangible property by the domestic corporation to a related party (whose QBAI would not be taken into account in calculating the corporation's DTIR) if, within a two-year period beginning one year before the transfer, the domestic corporation (or a related party whose QBAI would be taken into account in calculating the corporation's DTIR) leases the same or substantially similar property from a related party and such transfer and lease occur pursuant to a principal purpose of reducing the domestic corporation's DTIR. See proposed § 1.250(b)–2(h)(1) and (h)(4)(i) through (iv). A transfer and lease described in the preceding sentence is treated per se as occurring pursuant to a principal purpose of reducing a domestic corporation's DTIR if both the transfer and the lease occur within the same six-month period. See proposed § 1.250(b)–2(h)(3). If the anti-avoidance rule applies, the domestic corporation that transferred the property is treated as owning such property from the later of the beginning of the term of the lease or date of the transfer until the earlier of the end of the term of the lease or the end of the recovery period of the transferred property. See proposed § 1.250(b)–2(h)(1).

The anti-avoidance rule does not apply to a transfer to and lease from an unrelated party, unless the transfer to and lease from the unrelated party is pursuant to a structured arrangement. See proposed § 1.250(b)–2(h)(2). A structured arrangement exists only if either a reduction in the domestic corporation's DTIR is a material factor in the pricing of the arrangement with the transferee or, based on all the facts and circumstances, the reduction in the domestic corporation's DTIR is a principal purpose of the arrangement. See id. The proposed regulations provide a non-inclusive list of facts and circumstances indicating that a principal purpose of an arrangement is the reduction of DTIR. See proposed § 1.250(b)–2(h)(2)(ii)(A) through (D). The Treasury Department and the IRS welcome comments on alternative approaches to identifying a structured arrangement involving unrelated parties.

No inference is intended regarding the application of any other Code section or judicial doctrine that may apply to affect the determination of FDII and its components.

B. General Rules for FDDEI Transactions

1. Definitions of Sale, Foreign Person, and United States

Proposed § 1.250(b)–3 provides rules relevant to determining whether a sale of property is a FDDEI sale and whether a provision of a service is a FDDEI service.

Section 250(b)(5)(E) provides that for purposes of section 250(b), the term ''sale'' includes any lease, license, exchange, or other disposition. Accordingly, for purposes of determining whether a sale of property is a FDDEI sale, the proposed regulations define ''sale'' to include a lease, license, exchange, or other disposition of property, including a transfer of property resulting in gain or an income inclusion under section 367. See proposed § 1.250(b)–3(b)(7).

The proposed regulations define a foreign person as a person that is not a United States person, which includes a foreign government or international organization for purposes of the proposed regulations. See proposed § 1.250(b)–3(b)(2). A United States person (''U.S. person'') has the same meaning as under section 7701(a)(30), except that an individual that is a bona fide resident of a U.S. territory within the meaning of section 937(a) is excluded. See proposed § 1.250(b)–3(b)(10). While corporations formed in U.S. territories are generally treated as foreign corporations, under section 7701(a)(30), U.S. persons include all U.S. citizens or residents, regardless of whether they reside in a U.S. territory. However, a bona fide resident of a U.S. territory is generally exempt from U.S. tax on income sourced in that territory. See sections 931(a), 932(c)(4), 933(1), and 935. Therefore, to prevent the disparate treatment of sales to entities in a U.S. territory (potentially qualifying as a FDDEI sale) and sales to individuals in a U.S. territory (not qualifying as a FDDEI sale), the proposed regulations exclude bona fide residents of a U.S. territory from the definition of U.S. person.

A partnership is generally a ''person'' for purposes of the Code. See section 7701(a)(1). Accordingly, in determining whether a sale of property to or by a partnership qualifies as a FDDEI sale, or the provision of a service to or by a partnership qualifies as a FDDEI service, the proposed regulations treat a partnership as a person. See proposed § 1.250(b)–3(g). Therefore, for example, a sale of property to a foreign partnership for a foreign use may constitute a FDDEI sale because such sale is to a foreign person, whereas a sale of property to a domestic partnership, even if for a foreign use, will not constitute a FDDEI sale because such sale is to a domestic person. The Treasury Department and the IRS request comments on whether there are circumstances where it would be appropriate to treat a partnership as an aggregate of its partners for purposes of determining whether a sale of property or a provision of a service to a partnership is a sale or service to a foreign person.

The proposed regulations provide that the term ''United States'' generally has the meaning described in section 7701(a)(9). See proposed § 1.250(b)–3(b)(9). However, with respect to mines, oil and gas wells, and other natural deposits, the term United States includes certain seabed and subsoil of submarine areas adjacent to the territorial waters of the United States, as described in section 638(1). See id.

2. Foreign Military Sales

The Treasury Department and the IRS recognize that the statute is unclear as to whether a sale of property or the provision of a service to the U.S. government for resale or on-service to a foreign government under the Arms Export Control Act of 1976, as amended (22 U.S.C. 2751 *et seq.*), may qualify for the section 250 deduction. In general, the Arms Export Control Act governs the export of certain sales and services to foreign governments. Under the Arms Export Control Act, a seller or service provider provides sales or services to the U.S. government that are for the ultimate benefit of a foreign government. The concern is that such sale or service to the U.S. government governed by the Arms Export Control Act is not a sale to a ''person who is not a United States person'' within the meaning of section 250(b)(4)(A) or a service to a ''person not located within the United States'' within the meaning of section 250(b)(4)(B), notwithstanding that such a sale or service is ultimately provided to the foreign government.

The proposed regulations provide that, for purposes of section 250, a sale of property or the provision of a service to the U.S. government under the Arms Export Control Act of 1976 is treated as a sale of property or provision of a service to a foreign government. See proposed § 1.250(b)–3(c). See part I(D)(3) of the Special Analyses section for additional discussion regarding the analysis for the adoption of this rule. As

discussed in part III(B)(1) of this Explanation of Provisions section, a foreign government or international organization is a foreign person for purposes of section 250 and the proposed regulations. See proposed § 1.250(b)–3(b)(2). Therefore, a sale of property or provision of a service to the U.S. government under the Arms Export Control Act may qualify as a FDDEI transaction if the other requirements under proposed §§ 1.250(b)–3 through 1.250(b)–6 are satisfied. To the extent other requirements under proposed §§ 1.250(b)–3 through 1.250(b)–6 are not satisfied, a sale or service will not qualify as a FDDEI transaction regardless of whether such sale or service is pursuant to the Arms Export Control Act.

The Treasury Department and the IRS have not currently identified readily available documentation sufficient to demonstrate that a particular sale or service was made pursuant to the Arms Export Control Act. Comments are requested on whether final regulations should provide guidance on how taxpayers can demonstrate that a sale or service has been made pursuant to the Arms Export Control Act.

3. Knowledge and Reason To Know

As discussed in part III(C) of this Explanation of Provisions section, the proposed regulations provide that a sale of property qualifies as a FDDEI sale only if the seller or renderer does not know or have reason to know that the recipient is not a foreign person or that the property will not be for a foreign use. See proposed § 1.250(b)–4(c), (d), and (e). In addition, as discussed in part III(D) of this Explanation of Provisions section, the proposed regulations provide that the provision of a general service (as defined in proposed § 1.250(b)–5(c)(4)) qualifies as a FDDEI service only if the renderer of the service does not know or have reason to know that the recipient is located within the United States. See proposed § 1.250(b)–5(d)(1) and (e)(1). The terms ''know'' and ''reason to know'' are used throughout the Code and Treasury regulations. The Treasury Department and the IRS request comments regarding whether definitions of ''know'' and ''reason to know'' are necessary for purposes of the section 250 regulations.

4. Reliability of Documentation

In order for a transaction to constitute a FDDEI transaction, the proposed regulations prescribe different types of documentation that are required to be obtained for each type of transaction. For example, in the case of a sale of property, the seller must obtain documentation that establishes the recipient's status as a foreign person. See proposed § 1.250(b)–4(c)(2). See parts III(C) and III(D) of this Explanation of Provisions section for an explanation of the documentation requirements in these proposed regulations; see also part II of the Special Analyses section for a discussion of the Paperwork Reduction Act.

The proposed regulations provide that, for any documentation described in the proposed regulations to be relied upon, the seller or renderer must obtain the documentation by the FDII filing date, the documentation must be obtained no earlier than one year before the sale or service, and the seller or renderer must not know or have reason to know that the documentation is incorrect or unreliable. See proposed § 1.250(b)–3(d); see also proposed § 1.250(b)–3(b)(1) (defining the term ''FDII filing date''). For this purpose, a seller or renderer has reason to know that documentation is unreliable or incorrect if its knowledge of all the relevant facts or statements contained in the documentation is such that a reasonably prudent person in the position of the seller or renderer would question the accuracy of the documentation. See proposed § 1.250(b)–3(d)(1).

The Treasury Department and the IRS welcome comments on the documentation requirements in the proposed regulations.

5. Transactions Consisting of Both Sales and Services

Under section 250(b)(4) and (5) and these proposed regulations, the criteria for establishing that a transaction is foreign-derived is different for sales and services. For example, a transaction with a U.S. person that is located outside of the United States may qualify as a FDDEI service, but cannot qualify as a FDDEI sale. Because a transaction might include elements of both a sale and a service, the proposed regulations clarify that a transaction is classified according to the overall predominant character of the transaction. See proposed § 1.250(b)–3(e). For example, a sale of equipment that includes incidental support services from the seller at no additional cost would be classified as a sale, and therefore the provisions of proposed § 1.250(b)–4 would apply to determine whether gross income from the transaction is included in gross FDDEI.

6. Special Rule for Certain Loss Transactions

A domestic corporation's FDDEI includes all gross income included in gross DEI that is derived from FDDEI sales and FDDEI services in a taxable year, reduced by the amount of deductions properly allocable to such income. See proposed § 1.250(b)–1(c)(12) and part III(A)(2) of this Explanation of Provisions section. In most cases, a FDDEI sale or FDDEI service will increase a domestic corporation's section 250 deduction, because the income from such sale or service will increase the corporation's FDDEI and thus its foreign-derived ratio. However, in some cases, a FDDEI sale or a FDDEI service could have the effect of reducing FDDEI and thus a domestic corporation's section 250 deduction for the year. This could happen where, for instance, the domestic corporation's cost of goods sold attributed to property sold in a FDDEI sale exceeds its gross receipts from the sale, or the expenses allocated to the gross income from a FDDEI sale or FDDEI service exceed the gross income arising from the sale or service. In such a case, absent a rule to the contrary, a domestic corporation could intentionally fail to satisfy the documentation requirements with respect to a transaction that would otherwise qualify as a FDDEI sale or FDDEI service in order to prevent the transaction from reducing its FDDEI and thereby its section 250 deduction.

Section 250(b) does not contemplate a transaction-by-transaction determination of FDII, but rather an aggregate calculation based on all gross income ''which is derived in connection with'' sales and services described in section 250(b)(4). Therefore, it would be inappropriate to permit taxpayers to elect to exclude losses related to sales to foreign persons for a foreign use and services to persons located outside the United States by merely failing the documentation requirements. Accordingly, the proposed regulations provide that if a seller or renderer knows or has reason to know that property is sold to a foreign person for a foreign use or a general service is provided to a person located outside the United States, but the seller or renderer does not satisfy the documentation requirements applicable to such sale or service, the sale of property or provision of a service is nonetheless deemed a FDDEI transaction if treating the sale or service as a FDDEI transaction would reduce a domestic corporation's FDDEI. See proposed § 1.250(b)–3(f).

The special loss transaction rule in proposed § 1.250(b)–3(f) does not apply to proximate services, property services, and transportation services, each of which is defined and discussed in part III(D)(3) through (5) of this Explanation of Provisions section, because the

proposed regulations do not require documentation with respect to such services. Therefore, a proximate service, property service, or transportation service is a FDDEI service if it meets the applicable substantive requirements for a FDDEI service described in § 1.250(b)–5(f), (g), and (h), respectively.

C. FDDEI Sales

1. In General

Section 250(b)(4)(A) provides that FDDEI includes income from property the taxpayer sells to any person who is not a U.S. person, and which the taxpayer establishes to the satisfaction of the Secretary is for a foreign use. Accordingly, the proposed regulations define a FDDEI sale as a sale of property to a foreign person for a foreign use. See proposed § 1.250(b)–4(b).

2. Foreign Person

The proposed regulations provide that a recipient is treated as a foreign person only if the seller obtains documentation of the recipient's foreign status and does not know or have reason to know that the recipient is not a foreign person. See proposed § 1.250(b)–4(c)(1). The proposed regulations provide several types of permissible documentation for this purpose, such as a written statement by the recipient indicating that the recipient is a foreign person. See proposed § 1.250(b)–4(c)(2)(i). To alleviate the burden of documentation on small businesses and small transactions, the proposed regulations allow a seller that has less than $10,000,000 of gross receipts in the prior taxable year, or less than $5,000 in gross receipts from a single recipient during the current taxable year, to treat a recipient as a foreign person if the seller has a shipping address for the recipient that is outside the United States. See proposed § 1.250(b)–4(c)(2)(ii). The $10,000,000 and $5,000 thresholds were chosen based on the experience of the Treasury Department and the IRS and not based on any specific quantitative analysis. The Treasury Department and the IRS request comments regarding whether the $10,000,000 and $5,000 thresholds are appropriate and especially solicit comments that provide data, other evidence, and models that can enhance the rigor of the process by which such thresholds are determined.

3. Foreign Use

Under the proposed regulations, the rules applicable to the determination of whether a sale of property is for a foreign use depends on whether the property sold is ''general property'' or ''intangible property.'' See proposed § 1.250(b)–4(d) and (e). The proposed regulations define general property as property other than intangible property, a security (as defined in section 475(c)(2)), or a commodity (as defined in section 475(e)(2)(B) through (D)). See proposed § 1.250(b)–3(b)(3). The proposed regulations define intangible property by cross-reference to section 367(d)(4). See proposed § 1.250(b)–3(b)(4).

The proposed regulations provide that a sale of a security (as defined in section 475(c)(2)) or a commodity (as defined in section 475(e)(2)(B) through (D)) is not a FDDEI sale because such financial instruments are not subject to ''any use, consumption, or disposition'' outside the United States within the meaning of section 250(b)(5)(A). See proposed § 1.250(b)–4(f).

The proposed regulations provide that a sale of property (whether general property or intangible property) is treated as for a foreign use only if the seller obtains documentation that the property is for a foreign use and does not know or have reason to know, as of the FDII filing date, that the property is not for a foreign use (or, in the case of intangible property, that the portion of the sale of the intangible property for which the seller establishes foreign use is not for a foreign use). See proposed § 1.250(b)–4(d)(1) and (e)(1). Accordingly, if, as of the FDII filing date, the seller does not know or have reason to know that either the documentation obtained with respect to the sale is not reliable or that the property is not for a foreign use within the meaning of § 1.250(b)–4(d)(2) or (e)(2), then the sale of the property is treated as for a foreign use under § 1.250(b)–4(d)(1) or (e)(1) even if, in fact, the sale of such property is not for a foreign use within the meaning of § 1.250(b)–4(d)(2) or (e)(2).

a. Foreign Use for General Property

The sale of general property is for a foreign use if either the property is not subject to domestic use within three years of delivery of the property or the property is subject to manufacture, assembly, or other processing outside the United States before any domestic use of the property. See proposed § 1.250(b)–4(d)(2)(i) and Conf. Rep. at 625, fn. 1522 (''If property is sold by a taxpayer to a person who is not a U.S. person, and after such sale the property is subject to manufacture, assembly, or other processing (including the incorporation of such property, as a component, into a second product by means of production, manufacture, or assembly) outside the United States by such person, then the property is for a foreign use.''). Domestic use is defined as the use, consumption, or disposition of property within the United States, including manufacture, assembly, or other processing within the United States. See proposed § 1.250(b)–4(d)(2)(ii). Comments are requested on the supply chain implications of these rules.

General property is subject to manufacturing, assembly, or other processing only if it meets either of the following two tests: (1) There is a physical and material change to the property, or (2) the property is incorporated as a component into a second product. See proposed § 1.250(b)–4(d)(2)(iii)(A). The proposed regulations clarify that a physical and material change does not include ''minor assembly, packaging, or labeling.'' See proposed § 1.250(b)–4(d)(2)(iii)(B). However, whether property has undergone a physical and material change (as opposed to minor assembly, packaging, or labeling) is determined based on all the relevant facts and circumstances. The Treasury Department and the IRS request comments regarding whether additional guidance should be provided for determining whether property has undergone a physical and material change.

General property is incorporated as a component into a second product only if the fair market value of the property when it is delivered to the recipient constitutes no more than 20 percent of the fair market value of the second product, determined when the second product is completed. See proposed § 1.250(b)–4(d)(2)(iii)(C). If the seller sells multiple items of property that are incorporated into the second product, an aggregation rule treats all of the property sold by the seller that is incorporated into the second product as a single item of property for purposes of determining whether the property constitutes more than 20 percent of the fair market value of the second product. See id.

In order to establish that general property is for a foreign use, the seller must generally obtain documentation with respect to the sale. See proposed § 1.250(b)–4(d)(3). Such documentation could include, for example, proof of shipment of the property to a foreign address. See proposed § 1.250(b)–4(d)(3)(i). However, in the case of certain small businesses and small transactions, the seller may rely on a foreign shipping address for the recipient instead of obtaining documentation. See proposed § 1.250(b)–4(d)(3)(ii).

In lieu of the general documentation requirements for determining foreign use for sales of general property, in the case of a sale of multiple items of general property, which because of their fungible nature cannot reasonably be specifically traced to the location of use (''fungible mass''), a seller may establish that some, but not all, of the property is for a foreign use through market research, including statistical sampling, economic modeling, and other similar methods. See proposed § 1.250(b)–4(d)(3)(iii). A de minimis rule applies to treat the entire fungible mass as for a foreign use if a seller obtains documentation establishing that 90 percent or more of the fungible mass is for a foreign use. See id. Conversely, no portion of the fungible mass is treated as for a foreign use if the seller does not obtain documentation establishing that 10 percent or more of the fungible mass is for a foreign use. Id.

A special rule applies for purposes of determining whether the sale of certain transportation property is for a foreign use, which takes into account the special nature of property used for international transportation. Specifically, the sale of aircraft, railroad rolling stock, vessel, motor vehicle, or similar property that provides a mode of transportation and is capable of traveling internationally is for a foreign use only if, during the three-year period from the date of delivery of the property, the property is located outside the United States more than 50 percent of the time and more than 50 percent of the miles traversed in the use of such property will be traversed outside the United States. See proposed § 1.250(b)–4(d)(2)(iv). The seller can establish that a sale of general property used for international transportation is for a foreign use through, for example, a written statement from the recipient that the property is anticipated to satisfy the test described in the preceding sentence. See proposed § 1.250(b)–4(d)(3)(i)(A).

b. Foreign Use for Intangible Property

As discussed in part III(B) of this Explanation of Provisions section, a sale includes a license and any transfer of property in which gain or income is recognized under section 367, including a transfer of intangible property subject to section 367(d). See proposed § 1.250(b)–3(b)(7). The proposed regulations provide that a sale of intangible property is for a foreign use to the extent revenue is earned from exploiting the intangible property outside the United States, the documentation requirements are satisfied, and the seller does not know or have reason to know that the portion of the sale of the intangible property for which the seller establishes foreign use is not for a foreign use. See proposed § 1.250(b)–4(e)(1). Unlike a sale of general property (other than a sale of a fungible mass), a seller may establish foreign use for a portion of the income from the sale of intangible property. For purposes of determining whether a sale of intangible property is for a foreign use, the location where revenue is earned is generally determined based on the location of end-user customers licensing the intangible property or purchasing products for which the intangible property was used in development, manufacture, sale, or distribution. See proposed § 1.250(b)–4(e)(2). This determination is generally made on an annual basis based on the actual revenue earned by the recipient. Id.

Special rules apply to lump sum sales because, in these cases, it may be difficult or impossible to know the location where revenue will be generated when the sale occurs. The determination of foreign use in these cases is made based on the net present value of revenue the seller would have reasonably expected to earn from the exploitation of the intangible property. See proposed § 1.250(b)–4(e)(2)(iii). For sales of rights to intangible property for use both within and outside the United States, the seller must establish the proportionate amount of revenue earned within and outside the United States from use of the intangible property to establish foreign use. The proposed regulations describe documentation that can be used to establish where revenue is earned from use of the intangible property. See proposed § 1.250(b)–4(e)(3)(i). For example, if a domestic corporation licenses to a foreign person the worldwide rights to market and sell an item protected by a copyright, the domestic corporation would need to obtain documentation, as provided in the proposed regulations, establishing where revenue is earned from sales of the copyright-protected item.

A seller may establish the extent to which a sale of intangible property for a lump sum is for a foreign use through documentation containing reasonable projections of the amount and location of revenue that the seller would have reasonably expected to earn from the use of intangible property. See proposed § 1.250(b)–4(e)(3)(iii). To be considered reasonable, the net present value must be consistent with the financial data and projections used by the seller to determine the sales price to the foreign person. See id. The same rule for documentation applies to a sale to a foreign person (other than a related party of the seller) for annual payments that are not contingent on revenue or profit unless the seller has access to reliable information to determine the actual revenue earned by the foreign unrelated party from the exploitation of the intangible property. See proposed § 1.250(b)–4(e)(3)(ii).

As discussed in part III(C)(3)(a) of this Explanation of Provisions section, a sale of general property is treated as for a foreign use if the property is subject to manufacturing, assembly, or other processing outside the United States. See proposed § 1.250(b)–4(d)(2)(i)(B). This rule is based on footnote 1522 of the Conference Report, which provides that ''[i]f property is sold by a taxpayer to a person who is not a U.S. person, and after such sale the property is subject to manufacture, assembly, or other processing (including the incorporation of such property, as a component, into a second product by means of production, manufacture, or assembly) outside the United States by such person, then the property is for a foreign use.'' Intangible property is not ''subject to'' manufacture, assembly, or processing, and there is no other discussion in the Conference Report that indicates an intent to provide an analogous rule for intangible property otherwise used in the manufacturing process. However, comments are requested on whether a rule for intangible property similar to proposed § 1.250(b)–4(d)(2)(i)(B) is appropriate. Comments are also requested on what additional rules may be needed for determining the location of revenue generation from end-users and what types of documentation should be accepted to document the location of revenue generation with respect to intangible property.

D. FDDEI Services

1. In General

Section 250(b)(4)(B) provides that FDDEI includes income from services provided by a domestic corporation to any person, or with respect to property, not located within the United States. Section 250 does not prescribe rules for determining whether a person or property is ''not located within the United States.'' Proposed § 1.250(b)–5 provides rules for determining whether a service is provided to a person, or with respect to property, located outside the United States.

Under the proposed regulations, whether a service is provided to a person, or with respect to property, located outside the United States, depends on the type of service provided and, in the case of a general service

(defined below), the type of recipient of the service. The proposed regulations distinguish between services where the service provider (the ''renderer'') and the recipient are in physical proximity when the service is performed (''proximate services''), services with respect to tangible property (''property services''), services to transport people or property (''transportation services''), and all other services (''general services''). See proposed § 1.250(b)–5(b) and (c)(4) through (7). For purposes of determining whether a service constitutes a FDDEI service, the proposed regulations look to the location of the performance of the service for proximate services, the location of the property for property services, the origin and destination of transportation services, and the location of the recipient for general services. See proposed § 1.250(b)–5(d) through (h).

Each category of service described in § 1.250(b)–5 is mutually exclusive of each other category, and every possible service is described in a single category. Therefore, whether a service is a FDDEI service is determined under the rules relevant to one, and only one, category of service described in § 1.250(b)–5. For example, a general service that is provided to a recipient located within the United States is not a FDDEI service, even if the service is performed outside the United States, whereas a property service that is performed outside the United States is a FDDEI service, even if the recipient of the service is located within the United States. See parts III(D)(2) and (4) of this Explanation of Provisions section.

2. General Services to Persons Located Outside the United States

A general service is a service other than a proximate service, a property service, or a transportation service. See proposed § 1.250(b)–5(c)(4). General services is the residual category of services. Accordingly, a service that is not a property service, a transportation service, or a proximate service is analyzed as a general service.

For general services, the proposed regulations distinguish between services provided to ''consumers'' and services provided to ''business recipients.'' A consumer is defined as an individual that purchases a service for personal consumption. See proposed § 1.250(b)–5(c)(3). A business recipient is defined as any recipient other than a consumer. See proposed § 1.250(b)–5(c)(2). In both cases, general services are treated as provided to a person located outside the United States if the renderer does not know or have reason to know that the consumer or business recipient is located within the United States and obtains appropriate documentation. See proposed § 1.250(b)–5(d)(1) and (e)(1).

a. General Services to Consumers

The provision of a general service to a consumer located outside the United States is a FDDEI service. See proposed § 1.250(b)–5(b)(1). The proposed regulations provide that the consumer is located where a consumer resides when the service is provided. See proposed § 1.250(b)–5(d)(2).

The proposed regulations require a domestic corporation to document the location of the consumer. See proposed § 1.250(b)–5(d)(1) and (3). The proposed regulations provide several types of permissible documentation for this purpose, including a written statement by the consumer indicating the residence of the consumer when the service is provided. See proposed § 1.250(b)–5(d)(3)(i). However, in the case of certain small businesses and small transactions, the renderer may rely on a foreign billing address for the consumer instead of obtaining documentation. See proposed § 1.250(b)–5(d)(3)(ii).

b. General Services to Business Recipients

The provision of a general service to a business recipient located outside the United States is a FDDEI service. See proposed § 1.250(b)–5(b)(2). Under the proposed regulations, all general services that are not provided to consumers are treated as services provided to business recipients, regardless of whether the recipient is engaged in a trade or business. See proposed § 1.250(b)–5(c)(2).

The proposed regulations determine the location of a business recipient based on the location of the business recipient's operations, and the operations of any related party of the recipient, that receive a benefit (as defined in § 1.482–9(l)(3)) from such service. See proposed § 1.250(b)–5(e)(2) and (4). For purposes of this determination, the location of residence, incorporation, or formation of a business recipient is not relevant. For example, a general service that confers a benefit only on the U.S. operations of a foreign person will generally not qualify as a FDDEI service, whereas a service that confers a benefit only on the foreign operations of a U.S. person will generally qualify as a FDDEI service. For purposes of this rule, a business recipient is treated as having operations in any location where it maintains an office or other fixed place of business. See proposed § 1.250(b)–5(e)(2)(ii).

The proposed regulations provide that a service is generally provided to a business recipient located outside the United States to the extent that the renderer's gross income from providing the service is allocated to the business recipient's operations outside the United States. See proposed § 1.250(b)–5(e)(2)(i). To make this allocation, the renderer must first determine which of the business recipient's operations receive a benefit from the service. See proposed § 1.250(b)–5(e)(2)(i)(A). Where the service confers a benefit on the operations of the business recipient in specific locations, gross income of the renderer is allocated based on the location of the operations in specific locations that receive the benefit. See id. Where a service confers a benefit on the recipient's business as a whole, or where reliable information about the particular portion of the operations that specifically receive a benefit from the service is unavailable, the proposed regulations provide that the service is deemed to confer a benefit on all of the business recipient's operations. See id. The renderer then must allocate its gross income from providing the service between the operations that receive a benefit from the service that are located within and outside the United States. See proposed § 1.250(b)–5(e)(2)(i)(B). For this purpose, any reasonable method may be used, and the principles of § 1.482–9(k) apply to determine whether a method is reasonable. See id. A reasonable method may include, for example, an allocation based on the renderer's time spent working with different offices of the business recipient or publicly available information about the business recipient's revenue from different markets. See id. The Treasury Department and the IRS request comments on this approach for determining the location of a business recipient that operates both within and outside of the United States.

The proposed regulations also require a domestic corporation to obtain documentation sufficient to establish the location of a business recipient's operations that benefit from the service. See proposed § 1.250(b)–5(e)(1) and (3). A domestic corporation may obtain a statement from the recipient specifying the location of the operations that will benefit from the service or include a similar statement in a binding contract. See proposed § 1.250(b)–5(e)(3)(i)(A) and (B). A domestic corporation may also establish the location of the business recipient using information provided in the ordinary course of the provision of a service or publicly

available information. See proposed § 1.250(b)–5(e)(3)(i)(C) and (D). However, in the case of certain small businesses and small transactions, the renderer may rely on a foreign billing address for the business recipient instead of obtaining documentation. See proposed § 1.250(b)–5(e)(3)(ii).

3. Proximate Services

The provision of a proximate service to a recipient located outside the United States is a FDDEI service. See proposed § 1.250(b)–5(b)(3). A proximate service is defined as a service, other than a property service or a transportation service, substantially all of which is performed in the physical presence of the recipient or, in the case of a business recipient, its employees. See proposed § 1.250(b)–5(c)(6). For example, a training, consulting, or auditing service that is performed on-site would generally constitute a proximate service. Substantially all of a service is performed in the physical presence of the recipient or its employees if the renderer spends more than 80 percent of the time providing the service in the physical presence of the recipient or its employees. See proposed § 1.250(b)–5(c)(6). The recipient of a proximate service is treated as located where the service is performed. See proposed § 1.250(b)–5(f). If a proximate service is performed partly within and partly outside the United States, a proportionate amount of the service is treated as rendered to a person located outside the United States corresponding to the portion of time spent providing the proximate service outside the United States. See id.

4. Property Services

The provision of a property service with respect to tangible property located outside the United States is a FDDEI service. See proposed § 1.250(b)–5(b)(4). A property service is defined as a service, other than a transportation service, provided with respect to tangible property, but only if substantially all of the service is performed at the location of the property and results in physical manipulation of the property such as through assembly, maintenance, or repair. See proposed § 1.250(b)–5(c)(5). The proposed regulations provide that substantially all of a service is performed at the location of property if the renderer spends more than 80 percent of the time providing the service at or near the location of the property. See id. A property service is a FDDEI service only if the tangible property with respect to which the service is performed is located outside the United States for the duration of the period of performance. See proposed § 1.250(b)–5(g). The Treasury Department and the IRS request comments on whether to consider an exception for property that is located in the United States temporarily solely for purposes of the performance of certain services, such as maintenance or repairs. As discussed in part III(E) of this Explanation of Provisions section, a property service may qualify as a FDDEI service even if it is performed for a person located within the United States.

Other services that relate to property but may not necessarily be provided in close proximity to tangible property or do not result in the physical manipulation of such property such as through assembly, maintenance, or repair may be subject to the rules for proximate services, transportation services, or general services. For example, an architectural or engineering service that is not performed in physical proximity to the property or the recipient will be evaluated as a general service even if the service relates to property located outside the United States, and thus whether such a service is a FDDEI service will be determined based on the location of the recipient rather than the location of the property.

5. Transportation Services

The provision of a transportation service to a recipient, or with respect to property, located outside the United States is a FDDEI service. See proposed § 1.250(b)–5(b)(5). A transportation service is defined as a service to transport a person or property using any mode of transportation (such as an airplane). See proposed § 1.250(b)–5(c)(7).

Basing the location of a transportation service on the residence of the recipient of the transportation service could provide inconsistent results with respect to similar services. Similarly, providing different rules for the transportation of a person or property could provide inconsistent results with respect to similar services. Therefore, the proposed regulations provide that whether a ''transportation service'' is provided to a recipient, or with respect to property, located outside the United States is determined based on the origin and destination of the service. See proposed § 1.250(b)–5(h). If both the origin and destination of a transportation service are outside of the United States, then the service is a FDDEI service. See id. If either the origin or the destination of the transportation service is outside of the United States, but not both, then 50 percent of the service is a FDDEI service and thus 50 percent of the gross income from the provision of the service is included in the renderer's gross FDDEI. See id.

E. Domestic Intermediary Rules

Section 250(b)(5)(B) describes special rules for ''domestic intermediaries'' (the ''domestic intermediary rules''). Section 250(b)(5)(B)(i) provides that if a seller sells property to another person (other than a related party) for further manufacture or other modification within the United States, the property is not treated as sold for a foreign use even if such other person subsequently uses such property for a foreign use. Section 250(b)(5)(B)(ii) provides that services provided to a person (other than a related party) located within the United States are not treated as services described in section 250(b)(4)(B) even if such other person uses such services in providing services that are described in section 250(b)(4)(B).

The proposed regulations do not contain specific rules corresponding to the domestic intermediary rules because those rules are encompassed within the general rules relating to FDDEI sales and FDDEI services in the proposed regulations. With respect to sales of property, the proposed regulations provide that general property is not for a foreign use if, before being subject to manufacture, assembly, or other processing outside the United States, the property is subject to a domestic use. See proposed § 1.250(b)–4(d)(2)(i). For this purpose, domestic use includes manufacture, assembly, or other processing within the United States. See proposed § 1.250(b)–4(d)(2)(ii)(B). In addition, a sale of property to a U.S. person cannot qualify as a FDDEI sale under any circumstance. See section 250(b)(4)(A) and proposed § 1.250(b)–4(b). Therefore, a sale of property to a foreign person for further manufacture in the United States or to a U.S. person does not qualify for a FDDEI sale, regardless of the ultimate use of the property by the recipient.

With respect to the provision of services, the proposed regulations provide that a service is a FDDEI service only if the recipient of the service, or the property to which the service relates, is located outside the United States. See proposed § 1.250(b)–5(b)(1) through (5). Therefore, a service provided to a person, or with respect to property, located within the United States is not a FDDEI service, regardless of the ultimate use of the service by the recipient.

Section 250(b)(5)(B)(ii) could be read literally to provide that a FDDEI service includes only services provided to a

person not located within the United States, in which case a service provided ''with respect to property located outside the United States'' would not qualify as a FDDEI service if the recipient of such service was located within the United States. As discussed in part III(D) of this Explanation of Provisions section, consistent with the general rule of section 250(b)(4)(B), the proposed regulations clarify that a service qualifies as a FDDEI service if it is provided either to a person located outside the United States or with respect to property located outside the United States. The Treasury Department and the IRS have determined that an interpretation of section 250(b)(5)(B)(ii) that effectively eliminates the disjunctive test of section 250(b)(4)(B) would not be reasonable. Therefore, under the proposed regulations, whether a service that is treated as with respect to property—a property service or a transportation service—is a FDDEI service is determined solely by reference to the location of the property, and not the location of the recipient. See proposed § 1.250(b)–5(g) and (h).

Finally, the parenthetical references to related parties in the domestic intermediary rules could be read to imply the existence of an exception for further manufacture or modification in the United States by a related party or a service provided to a related party located within the United States. However, the general rules of section 250(b)(4)(A) and (B) do not authorize such exceptions, and the domestic intermediary rules do not purport to expand these general rules, but rather to limit the transactions that qualify under them. Therefore, with respect to related party domestic intermediaries, the proposed regulations do not provide an exception to the general rule that property must be sold to a foreign person to qualify as a FDDEI sale or that a service must be provided to a person located outside the United States to qualify as a FDDEI service. Cf. part V of this Explanation of Provisions section regarding the applicability of the attribute redetermination rule of § 1.1502–13(c)(1)(i) to the determination of FDDEI of a member of a consolidated group.

F. Related Party Transactions

A sale of property or a provision of a service may qualify as a FDDEI transaction, regardless of whether the recipient of such service is a related party of the seller or renderer. However, in the case of a sale of general property or a provision of a general service to a related party, section 250(b)(5)(C) and proposed § 1.250(b)–6 provide additional requirements that must be satisfied for the transaction to qualify as a FDDEI sale or FDDEI service. These requirements must be satisfied in addition to the general requirements that apply to such sales and services as provided in proposed §§ 1.250(b)–3 through 1.250(b)–5.

The proposed regulations define a related party with respect to any person as any member of a modified affiliated group that includes such person. Proposed § 1.250(b)–1(c)(19). A modified affiliated group is defined as an affiliated group as provided in section 1504(a) by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears, and without regard to section 1504(b)(2) and (3). Proposed § 1.250(b)–1(c)(17)(i). A modified affiliated group also includes any person other than a corporation that is controlled by one or more members of a modified affiliated group or that controls such a member. Proposed § 1.250(b)–1(c)(17)(ii). For this purpose, ''control'' is defined as provided in section 954(d)(3), meaning direct, indirect, or constructive ownership under section 958 of more than 50 percent of the value of the beneficial interests in such person. Proposed § 1.250(b)–1(c)(17)(iii).

1. Related Party Sales

Section 250(b)(5)(C)(i) provides that property sold to a related party that is not a U.S. person ''shall not be treated as for a foreign use unless (I) such property is ultimately sold by a related party, or used by a related party in connection with property which is sold or the provision of services, to another person who is an unrelated party who is not a United States person, and (II) the taxpayer establishes to the satisfaction of the Secretary that such property is for a foreign use.'' Accordingly, the proposed regulations provide that a sale of general property to a foreign related party (a ''related party sale'') qualifies as a FDDEI sale only if certain additional requirements described in § 1.250(b)–6(c)(1)(i) or (ii) are satisfied. See proposed § 1.250(b)–6(c)(1).

If a foreign related party resells the purchased property (such as where the foreign related party is a distributor or a manufacturer of a product that incorporates the purchased property as a component), the sale to the foreign related party qualifies as a FDDEI sale only if an unrelated party transaction with respect to such sale occurs and the unrelated party transaction is a FDDEI sale. An unrelated party transaction is generally a transaction between the foreign related party and an unrelated foreign person in which the property purchased by the foreign related party is sold or used. See proposed § 1.250(b)–6(b)(5). For purposes of this rule, whether property is a component of another property that is subsequently sold in an unrelated party transaction is determined without regard to the rule defining a ''component'' for purposes of determining whether general property is subject to manufacturing, assembly, or other processing, as described in part III(C)(3)(a) of this Explanation of Provisions section. The unrelated party sale generally must occur on or before the FDII filing date; otherwise the gross income from the related party sale is included in the domestic corporation's gross DEI for the taxable year of the related party sale, but is not included in its gross FDDEI. See proposed § 1.250(b)–6(c)(1)(i). However, if an unrelated party transaction occurs after the FDII filing date but within the period of limitations provided by section 6511, the proposed regulations provide that the domestic corporation may file an amended return for the taxable year in which the related party sale occurred claiming the related party sale as a FDDEI sale for purposes of determining the taxpayer's foreign-derived intangible income for that taxable year, provided that the sale otherwise meets the requirements in proposed § 1.250(b)–6(c)(1)(i). See id. The Treasury Department and the IRS welcome comments on whether alternatives should be considered in lieu of requiring the filing of an amended return.

For transactions other than the resale of purchased property, such as where the foreign related party uses the purchased property to produce other property that is sold in unrelated party transactions, or where the foreign related party uses the property in the provision of a service in an unrelated party transaction, the sale of property does not qualify as a FDDEI sale unless, as of the FDII filing date, the seller reasonably expects that more than 80 percent of the revenue earned by the foreign related party from the use of the property in all transactions will be earned from unrelated party transactions that are FDDEI transactions (determined without regard to the documentation requirements in § 1.250(b)–4 or § 1.250(b)–5). See proposed § 1.250(b)–6(c)(1)(ii).

The rules applicable to related party sales apply only to determine whether sales of general property qualify as a FDDEI sale. See proposed § 1.250(b)–6(c)(1). Sales of intangible property, whether to a related or an unrelated party, are for a foreign use only to the

extent that the intangible property generated revenue from exploitation outside the United States. See proposed § 1.250(b)–4(e)(2) and part III(C)(3)(b) of this Explanation of Provisions section. Thus, additional rules with respect to related party sales of intangible property are unnecessary to ensure that such sales are ultimately for a foreign use.

2. Related Party Services

Section 250(b)(5)(C)(ii) provides that a service provided to a related party not located in the United States ''shall not be treated [as a FDDEI service] unless the taxpayer establishe[s] to the satisfaction of the Secretary that such service is not substantially similar to services provided by such related party to persons located within the United States.'' Accordingly, the proposed regulations generally provide that a provision of a general service to a business recipient that is a related party qualifies as a FDDEI service only if the service is not substantially similar to a service provided by the related party to persons located within the United States. See proposed § 1.250(b)–6(d)(1).

Absent section 250(b)(5)(C)(ii) and proposed § 1.250(b)–6(d)(1) (the ''related party services rule''), a domestic corporation could generate gross FDDEI from the provision of services that primarily benefit persons within the United States by using a related party located outside the United States as a conduit. The related party services rule prevents taxpayers from claiming gross FDDEI derived from such ''round tripping'' arrangements. In contrast, proximate services, property services, and transportation services by their nature present minimal risk for ''round tripping,'' because the location of the recipient or property, as applicable, for purposes of such services is generally determined based on the place of performance. See proposed § 1.250(b)–5(f), (g), and (h), and parts III(D)(3), (4), and (5) of this Explanation of Provisions section. Further, a general service provided to a consumer that is a related party cannot be substantially similar to a service provided by a consumer to a person located within the United States, because a consumer, by definition, is an individual that purchases the service for personal use. See proposed § 1.250(b)–5(c)(3). Accordingly, the proposed regulations provide that the related party services rule applies only to determine whether a general service provided to a business recipient that is a related party is a FDDEI service. See proposed § 1.250(b)–6(d)(1).

A service provided by a renderer to a related party is ''substantially similar'' to a service provided by the related party to a person located within the United States if the renderer's service (or ''related party service'') is used by the related party to provide a service to a person located within the United States and either the ''benefit test'' of proposed § 1.250(b)–6(d)(2)(i) or the ''price test'' of proposed § 1.250(b)–6(d)(2)(ii) is satisfied. The rules to determine the location of a recipient of a service provided by a related party are generally the same as the rules for determining the location of a recipient of a service provided by the renderer.

The benefit test is satisfied if 60 percent or more of the benefits conferred by the related party service are to persons located within the United States. See proposed § 1.250(b)–6(d)(2)(i). For this purpose, the term ''benefit'' has the meaning provided in § 1.482–9(l)(3). See proposed § 1.250(b)–5(c)(1). Therefore, a related party service provides a benefit to a customer of the related party if it provides ''a reasonably identifiable increment of economic or commercial value'' to the customer, rather than an indirect or remote benefit. See § 1.482–9(l)(3)(i) and (ii). Because the benefit test compares the benefits from the service provided to persons located in the United States to the total benefits from the service provided by the renderer (rather than to the total benefits of the service provided by the related party), a service provided to a related party is ''substantially similar'' to a service provided by the related party to persons located within the United States if 60 percent or more of the benefits of the service are conferred on persons located within the United States, even if the related party adds significant value to the service through, for instance, bundling the related party service with other high value services.

Under the price test, a service provided by a renderer to a related party is ''substantially similar'' to a service provided by the related party to a person located within the United States if the renderer's service is used by the related party to provide a service to a person located within the United States and 60 percent or more of the price that persons located within the United States pay for the service provided by the related party is attributable to the renderer's service. See proposed § 1.250(b)–6(d)(2)(ii). Therefore, the price test compares the value of the service that is provided by the renderer to the related party to the value of the service that is provided by the related party to its customers. Consequently, a related party service that is not treated as substantially similar to a service provided by the related party to persons located in the United States under the benefit test, because more than 40 percent of the benefits from the service are conferred to persons located outside the United States, is nonetheless treated as ''substantially similar'' under the price test if the related party service accounts for 60 percent or more of the total price that is charged to customers located within the United States.

If a related party service is treated as substantially similar to a service provided by the related party to a person located within the United States solely by reason of the price test, the general rule that wholly disqualifies the related party service as a FDDEI service does not apply. Rather, in such case, a portion of the gross income from the related party service will be treated as a FDDEI service corresponding to the ratio of benefits conferred by the related party service to persons not located within the United States to the sum of all benefits conferred by the related party service. See proposed § 1.250(b)–6(d)(1).

IV. Section 250 Deduction for Individuals Making a Section 962 Election

As discussed in part II of this Explanation of Provisions section, the section 250 deduction for FDII and GILTI is available only to domestic corporations. However, section 962(a)(1) provides that an individual that is a U.S. shareholder may generally elect to be taxed on amounts included in the individual's gross income under section 951(a) in ''an amount equal to the tax that would be imposed under section 11 if such amounts were received by a domestic corporation.'' GILTI is treated as an amount included under section 951(a) for purposes of section 962. See section 951A(f)(1)(A) and proposed § 1.951A–6(b)(1). A section 962 election can be made by an individual U.S. shareholder who is considered, by reason of section 958(b), to own stock of a foreign corporation owned (within the meaning of section 958(a)) by a domestic pass-through entity, including a partnership or an S corporation. See § 1.962–2(a).

Congress enacted section 962 to ensure that individuals' tax burdens with respect to undistributed foreign earnings of their CFCs ''will be no heavier than they would have been had they invested in an American corporation doing business abroad.'' S. Rept. 1881, 1962–3 C.B. 784, at 798. Existing § 1.962–1(b)(1)(i) provides that a deduction of a U.S. shareholder does not reduce the amount included in gross income under section 951(a) for purposes of computing the amount of

tax that would be imposed under section 11. However, allowing a section 250 deduction with respect to GILTI of an individual (including an individual that is a shareholder of an S corporation or a partner in a partnership) that makes an election under section 962 is consistent with the purpose of that provision of ensuring that such individual's tax burden with respect to its CFC's undistributed foreign earnings is no greater than if the individual owned such CFC through a domestic corporation. Accordingly, the proposed regulations provide that, for purposes of section 962, ''taxable income'' as used in section 11 of an electing individual is reduced by the portion of the section 250 deduction that would be allowed to a domestic corporation with respect to the individual's GILTI and the section 78 gross-up attributable to the shareholder's GILTI. See proposed § 1.962–1(b)(1)(i)(B)(*3*).

V. Application of Section 250 to Consolidated Groups

As discussed in the Background section of this preamble, section 250 provides a domestic corporation a deduction for its FDII, GILTI, and the section 78 gross-up attributable to its GILTI. The section 250 deduction is available to a member of a consolidated group (''member'') in the same manner as the deduction is available to any domestic corporation. However, a computation of a member's section 250 deduction based solely on its items of income and QBAI may not result in a clear reflection of the consolidated group's income tax liability. For example, a consolidated group could segregate all of its QBAI in one member, thereby decreasing the DTIR of other members relative to the consolidated group's DTIR if determined at a group level. Alternatively, a strict, separate-entity application of section 250 could inappropriately decrease a consolidated group's aggregate amount of deduction for its FDII, for instance, because one member's DII (which is the excess of DEI over DTIR) would not be taken into account in calculating the FDII of another member that has FDDEI in excess of its DEI.

Based on the foregoing, the proposed regulations provide that a member's section 250 deduction is determined by reference to the relevant items of all members of the same consolidated group. Consistent with the authority provided by section 1502, the proposed regulations ensure that the aggregate amount of section 250 deductions allowed to members appropriately reflects the income, expenses, gains, losses, and property of all members. Definitions in proposed § 1.1502–50(f) result in the aggregation of the DEI, FDDEI, DTIR, and GILTI of all members. These aggregate numbers and the consolidated group's consolidated taxable income are then used to calculate an overall deduction amount for the group. Proposed § 1.1502–50(b) then allocates this overall deduction amount among the members on the basis of their respective contributions to the consolidated group's aggregate amount of FDDEI and the consolidated group's aggregate amount of GILTI.

The proposed regulations also address two issues relating to intercompany transactions. First, the proposed regulations add an example to § 1.1502–13 demonstrating the applicability of the attribute redetermination rule of § 1.1502–13(c)(1)(i) to the determination of FDDEI. This example applies the intercompany transaction rules to clearly reflect consolidated taxable income. It does not indicate a change in the law. In this example, the attribute redetermination rule applies to gross DEI and gross FDDEI, which are attributes of an intercompany or corresponding item. The Treasury Department and the IRS were concerned that applying § 1.1502–13(c) to DEI and FDDEI directly could result in circular computations due to the apportionment of certain expenses on a gross income basis. In addition, the example illustrates the applicability of the attribute redetermination rule in the context of an intercompany loss. In such circumstances, the application of the allocation and apportionment rules of §§ 1.861–8 through 1.861–14T and 1.861–17 may be modified in order to achieve the same overall result within the consolidated group that would occur if the members were divisions of a single corporation.

Second, the proposed regulations provide that, for purposes of determining a member's QBAI, the basis of specified tangible property will not be affected by an intercompany transaction. See proposed § 1.1502–50(c)(1). Accordingly, an intercompany transaction cannot result in the increase or decrease of a consolidated group's aggregate amount of DTIR or, in turn, aggregate amount of deduction.

VI. Reporting Requirements

To claim a deduction under section 250 by reason of having FDII, a taxpayer must calculate its deemed intangible income, deduction eligible income, and foreign-derived deduction eligible income. None of these terms are used in other provisions of the Code, and thus pre-existing forms do not collect data relevant to determining these amounts. In addition, when calculating its deduction under section 250, a taxpayer must determine the application of the taxable income limitation of section 250(a)(2). In order to effectively administer and enforce section 250, the proposed regulations require the collection of relevant information on new or existing forms.

A domestic corporation or an individual making an election under section 962 that claims a deduction under section 250 for a taxable year must make an annual return on Form 8993, ''Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI)'' (or any successor form) for such year, providing the information required by the form. See proposed § 1.250(a)–1(d).

Certain related party transactions are reported on various information returns under sections 6038 and 6038A. Under section 6038(a)(1), U.S. persons that control foreign business entities (''controlling U.S. persons'') must report certain information with respect to those entities, which includes information listed in section 6038(a)(1)(A) through (E), as well as information that ''the Secretary determines to be appropriate to carry out the provisions of this title.'' This information is reported on Form 5471, ''Information Return of U.S. Persons With Respect To Certain Foreign Corporations,'' or Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships,'' as applicable. Section 6038A requires 25-percent foreign-owned domestic corporations (''reporting corporations'') to file certain information returns with respect to those corporations, including information related to transactions between the reporting corporation and each foreign person which is a related party to the reporting corporation. This information is reported on Form 5472, ''Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.'' In order to effectively administer and enforce section 250, the proposed regulations provide that controlling U.S. persons or reporting corporations, as described above, that claim a deduction under section 250 determined by reference to FDII with respect to amounts reported on Form 5471, 5472, or 8865 must report certain information relating to transactions with foreign business entities or related parties in accordance with sections 6038 and 6038A. See proposed §§ 1.6038–2(f)(15), 1.6038–3(g)(4), and 1.6038A–2(b)(5)(iv).

Certain partnerships and their partners also have reporting requirements under sections 6031 and 6038 with respect to partnership income. A domestic partnership is generally required to file an annual information return (Form 1065, ''U.S. Return of Partnership Income'') and provide information to its partners on Schedule K–1 (Form 1065), ''Partner's Share of Income, Deductions, Credits, etc.,'' with respect to each partner's distributive share of partnership items and other information. See section 6031 and § 1.6031(b)–1T. The proposed regulations provide that a partnership that has one or more direct or indirect partners that are domestic corporations and that is required to file a return under section 6031 must furnish on Schedule K–1 (Form 1065) the partner's share of the partnership's gross DEI, gross FDDEI, deductions that are definitely related to the partnership's gross DEI and gross FDDEI, and partnership QBAI for each taxable year in which the partnership has gross DEI, gross FDDEI, or partnership specified tangible property. See proposed § 1.250(b)–1(e)(2). Although a foreign partnership that does not have income effectively connected with a trade or business within the United States or U.S. source income is not required to file Form 1065, a U.S. person who owns a ten-percent interest or a fifty-percent interest of a foreign partnership controlled by U.S. persons is required to report certain information under section 6038. Similar to the requirements for partnership reporting on Form 1065, the proposed regulations require controlling ten-percent partners and controlling fifty-percent partners (as defined in § 1.6038–3(a)(1) and (2)) of certain foreign partnerships controlled by U.S. persons to report on Schedule K–1 (Form 8865), ''Partner's Share of Income, Deductions, Credits, etc.,'' the partner's share of the partnership's gross DEI, gross FDDEI, deductions that are definitely related to the partnership's gross DEI and gross FDDEI, and partnership QBAI. See proposed § 1.6038–3(g)(4).

VII. Applicability Dates

Proposed §§ 1.250(a)–1 through 1.250(b)–6 are proposed to apply to taxable years ending on or after March 4, 2019. See section 7805(b)(1)(B). However, the Treasury Department and the IRS recognize that these rules may apply to transactions that have occurred before the filing of these proposed regulations and that taxpayers may not be able to obtain the documentation required for transactions that have already been completed. Accordingly, for taxable years beginning on or before March 4, 2019, taxpayers may use any reasonable documentation maintained in the ordinary course of the taxpayer's business that establishes that a recipient is a foreign person, property is for a foreign use (within the meaning of proposed § 1.250(b)–4(d) and (e)), or a recipient of a general service is located outside the United States (within the meaning of proposed § 1.250(b)–5(d)(2) and (e)(2)), as applicable, in lieu of the documentation required in proposed §§ 1.250(b)–4(c)(2), (d)(3), and (e)(3) and 1.250(b)–5(d)(3) and (e)(3), provided that such documentation meets the reliability requirements described in proposed § 1.250(b)–3(d). Reasonable documentation includes, but is not limited to, documents described in or similar to the documents described in proposed §§ 1.250(b)–4(c)(2), (d)(3), and (e)(3) and 1.250(b)–5(d)(3) and (e)(3). For this purpose, reasonable documentation also includes the documentation described in the special rules for small businesses and small transactions in proposed §§ 1.250(b)–4(c)(2)(ii) and (d)(3)(ii) and 1.250(b)–5(d)(3)(ii) and (e)(3)(ii), even if the taxpayer would not otherwise qualify for the special rules. The Treasury Department and the IRS welcome comments on this special applicability date rule.

Proposed § 1.962–1(b)(1)(i)(B)(*3*), which allows individuals making an election under section 962 to take into account the section 250 deduction, is proposed to apply to taxable years of a foreign corporation ending on or after *March 4, 2019,* and with respect to a U.S. person, for the taxable year in which or with which such taxable year of the foreign corporations ends. See id. Taxpayers may rely on proposed §§ 1.250(a)–1 through 1.250(b)–6 and § 1.962–1(b)(1)(i)(B)(*3*) for taxable years ending before May 4, 2019.

Proposed § 1.1502–50 is proposed to apply to consolidated return years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. See sections 1503(a) and 7805(b)(1)(A). Taxpayers may rely on proposed § 1.1502–50 for taxable years ending before the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Proposed §§ 1.6038–2(f)(15) and 1.6038A–2(b)(5)(iv) are proposed to apply with respect to information for annual accounting periods beginning on or after May 4, 2019. See sections 6038(a)(3) and 7805(b)(1)(B). Proposed § 1.6038–3(g)(4) is proposed to apply to taxable years of a foreign partnership beginning on or after May 4, 2019. See section 7805(b)(1)(B).

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These proposed regulations have been designated as economically significant by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) and subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

A. Background

As described in part I of the Explanation of Provisions section, the section 250 deduction is an important component of the changes to the U.S. international tax system included in the Act. The purpose of the section 250 deduction is to minimize the role that U.S. tax considerations play in a domestic corporation's decision whether to service foreign markets directly or through a controlled foreign corporation (''CFC''). See Senate Explanation, at 370 (''[O]ffering similar, preferential rates for intangible income derived from serving foreign markets, whether through U.S.-based operations or through CFCs, reduces or eliminates the tax incentive to locate or move intangible income abroad, thereby limiting one margin where the Code distorts business investment decisions.''). Further, the section 250 deduction protects the U.S. tax base against base erosion incentives created by the new participation exemption system established under section 245A, discussed in part I of the Explanation of Provisions section. At the most basic level, the section 250 deduction is allowed to a domestic corporation with respect to its intangible income derived from foreign markets, resulting in a lower effective rate of U.S. tax on its global intangible low-taxed income

(''GILTI'') and foreign-derived intangible income (''FDII'').

The Act defines a corporation's FDII as the portion of its return in excess of a return on tangible assets that is derived from serving foreign markets, while it defines a corporation's GILTI as the portion of its return in excess of a return on tangible assets that is derived through its foreign affiliates. FDII and GILTI are calculated through formulas set out in sections 250 and 951A, respectively. For taxable years between 2018 and 2026, section 250 generally allows a deduction equal to the sum of 37.5 percent of the corporation's FDII plus 50 percent of its GILTI (thereafter, these deductions are reduced to 21.875 percent and 37.5 percent, respectively). These deduction rates produce comparable tax rates on income earned from serving foreign markets, regardless of where such income is earned. Different percentages are required by the Act to achieve approximate parity, given that the 80 percent limitation on foreign tax credits in section 960(d) results in additional U.S. tax.[2] More specifically, the Act defines a domestic corporation's FDII as its deemed intangible income (''DII'') multiplied by the percentage of its deduction eligible income (''DEI'') that is foreign-derived deduction eligible income (''FDDEI''). The Act defines DEI as the excess of the corporation's gross income (with certain exclusions [3]) over deductions (including taxes) properly allocable to the income. The Act defines DII as the excess (if any) of its DEI over 10 percent of its qualified business asset investment (''QBAI''), or tangible asset base. The Act defines FDDEI as DEI derived from sales of property to foreign persons for foreign use and from the provision of services to persons, or with respect to property, located outside the United States.

Finally, if the sum of a corporation's FDII and GILTI exceeds its taxable income (determined without regard to section 250), then the Act requires that the amount of FDII and GILTI for which a deduction is allowed is reduced pro rata by the excess. While the Act provides the framework for determining a domestic corporation's FDII, it grants discretion to the Secretary to establish how certain requirements, such as whether sales are for a foreign use, are satisfied. See sections 250(b)(4)(A) and (B), (b)(5)(C)(i)(II), and (b)(5)(C)(ii). In addition, the Act does not address all of the details necessary to calculate FDII, such as the allocation of expenses. Further, the Act is unclear regarding whether the section 250 deduction for FDII is available for certain foreign military sales or services and whether a section 250 deduction for GILTI is available for an individual taxpayer making a section 962 election. The following analysis describes the need for the proposed regulations and discusses the costs and benefits relative to the baseline, as well as the important alternative regulatory choices that were considered.

B. The Need for Proposed Regulations

The purpose of the proposed regulations is to provide guidance to taxpayers in determining the amount of their deduction under section 250. Section 250(c) states that ''[t]he Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of [section 250].'' Therefore, the proposed regulations seek to provide the detail, structure, and language required to implement section 250.

The proposed regulations seek to assist taxpayers in calculating the allowable section 250 deduction, for example, by providing details on how to compute FDII, and the components of FDII such as QBAI, DEI, and FDDEI. In particular, with respect to FDDEI, the proposed regulations provide guidance on which sales of property and which provisions of services generate gross income included in FDDEI, and on how to allocate expenses to such gross income to determine FDDEI.

In addition, the proposed regulations provide an ordering rule to coordinate the computation of the section 250 taxable income limitation with the taxable income limitations across other provisions of the Code.

The proposed regulations also seek to clarify that the section 250 deduction for FDII is available for certain foreign military sales and services. In addition, the proposed regulations allow a section 250 deduction to individual taxpayers with respect to GILTI if they make an election under section 962.

Finally and importantly, the proposed regulations also seek to provide clarity and guidance regarding the types of documentation required to substantiate that, in fact, sales of property are to foreign persons for a foreign use and provisions of services are to persons, or with respect to property, located outside the United States. In developing the proposed regulations, the Treasury Department and the IRS sought to balance the need for rigorous documentation to ensure compliance with the desire to minimize administrative burden and costs to taxpayers.

C. Baseline

The economic analysis that follows compares the proposed regulations to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of the proposed regulations. A no-action baseline reflects the current environment including the existing international tax regulations, prior to any amendment by the proposed regulations.

D. Cost and Benefits of the Proposed Regulations and Potential Alternatives

The proposed regulations provide certainty, clarity, and consistency in the application of the section 250 deduction by unambiguously defining terms, calculations, and acceptable forms of documentation, and also by making clear the conditions under which military sales are eligible to claim the deduction. In the absence of such guidance, the chance that different taxpayers would interpret the statute differently would be exacerbated. Similarly situated taxpayers might interpret the statutory rules pertaining to particular sales or services differently, with one taxpayer pursuing a sale that another taxpayer might decline to make, because of different interpretations of how the income would be treated under section 250. If this second taxpayer's activity were more profitable, an economic loss arises. Such situations are more likely to arise in the absence of guidance. While no guidance can curtail all differential or inaccurate interpretations of the statute, the proposed regulations will significantly mitigate the chance for such interpretations and thereby increase economic efficiency.

In general, the Treasury Department and the IRS expect that in the absence of this guidance, taxpayers would undertake fewer eligible sales and services. Thus, the proposed regulation will generally enhance U.S. sales and

[2] At the most basic level, abstracting from various complexities of the GILTI regime, the 21 percent U.S. statutory rate with a 50 percent deduction for GILTI implies that at foreign effective rates in excess of 10.5 percent (assuming no U.S. expenses), foreign tax credits are sufficient to fully offset U.S. tax on GILTI income. However, the GILTI regime limits foreign tax credits to 80 percent of their total value, so a ''baseline'' GILTI scenario, with zero expense allocations, implies that foreign tax credits can fully offset U.S. tax on GILTI at foreign effective tax rates in excess of 13.125 percent (*i.e.,* 10.5/0.8). The section 250 deduction for FDII is also intended to have a ''baseline rate'' of 13.125 percent (*i.e.,* $0.21 \times (1 - 0.375)$); typically foreign tax credits are not relevant for FDII, and there is no 80 percent limitation applied to foreign tax credits with respect to FDII.

[3] The exclusions are: (1) Subpart F inclusions (section 951); (2) GILTI; (3) financial services income (as defined in section 904(d)(2)(D)); (4) dividends received from the corporation's CFCs; (5) domestic oil and gas extraction income; and (6) foreign branch income (as defined in section 904(d)(2)(J)).

services across all eligible activities. The Treasury Department and the IRS have not made quantitative estimates of these effects.

The benefits and costs of major, specific provisions of these proposed regulations relative to the no-action baseline and alternatives to these proposed rules considered by the Treasury Department and the IRS are discussed in further detail below.

1. Documentation Requirements

The proposed regulations set forth what forms of documentation can be used to substantiate that receipts qualify as ''foreign-derived'' for purposes of FDII and the section 250 deduction. In general, the Treasury Department and the IRS weighed the compliance burden imposed on taxpayers from documentation requirements against the need for documentation to be sufficiently rigorous in establishing foreign use or the location of a person that receives a service. Because the statute provides different requirements for sales or services to qualify for a section 250 deduction and the proposed regulations provide different requirements depending on the type of sale or the type of service, and because documentation needs to be tailored to the applicable requirement, the proposed regulations specify different types of acceptable documentation for different types of transactions. In particular, documentation requirements vary with respect to the determination of whether a sale of property is to a foreign person, whether a sale of general property is for a foreign use, whether a sale of intangible property is for a foreign use, whether an individual consumer of a general service is located outside the United States, and whether a business recipient of a general service is located outside the United States.

In each case, the proposed regulations provide that the list of acceptable documentation constitutes reasonable proof that a transaction is a FDDEI transaction. In general, the types of documentation listed are readily accessible to most taxpayers. For example, with respect to demonstrating foreign use for general property, taxpayers can show evidence of shipment to a location outside the United States (presuming that the seller has no knowledge or reason to know that that information is unreliable or incorrect).

To further reduce compliance burdens, the proposed regulations allow additional flexibility for particular types of taxpayers or transactions. For example, throughout the proposed regulations, small businesses (defined in the proposed regulations as taxpayers with less than $10 million of gross receipts annually) are subject to less stringent documentation requirements because their smaller scale makes compliance more burdensome for them and makes the sophisticated tax minimization planning that can sometimes characterize abuse unlikely. Small transactions (defined in the proposed regulations as less than $5,000 of gross receipts from a single recipient) are also subject to less stringent documentation requirements, because the fixed costs of compliance likely account for a larger fraction of the profit on small transactions, and large scale abuse is less likely. The Treasury Department and the IRS request comments on whether the thresholds in the proposed regulations for small businesses and small transactions are appropriate and especially solicit comments that provide data, other evidence, and models that can enhance the rigor of the process by which such thresholds are determined. Further, the proposed regulations allow a more flexible approach for the documentation of sales of fungible general property because it is burdensome and unnecessary to track each sale of a fungible item as long as the taxpayer can establish by documentation that a certain percentage of the fungible property is for a foreign use.

In determining appropriate documentation requirements, the Treasury Department and the IRS balanced the rigor and reliability of the proof that transactions are foreign-derived with the cost to taxpayers of obtaining such documentation. The Treasury Department and the IRS considered a spectrum of trade-offs between the rigor of proof of foreign use and the burden such proof would impose on taxpayers. One option considered was allowing only the most stringent form of documentation in each case (for example, a written statement of foreign use made under penalties of perjury, plus evidence of such use) without any flexibility, but this was deemed overly burdensome for taxpayers and foreign buyers. Overly burdensome documentation requirements might shift transactions to sellers that do not need or cannot use the FDII deduction, or it may discourage foreign persons from transacting with a U.S. seller or renderer. The Treasury Department and the IRS aimed to propose rules that would not alter economic decisions because of these concerns. In addition, highly burdensome rules may lead to abuse. For example, a foreign buyer that falsifies documentation provided to a domestic corporation to allow the corporation to obtain a deduction would not be subject to penalties by the IRS. Because the incentives for compliance by foreign buyers are limited (for example, contractual liability between the parties), the burden should also be limited. In comparison, chapters 3 and 4 of subtitle A of the Code require U.S. financial institutions to withhold on certain payments to foreign persons if they do not provide documentation. Because of the enforcement mechanism built into the statutes in chapters 3 and 4 (*i.e.,* withholding), the IRS can require stricter documentation (for example, most foreign persons have to provide to the financial institution a specific IRS form, completed and signed under penalties of perjury, and in some cases must attach additional documentation on underlying payees).

The Treasury Department and the IRS also considered a system in which taxpayers submitted documentation in advance of a potential FDDEI transaction for the IRS to review and determine whether the documentation is sufficient. This option was rejected because the time involved would delay normal business transactions.

A third option that the Treasury Department and the IRS considered was to allow a taxpayer to use its discretion to determine what type of documentation is appropriate, but this would not provide sufficient clarity and assurance to taxpayers and is potentially open to abuse. For each type of transaction, the Treasury Department and the IRS chose to allow a menu of acceptable documentation options that vary according to the type of transaction, and selected documentation options that would be readily available to the taxpayer whenever possible. By allowing taxpayers to, in some cases, rely on documents already obtained in the normal course of business, the proposed regulations impose essentially zero documentation cost in such cases. The Treasury Department and the IRS request comments on the approaches and decisions relating to documentation requirements discussed in this part I(D)(1) of this Special Analyses section. See part II of this Special Analyses section regarding the Paperwork Reduction Act for additional discussion on the expected paperwork burden of these documentation requirements.

2. Computation of the Ratio of FDDEI to DEI

The proposed regulations provide guidance on the computation of the foreign-derived ratio. As noted in part I(A) of this Special Analyses section, the

Act defines a corporation's FDII as its DII multiplied by the corporation's foreign-derived ratio, which is the ratio of its DEI to its FDDEI. The proposed regulations specify that, for purposes of determining the numerator of the foreign-derived ratio, the domestic corporation must allocate expenses to its gross FDDEI. The Treasury Department and the IRS deemed this approach the most consistent with the statute by providing what the Treasury Department and the IRS have determined to be the most accurate measure of the corporation's income that is ''foreign-derived,'' through matching of expenses to gross income.

The Treasury Department and the IRS considered two other approaches; one, in which the foreign-derived ratio would be computed as the ratio of foreign versus U.S. gross receipts and another in which the ratio would be computed as foreign versus U.S. gross income. The Treasury Department and the IRS have determined that both of these approaches would result in a less accurate measure of foreign-derived net income. The Treasury Department and the IRS have determined that these alternative approaches could also reward low margin (or even loss-leading) sales or services to foreign markets by allowing a section 250 deduction due to positive gross receipts or income from foreign sources, even if the net income from foreign sources after allocated expenses is zero or negative. The Treasury Department and the IRS have determined that the chosen alternative generally provides the most accurate computation of FDII but solicit comments on whether an alternative method would be more appropriate.

3. Military Sales

Section 250 requires sales to be made to a foreign person and services to be provided to a person located outside the United States but does not include specific rules applicable to foreign military sales or services. For example, many sales of military equipment and services by a U.S. defense contractor to a foreign government are structured, pursuant to the Arms Export Control Act, as sales and services provided to the U.S. government for resale or on-service to the foreign government. See part III(B)(2) of the Explanation of Provisions section for additional discussion of the Arms Export Control Act. In effect, the contractor is selling goods and services to a foreign person, but the sale is technically made to the U.S. government. The Treasury Department and the IRS recognize that the statute is unclear as to whether certain foreign military sales and services can qualify for the section 250 deduction, due to the concern that a foreign military sale or service pursuant to the Arms Export Control Act would not qualify as a sale or service to a foreign person since the sale is actually made to the U.S. government and not to a foreign person or a person located outside the United States.

The Treasury Department and the IRS considered several options for addressing this issue. One option was not addressing this issue in the proposed regulations. This option was rejected because the Treasury Department and the IRS determined that it would perpetuate uncertainty about the application of section 250 to foreign military sales and services and could result in economic inequities if some taxpayers took the position that foreign military sales and services qualify for a section 250 deduction but other similarly-situated taxpayers took the position that such sales and services do not qualify. A second option the Treasury Department and the IRS considered was to clarify that a foreign military sale or service through the U.S. government can never qualify for a section 250 deduction. However, this option was rejected because the Treasury Department and the IRS determined that it would treat taxpayers in the defense industry inequitably relative to other industries by denying them a section 250 deduction with respect to a significant amount of their foreign market sales or services. A third option the Treasury Department and the IRS considered was to allow any sale or service to a U.S. person that acts as an intermediary and does not take on the benefits and burdens of ownership to potentially qualify for a section 250 deduction if there is an ultimate foreign recipient. This option was rejected because the Treasury Department and the IRS determined that such a broad exception would allow multiple deductions in instances where both the seller and the intermediary buyer are U.S. taxpayers, because both the seller and the intermediary could potentially qualify for a section 250 deduction. In contrast, the U.S. government is not a taxpayer eligible for a section 250 deduction so only the seller would benefit from a special rule for military exports. Furthermore, determining whether a party is an ''intermediary'' for this purpose would require a complex facts and circumstances analysis of whether the party had the benefits and burdens of ownership, which could create uncertainty in the application of section 250 with respect to any transaction in which property or services are sold for resale or on-service.

The proposed regulations provide uniform tax treatment across the economy by generally allowing all sectors to claim the section 250 deduction, subject to other applicable rules. Otherwise, certain sales and services by the defense industry that are clearly intended for a foreign use, and that satisfy all other requirements under section 250, would be denied the benefit solely as a result of such sales or services being first made to the U.S. government under the Arms Export Control Act, whereas other industries that are not subject to the Arms Export Control Act would not have this concern. Therefore, the proposed regulations provide that foreign military sales or services to the U.S. government under the Arms Export Control Act would be treated as a sale of property or provision of a service to a foreign person. This rule seeks to provide uniform tax treatment between the defense sector and other sectors of the U.S. economy with respect to sales and services that are clearly meant for a foreign use.

4. Section 962

The section 250 deduction for FDII and GILTI is available only to domestic corporations. However, Congress enacted section 962 in Public Law 89–834 (1962) to ensure that individuals' tax burdens with respect to undistributed foreign earnings of their CFCs are comparable with their tax burdens if they had held their CFCs through a domestic corporation. See S. Rept. 1881, 87th Cong., 2d Sess. 92 (1962). Allowing a section 250 deduction with respect to GILTI of an individual (including an individual that is a shareholder of an S corporation or a partner in a partnership) that makes an election under section 962 provides comparable treatment for this income.

The Treasury Department and the IRS considered two options with respect to extending the section 250 deduction to individuals (which include, for this purpose, individual partners in partnerships and individual shareholders in S corporations) that make an election under section 962. The first option considered was to not allow the deduction for individuals. Not allowing the section 250 deduction would require that individuals that own their CFCs directly (or indirectly through a partnership or S corporation) transfer the stock of their CFCs to new U.S. corporations in order to obtain the benefit of the section 250 deduction. The Treasury Department and the IRS determined that such reorganization

would be economically costly, both in terms of legal fees and substantive economic costs related to organizing and operating new corporate entities. The second option considered was to give individuals the section 250 deduction with respect to their GILTI if they make the section 962 election. The Treasury Department and the IRS determined that allowing individuals the section 250 deduction would improve economic efficiency by preventing the need for costly restructuring solely for the purpose of tax savings. This is the option adopted by the Treasury Department and the IRS in the proposed regulations. The Treasury Department and the IRS welcome comments on whether an alternative approach would be more appropriate.

II. Paperwork Reduction Act

The proposed regulations provide the authority for the IRS to require taxpayers to file certain forms (identified and discussed in further detail below) with the IRS to obtain the benefit of the section 250 deduction. In order to provide advance notice and solicit public comment, the IRS released drafts of the relevant forms in 2018 based on the statutory language and requested comments. The IRS received no comments on the forms during the comment period. The 2018 versions of the forms that were released in 2018 are available at *https://www.irs.gov/forms-instructions.* The Treasury Department and the IRS are not proposing to make any changes to those forms through these regulations. The Treasury Department and the IRS are also soliciting public comment on the forms and paperwork requirements in general discussed in the proposed regulations. The Treasury Department and the IRS specifically request comments on whether there are (1) ways to reduce the burdens associated with the forms, (2) opportunities to clarify the forms or associated instructions, or (3) ways to improve the quality of the collections in general.

The proposed regulations require all taxpayers with a section 250 deduction to file one new form (Form 8993). The proposed regulations also authorize the IRS to request additional information on several existing forms (Forms 1065 (Schedule K–1), 5471, 5472, and 8865) if the filer of the form has a deduction under section 250. With respect to Forms 5471, 5472, and 8993, the proposed regulations do not specify the information that will be required from taxpayers that have a section 250 deduction, but instead provide that this information will be prescribed by the forms and instructions. With respect to Forms 1065 (Schedule K–1) and 8865, the proposed regulations specify the additional information that must be provided. For additional explanation of the reporting requirements contained in these proposed regulations, see part VI of the Explanation of Provisions section. The rest of this part II of the Special Analyses section provides additional details on forms and information about the paperwork burden.

The information collection burdens under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (''PRA'') from the proposed regulations are in proposed §§ 1.250(a)–1(d), 1.250(b)–1(e)(2), 1.6038–2(f)(15), 1.6038–3(g)(4), and 1.6038A–2(b)(5)(iv).

The collection of information in proposed § 1.250(a)–1(d) would be mandatory for each domestic corporation claiming a deduction under section 250 as well as for any individual making an election under section 962 that claims a deduction under section 250 attributable to the individual's GILTI. The collection of information in proposed § 1.250(a)–1(d) is pursuant to sections 6001 and 6011 and would be satisfied by submitting a new reporting form, Form 8993, ''Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI),'' with an income tax return. For purposes of the PRA, the reporting burden associated with proposed § 1.250(a)–1(d) will be reflected in the PRA submission for new Form 8993 (OMB control numbers 1545–0123 in the case of business taxpayers, and 1545–0074 in the case of individual taxpayers).

The collection of information in proposed § 1.250(b)–1(e)(2) would require each partnership to provide to each of its partners the partner's distributive share of gross DEI, gross FDDEI, deductions that are definitely related to the partnership's gross DEI and gross FDDEI, and partnership QBAI. For purposes of the PRA, the reporting burden associated with proposed § 1.250(b)–1(e)(2) would be reflected in the PRA submission for Form 1065 (OMB control number 1545–0123).

The collection of information in proposed § 1.6038–2(f)(15) would require every U.S. person that controls a foreign corporation during an annual accounting period and files Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations,'' for that period. The collection of information in proposed § 1.6038–2(f)(15) would be satisfied by providing information about the section 250 deduction for the corporation's accounting period as Form 5471 and its instructions may prescribe. For purposes of the PRA, the reporting burden on the applicable business taxpayers associated with proposed § 1.6038–2(f)(15) will be reflected in the PRA submission for Form 5471 (OMB control number 1545–0123).

The collection of information in proposed § 1.6038–3(g)(4) would be mandatory for every U.S. person that controls a foreign partnership during the partnership tax year and files Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships,'' for that period. The collection of information in proposed § 1.6038–3(g)(4) would require a controlling ten-percent partner or controlling fifty-percent partner to provide to the IRS on Form 8865 its share of the partnership's gross DEI, gross FDDEI, deductions that are definitely related to the partnership's gross DEI and gross FDDEI, and partnership QBAI. For purposes of the PRA, the reporting burden associated with proposed § 1.6038–3(g)(4) will be reflected in the PRA submission for Form 8865 (OMB control number 1545–1668).

The collection of information in proposed § 1.6038A–2(b)(5)(iv) would be mandatory for every reporting corporation that files Form 5472, ''Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business,'' for the tax year. The collection of information in proposed § 1.6038A–2(b)(5)(iv) would be satisfied by providing information about the section 250 deduction for the tax year as Form 5472 and its instructions may prescribe. For purposes of the PRA, the reporting burden associated with proposed § 1.6038A–2(b)(5)(iv) will be reflected in the PRA submission for Form 5472 (OMB control number 1545–0123).

The tax forms that will be created or revised as a result of the information collections in the proposed regulations, as well as the estimated number of respondents, are as follows:

RELATED NEW OR REVISED TAX FORMS

	New	Revision of existing form	Number of respondents (estimated)
Form 8993	✓		75,000–350,000
Form 1065, Schedule K–1 (for corporate partners only, revision starting TY2020)		✓	15,000–45,000
Form 5471		✓	10,000–20,000
Form 8865		✓	<10,000
Form 5472		✓	50,000–80,000

Source: RAAS:CDW and ITA

The numbers of respondents in the Related New or Revised Tax Forms table were estimated by the Research, Applied Analytics and Statistics Division (''RAAS'') of the IRS from the Compliance Data Warehouse (''CDW''), using tax years 2014 through 2016; as well as based on export data from the International Trade Administration (''ITA'') for 2015 and 2016. Tax data for 2017 are not yet available due to extended filing dates. Data for Form 8993 represent preliminary estimates of the total number of taxpayers that may be required to file the new Form 8993. The upper bound estimate reflects the total number of exporting companies reported in the ITA data, as well as the CDW-based counts of individuals reporting related party transactions. The lower bound estimate reflects the CDW-based counts of individual and corporate taxpayers reporting related party transactions. Data for each of the Forms 1065, 5471, 5472, and 8865 represent preliminary estimates of the total number of taxpayers that are expected to file these revised forms regardless of whether that taxpayer must also file Form 8993.

The current status of the Paperwork Reduction Act submissions related to the tax forms that will be revised as a result of the information collections in the proposed regulations is provided in the accompanying table. As described above, the reporting burdens associated with the information collections in the proposed regulations are included in the aggregated burden estimates for OMB control numbers 1545–0123 (which represents a total estimated burden time for all forms and schedules for corporations of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017)), 1545–0074 (which represents a total estimated burden time, including all other related forms and schedules for individuals, of 1.784 billion hours and total estimated monetized costs of $31.764 billion ($2017)), and 1545–1668 (which represents a total estimated burden time for all related forms and schedules for other filers, in particular trusts and estates, of 281,974 hours and total estimated monetized costs of $25.107 million ($2017)). The overall burden estimates provided for the OMB control numbers below are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be created or revised as a result of the information collections in the proposed regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the proposed regulations. These burdens have been reported for other regulations related to the taxation of cross-border income and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burden that international tax provisions imposed prior to the Act. No burden estimates specific to the forms affected by the proposed regulations are currently available. The Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden.

Form	Type of filer	OMB Number(s)	Status
Form 8993 (NEW)	Business (NEW Model)	1545–0123	Published in the **Federal Register** Notice (FRN) on 10/11/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.*		
	Individual (NEW Model)	1545–0074	Limited Scope submission (1040 only). Full ICR submission for 2019 for all forms in 3/2019. 60 Day FRN not published yet for full collection for 2019.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201808-1545-031.*		
Form 1065, Schedule K–1	Business (NEW Model)	1545–0123	Published in the FRN on 10/11/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.*		
Form 5471	Business (NEW Model)	1545–0123	Published in the FRN on 10/11/18. Public Comment period closed on 12/10/18.

Form	Type of filer	OMB Number(s)	Status
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.*		
Form 8865	All other filers (mainly trusts and estates) (Legacy system).	1545–1668	Published in the FRN on 10/01/18. Public Comment period closed on 11/30/18.
	Link: *https://www.federalregister.gov/documents/2018/10/01/2018-21288/proposed-collection-comment-request-for-regulation-project.*		
Form 5472	Business (NEW Model)	1545–0123	Published in the FRN on 10/11/18. Public Comment period closed on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.*		

III. Regulatory Flexibility Act

It is hereby certified that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Although the Treasury Department and the IRS project that the proposed regulations may affect a substantial number of small entities, the economic impact on small entities as a result of this notice of proposed rulemaking is not expected to be significant.

The small business entities that are subject to section 250 and this notice of proposed rulemaking are small domestic corporations claiming a deduction under section 250 based on their FDII and GILTI. Pursuant to proposed § 1.250(a)–1(d), taxpayers are required to file new Form 8993 to compute the amount of the eligible deduction for FDII and GILTI under section 250. The Treasury Department and the IRS estimate that there are between 75,000 and 350,000 respondents of all sizes that are likely to file Form 8993. The lower end estimate comes from IRS-collected data on related party transactions that are indicative of exports to related parties. These data provide a lower bound for the number of taxpayers that export since related party exports are only a part of total exports. The IRS does not collect information on exports to third parties; therefore, International Trade Administration (''ITA'') statistics of the number of companies engaged in export activities are used.[4] The ITA data provide the upper bound of the estimate of affected taxpayers. The Treasury Department and the IRS welcome comments on the analysis of number of entities affected, particularly on how such analysis should take into account different industries. Additionally, under proposed § 1.250(b)–1(e), a partnership that has one or more direct or indirect partners that are domestic corporations and that is required to file a return under section 6031 must furnish on Schedule K–1 (Form 1065) certain information that would allow the partner to accurately calculate its FDII. The Treasury Department and the IRS estimate the number of domestic corporations that are direct or indirect partners in a partnership affected by proposed § 1.250(a)–1(e) is between 15,000 and 45,000.

In order to substantiate the amount of the section 250 deduction on Form 8993 related to the calculation of FDII for the sale of property or the provision of a service, the proposed regulations in §§ 1.250(b)–3 through 1.250(b)–5 prescribe different types of documentation that should be obtained for each transaction. As discussed in the Explanation of Provisions section of the preamble, the proposed regulations provide several types of permissible documentation for the purpose of determining the amount of a domestic corporation's income that is considered foreign-derived. For example, in the case of a sale of general property, the seller must (1) obtain documentation that establishes the recipient's status as a foreign person, such as a written statement by the recipient indicating that the recipient is a foreign person; and (2) obtain documentation that the property is for foreign use, such as proof of shipment of the property to a foreign address.

To alleviate the burden of documentation on many small businesses and small transactions, the proposed regulations allow a seller that has less than $10,000,000 of gross receipts in the prior taxable year, or less than $5,000 in gross receipts from a single recipient during the current taxable year, to treat a recipient as a foreign person if the seller has a shipping address for the recipient that is outside the United States. The small business and small transaction exceptions to establish foreign person status are applicable to sales of both general property and intangible property. Furthermore, to establish that general property is for a foreign use, certain small businesses and businesses with small transactions may rely on the existence of a foreign shipping address for the recipient instead of obtaining documentation. The proposed regulations also contain small business and small transaction exceptions related to general services provided to consumers and business recipients. The Treasury Department and the IRS anticipate that a substantial share of small entities claiming a section 250 deduction will qualify for the small business and small transactions exceptions described above, thereby significantly reducing the overall burden of the proposed regulations on small entities. The Treasury Department and the IRS solicit comments on this issue.

The reporting burden for completing Form 8993 is estimated to average 24 hours for all affected entities, regardless of size. The reporting burden on small entities (those with receipts below $10 million in RAAS calculations) is estimated to average 15 hours. Based on the monetized hourly burden reported below, the annual per-entity reporting burden will be $1,067. The Treasury Department and the IRS project that compliance with the documentation requirements in the proposed regulations will have a de minimis or limited impact on all affected entities, regardless of size, as the majority of taxpayers will be able to use records that are maintained in the normal course of business. Small business entities that have less than $10 million of gross receipts in the prior taxable year, or less than $5,000 in gross receipts from a single recipient during the current taxable year, are expected to experience 0 to 5 minutes, with an average of 2.5 minutes, of recordkeeping

[4] ITA data was accessed at *http://tse.export.gov/EDB/SelectReports.aspx?DATA=ExporterDB* in December, 2018.

per transaction recipient. Taxpayers ineligible to qualify for either exception are expected to experience 0 to 30 minutes, with an average of 15 minutes, of recordkeeping per transaction recipient. These hourly estimates were derived by RAAS based the existence of exceptions available to small businesses, as well as based on the previously noted overlap between acceptable documentation and records kept in the normal course of business, suggesting limited impact. The hourly estimates include all associated activities: recordkeeping, tax planning, learning about the law, gathering tax materials, form completion and submissions, and time with a tax preparer or use of tax software. The estimated monetized burden for compliance is $71.14 per hour, a figure computed from the IRS Business Taxpayer Burden model which assigns each firm in the micro data a monetization rate based on total revenue and assets reported on their tax return. See Tax Compliance Burden (John Guyton et al., July 2018) at *https://www.irs.gov/pub/irs-soi/d13315.pdf*. The assigned monetization rates include, in addition to wages, employer non-wage costs such as employment taxes, benefits, and overhead. For these reasons, the Treasury Department and the IRS have determined that the requirements in proposed §§ 1.250(a)–1 and 1.250(b)–3 through 1.250(b)–6 will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required with respect to proposed §§ 1.250(a)–1 and 1.250(b)–3 through 1.250(b)–6.

The small business entities that are subject to proposed § 1.6038–2(f)(15) are domestic small business entities that are controlling U.S. shareholders of a foreign corporation and that claim a deduction under section 250 by reason of having FDII. For these purposes, a domestic small business entity controls a foreign corporation by owning more than 50 percent of that foreign corporation's stock, measured either by value or voting power. The data to assess the number of small entities potentially affected by § 1.6038–2(f)(15) are not readily available. However, businesses that are controlling U.S. shareholders of a foreign corporation are generally not small businesses because the ownership of sufficient stock in a foreign corporation in order to be a controlling U.S. shareholder generally entails significant resources and investment. Therefore, the Treasury Department and the IRS project that a substantial number of domestic small business entities will not be subject to proposed § 1.6038–2(f)(15). Consequently, the Treasury Department and the IRS have determined that proposed § 1.6038–2(f)(15) will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required with respect to the collection of information requirements of proposed § 1.6038–2(f)(15).

The small business entities that are subject to proposed § 1.6038–3(g)(4) are domestic small entities that are controlling fifty-percent partners or controlling ten-percent partners of a foreign partnership and that claim a deduction under section 250 by reason of having FDII. A controlling fifty-percent partner is a U.S. person that owns more than a fifty-percent interest in a foreign partnership. A controlling ten-percent partner is a U.S. person that owns a ten-percent or greater interest in a foreign partnership that is controlled by U.S. persons owning at least a ten-percent interest. For these purposes, a fifty percent interest or ten percent interest in a partnership is an interest equal to fifty percent or ten percent of the capital or profits interest in a partnership, or an interest to which fifty percent or ten percent of the deductions or losses of the partnership are allocated, respectively. The data to assess the number of small entities potentially affected by proposed § 1.6038–3(g)(4) are not readily available. However, businesses that are controlling fifty-percent partners or controlling ten-percent partners of a foreign partnership are generally not small businesses because the ownership of a sufficient interest in a foreign partnership in order to be a controlling fifty-percent partner or a controlling ten-percent partner generally entails significant resources and investment. Therefore, the Treasury Department and the IRS have determined that proposed § 1.6038–3(g)(4) will not affect a substantial number of domestic small business entities. Moreover, any increase in costs imposed by the rule is likely to be small, relative to total costs, for any entity. Consequently, the Treasury Department and the IRS have determined that proposed § 1.6038–3(g)(4) will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required with respect to the collection of information requirements of proposed § 1.6038–3(g)(4).

The small business entities that are subject to proposed § 1.6038A–2(b)(5)(iv) are domestic small entities that are at least 25-percent foreign-owned, by vote or value, that claim a deduction under section 250 by reason of having FDII. The data to assess the number of small entities potentially affected by proposed § 1.6038A–2(b)(5)(iv) is not readily available. However, domestic corporations that are at least 25-percent foreign-owned are generally not small businesses because a foreign person's ownership of at least 25 percent of a domestic corporation, whether by vote or value, generally entails significant resources and investment, and a foreign person is unlikely to expend such resources to invest in a small domestic entity. Therefore, the Treasury Department and the IRS project that a substantial number of domestic small business entities will not be subject to proposed § 1.6038A–2(b)(5)(iv). Consequently, the Treasury Department and the IRS have determined that that proposed § 1.6038A–2(b)(5)(iv) will not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required with respect to the collection of information requirements of proposed § 1.6038A–2(b)(5)(iv).

Notwithstanding this certification, the Treasury Department and the IRS invite comments from the public on both the number of entities affected and the economic impact of this proposed rule on small entities.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Executive Order.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. Comments are requested on all aspects of the proposed regulations. In addition, the Treasury Department and the IRS solicit comments regarding the appropriateness of the numerical thresholds in the following provisions, along with data, other evidence, and models that can enhance the rigor of the process by which such thresholds are determined: proposed § 1.250(b)–4(c)(2)(ii), (d)(2)(iii)(C), (d)(2)(iv), (d)(3)(ii) and (iii); proposed § 1.250(b)–5(c)(5), (c)(6), (d)(3)(ii), (e)(3)(ii), and (h); and proposed § 1.250(b)–6(c)(1)(ii) and (d)(2).

All comments will be available at *http://www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Kenneth Jeruchim of the Office of the Associate Chief Counsel (International) and Michelle A. Monroy and Austin Diamond-Jones of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov*.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order for §§ 1.250–1 and 1.250(a)–1 through 1.250(b)–6, revising the entries for §§ 1.1502–12 and 1.1502–13, and adding an entry in numerical order for § 1.1502–50 to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Sections 1.250–1 and 1.250(a)–1 through 1.250(b)–6 also issued under 26 U.S.C. 250(c).

Sections 1.250(a)–1 and 1.250(b)–1 also issued under 26 U.S.C. 6001 and 6011(a).

* * * * *

Section 1.1502–12 also issued under 26 U.S.C. 250(c) and 1502.

Section 1.1502–13 also issued under 26 U.S.C. 250(c) and 1502.

* * * * *

Section 1.1502–50 also issued under 26 U.S.C. 250(c) and 1502.

* * * * *

■ **Par. 2.** Sections 1.250–0, 1.250–1, and 1.250(a)–1 through 1.250(b)–6 are added to read as follows:

Sec.

* * * * *

1.250–0 Table of contents.
1.250–1 Introduction.
1.250(a)–1 Deduction for foreign-derived intangible income and global intangible low-taxed income.
1.250(b)–1 Computation of foreign-derived intangible income (FDII).
1.250(b)–2 Qualified business asset investment.
1.250(b)–3 FDDEI transactions.
1.250(b)–4 FDDEI sales.
1.250(b)–5 FDDEI services.
1.250(b)–6 Related party transactions.

* * * * *

§ 1.250–0 Table of contents.

This section lists the table of contents for §§ 1.250–1 through 1.250(b)–6.

§ 1.250–1 Introduction.

(a) Overview.
(b) Applicability dates.

§ 1.250(a)–1 Deduction for foreign-derived intangible income and global intangible low-taxed income.

(a) Scope.
(b) Allowance of deduction.
(1) In general.
(2) Taxable income limitation.
(3) Reduction in deduction for taxable years after 2025.
(4) Treatment under section 4940.
(c) Definitions.
(1) Domestic corporation.
(2) Foreign-derived intangible income.
(3) Global intangible low-taxed income.
(4) Section 250(a)(2) amount.
(d) Reporting requirement.
(e) Determination of deduction for consolidated groups.
(f) Examples.

§ 1.250(b)–1 Computation of foreign-derived intangible income (FDII).

(a) Scope.
(b) Definition of foreign-derived intangible income.
(c) Definitions.
(1) Controlled foreign corporation.
(2) Deduction eligible income.
(3) Deemed intangible income.
(4) Deemed tangible income return.
(5) Dividend.
(6) Domestic corporation.
(7) Domestic oil and gas extraction income.
(8) FDDEI sale.
(9) FDDEI service.
(10) FDDEI transaction.
(11) Foreign branch income.
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(17) Modified affiliated group.
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(ii) Special rule for noncorporate entities.
(iii) Definition of control.
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(19) Related party.
(20) United States shareholder.
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(ii) Determination of deductions to allocate.
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(1) In general.
(2) Reporting requirement for partnership with domestic corporate partners.

(3) Examples.
(f) Determination of foreign-derived intangible income for consolidated groups.
(g) Determination of foreign-derived intangible income for tax-exempt corporations.

§ 1.250(b)–2 Qualified business asset investment.

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(b) Definition of qualified business asset investment.
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(1) In general.
(2) Tangible property.
(d) Dual use property.
(1) In general.
(2) Dual use ratio.
(3) Example.
(e) Determination of adjusted basis of specified tangible property.
(1) In general.
(2) Effect of change in law.
(3) Specified tangible property placed in service before enactment of section 250.
(f) Special rules for short taxable years.
(1) In general.
(2) Determination of quarter closes.
(3) Reduction of qualified business asset investment.
(4) Example.
(g) Partnership property.
(1) In general.
(2) Definitions related to partnership QBAI.
(i) In general.
(ii) Partnership QBAI ratio.
(iii) Partnership specified tangible property.
(3) Determination of adjusted basis.
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(h) Anti-avoidance rule for certain transfers of property.
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(3) Per se rules for certain transactions.
(4) Definitions related to anti-avoidance rule.
(i) Disqualified period.
(ii) FDII-eligible related party.
(iii) Specified related party.
(iv) Transfer.
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§ 1.250(b)–3 FDDEI transactions.

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§ 1.250(b)–4 FDDEI sales.

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(A) In general.
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(3) Documentation of foreign use of general property.
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(B) Special rule for small transactions.
(iii) Sales of fungible mass of general property.
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(e) Foreign use for intangible property.
(1) In general.
(2) Determination of foreign use.
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(ii) Sales in exchange for periodic payments.
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(3) Documentation of foreign use of intangible property.
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§ 1.250(b)–5 FDDEI services.

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(c) Definitions.
(1) Benefit.
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(3) Consumer.
(4) General service.
(5) Property service.
(6) Proximate service.
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(d) General services provided to consumers.
(1) In general.
(2) Location of consumer.
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(A) Special rule for small businesses.
(B) Special rule for small transactions.
(e) General services provided to business recipients.
(1) In general.
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(i) In general.
(A) Determination of business operations that benefit from the service.
(B) Determination of amount of benefit conferred on operations outside the United States.
(ii) Location of business recipient's operations.
(3) Documentation of location of business recipient.
(i) In general.
(ii) Special rules.
(A) Special rule for small businesses.
(B) Special rule for small transactions.
(4) Related parties.
(5) Examples.
(f) Proximate services.
(g) Property services.
(h) Transportation services.

§ 1.250(b)–6 Related party transactions.

(a) Scope.
(b) Definitions.
(1) Foreign related party.
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(3) Related party sale.
(4) Related party service.
(5) Unrelated party transaction.
(c) Related party sales.
(1) In general.
(i) Sale of property in an unrelated party transaction.
(ii) Use of property in an unrelated party transaction.
(2) Treatment of foreign related party as seller or renderer.
(3) Transactions between a foreign related party and other foreign related parties.
(4) Example.
(d) Related party services.
(1) In general.
(2) Substantially similar services.
(3) Location of recipient of services provided by related party.
(4) Examples.

§ 1.250–1 Introduction.

(a) *Overview.* Sections 1.250(a)–1 through 1.250(b)–6 provide rules to determine a domestic corporation's section 250 deduction. Section 1.250(a)–1 provides rules to determine the amount of a domestic corporation's deduction for foreign-derived intangible income and global intangible low-taxed income. Section 1.250(b)–1 provides general rules and definitions regarding the computation of foreign-derived intangible income. Section 1.250(b)–2 provides rules for determining a domestic corporation's qualified business asset investment. Section 1.250(b)–3 provides general rules and definitions regarding the determination of gross foreign-derived deduction eligible income. Section 1.250(b)–4 provides rules regarding the determination of gross foreign-derived deduction eligible income from the sale of property. Section 1.250(b)–5 provides rules regarding the determination of gross foreign-derived deduction eligible income from the provision of a service. Section 1.250(b)–6 provides rules regarding the sale of property or provision of a service to a related party.

(b) *Applicability dates.* Sections 1.250(a)–1 through 1.250(b)–6 apply to taxable years ending on or after March 4, 2019. However, for taxable years beginning on or before March 4, 2019, taxpayers may use any reasonable documentation maintained in the ordinary course of the taxpayer's business that establishes that a recipient is a foreign person, property is for a foreign use (within the meaning of § 1.250(b)–4(d) and (e)), or a recipient of a general service is located outside the United States (within the meaning of § 1.250(b)–5(d)(2) and (e)(2)), as applicable, in lieu of the documentation required in §§ 1.250(b)–4(c)(2), (d)(3), and (e)(3) and 1.250(b)–5(d)(3) and (e)(3), provided that such documentation meets the reliability requirements described in § 1.250(b)–3(d).

§ 1.250(a)–1 Deduction for foreign-derived intangible income and global intangible low-taxed income.

(a) *Scope.* This section provides rules for determining the amount of a domestic corporation's deduction for foreign-derived intangible income and global intangible low-taxed income. Paragraph (b) of this section provides general rules for determining the amount of the deduction. Paragraph (c) of this section provides definitions relevant for determining the amount of the deduction. Paragraph (d) of this section provides reporting requirements for a domestic corporation claiming the deduction. Paragraph (e) of this section provides a rule for determining the amount of the deduction of a member of a consolidated group. Paragraph (f) of this section provides examples illustrating the application of this section.

(b) *Allowance of deduction*—(1) *In general.* A domestic corporation is allowed a deduction for any taxable year equal to the sum of—

(i) 37.5 percent of its foreign-derived intangible income for the year; and

(ii) 50 percent of—

(A) Its global intangible low-taxed income for the year; and

(B) The amount treated as a dividend received by the corporation under section 78 which is attributable to its global intangible low-taxed income for the year.

(2) *Taxable income limitation.* In the case of a domestic corporation with a section 250(a)(2) amount for a taxable year, for purposes of applying paragraph (b)(1) of this section for the year—

(i) The corporation's foreign-derived intangible income for the year (if any) is reduced (but not below zero) by an amount that bears the same ratio to the corporation's section 250(a)(2) amount that the corporation's foreign-derived intangible income for the year bears to the sum of the corporation's foreign-derived intangible income and global intangible low-taxed income for the year; and

(ii) The corporation's global intangible low-taxed income for the year (if any) is reduced (but not below zero) by the excess of the corporation's section 250(a)(2) amount over the amount of the reduction described in paragraph (b)(2)(i) of this section.

(3) *Reduction in deduction for taxable years after 2025.* For any taxable year of a domestic corporation beginning after December 31, 2025, paragraph (b)(1) of this section applies by substituting—

(i) 21.875 percent for 37.5 percent in paragraph (b)(1)(i) of this section; and

(ii) 37.5 percent for 50 percent in paragraph (b)(1)(ii) of this section.

(4) *Treatment under section 4940.* For purposes of section 4940(c)(3)(A), a deduction under section 250(a) is not treated as an ordinary and necessary expense paid or incurred for the production or collection of gross investment income.

(c) *Definitions.* The following definitions apply for purposes of this section.

(1) *Domestic corporation.* The term *domestic corporation* has the meaning set forth in section 7701(a), but does not include a regulated investment company (as defined in section 851), a real estate investment trust (as defined in section 856), or an S corporation (as defined in section 1361).

(2) *Foreign-derived intangible income.* The term *foreign-derived intangible income* has the meaning set forth in § 1.250(b)–1(b).

(3) *Global intangible low-taxed income.* The term *global intangible low-taxed income* means, with respect to a domestic corporation for a taxable year, the sum of the corporation's GILTI inclusion amount under § 1.951A–1(c) for the taxable year and the corporation's distributive share of any U.S. shareholder partnership's GILTI inclusion amount under § 1.951A–5(b)(2).

(4) *Section 250(a)(2) amount.* The term *section 250(a)(2) amount* means, with respect to a domestic corporation for a taxable year, the excess (if any) of the sum of the corporation's foreign-derived intangible income and global intangible low-taxed income (determined without regard to section 250(a)(2) and paragraph (b)(2) of this section), over the corporation's taxable income determined with regard to all items of income, deduction, or loss, except for the deduction allowed under section 250 and this section. Therefore, for example, a domestic corporation's taxable income under the previous sentence is determined taking into account the application of sections 163(j) and 172(a). For a corporation that is subject to the unrelated business income tax under section 511, taxable income is determined only by reference to that corporation's unrelated business taxable income defined under section 512.

(d) *Reporting requirement.* Each domestic corporation (or individual making an election under section 962) that claims a deduction under section 250 for a taxable year must make an annual return on Form 8993, ''Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI)'' (or any successor form) for such year, setting forth the information, in such form and manner, as Form 8993 (or any successor form) or its instructions prescribe. Returns on Form 8993 (or any successor form) for a taxable year must be filed with the domestic corporation's (or in the case of a section 962 election, the individual's) income tax return on or before the due date (taking into account extensions) for filing the corporation's (or in the case of a section 962 election, the individual's) income tax return.

(e) *Determination of deduction for consolidated groups.* A member of a consolidated group (as defined in § 1.1502–1(h)) determines its deduction

under section 250(a) and this section under the rules provided in § 1.1502–50(b).

(f) *Examples.* The following examples illustrate the application of this section. For purposes of the examples, it is assumed that DC is a domestic corporation that is not a member of a consolidated group and the taxable year of DC begins after 2017 and before 2026.

(1) *Example 1: Application of the taxable income limitation*—(i) *Facts.* For the taxable year, without regard to section 250(a)(2) and paragraph (b)(2) of this section, DC has foreign-derived intangible income of $100x and global intangible low-taxed income of $300x. DC's taxable income (without regard to section 250(a) and this section) is $300x.

(ii) *Analysis.* DC has a section 250(a)(2) amount of $100x, which is equal to the excess of the sum of DC's foreign-derived intangible income and global intangible low-taxed income of $400x ($100x + $300x) over its taxable income of $300x. As a result, DC's foreign-derived intangible income and global intangible low-taxed income are reduced, in the aggregate, by $100x under section 250(a)(2) and paragraph (b)(2) of this section for purposes of calculating DC's deduction allowed under section 250(a)(1) and paragraph (b)(1) of this section. DC's foreign-derived intangible income is reduced by $25x, the amount that bears the same ratio to the section 250(a)(2) amount ($100x) as DC's foreign-derived intangible income ($100x) bears to the sum of DC's foreign-derived intangible income and global intangible low-taxed income ($400x). DC's global intangible low-taxed income is reduced by $75x, which is the remainder of the section 250(a)(2) amount ($100x − $25x). Therefore, for purposes of calculating its deduction under section 250(a)(1) and paragraph (b)(1) of this section, DC's foreign-derived intangible income is $75x ($100x − $25x) and its global intangible low-taxed income is $225x ($300x − $75x). Accordingly, DC is allowed a deduction for the taxable year under section 250(a)(1) and paragraph (b)(1) of this section of $140.63x ($75x × 0.375 + $225x × 0.50).

(2) *Example 2: Interaction of sections 163(j), 172, and 250*—(i) *Facts.* For the taxable year, DC has gross DEI (as defined in § 1.250(b)–1(c)(14)) and gross FDDEI (as defined in § 1.250(b)–1(c)(15)) of $300x. DC has no income for the taxable year other than income included in gross DEI. DC also has a net operating loss carryover to the taxable year under section 172(b) of $130x and business interest (as defined in section 163(j)(5), without regard to any carryforwards described in section 163(j)(2)) of $100x. Under § 1.250(b)–1(d)(2), all of DC's interest expense is allocable to gross FDDEI and the net operating loss carryover, to the extent absorbed in the taxable year, is allocable to gross FDDEI. DC has no other allowable deductions, qualified business asset investment (as defined in § 1.250(b)–2(b)), or global intangible low-taxed income for the taxable year. DC has no floor plan financing interest (as defined in section 163(j)(9)) for the taxable year and no business interest income (as defined in section 163(j)(6)) for the taxable year.

(ii) *Analysis*—(A) *Calculation of tentative section 250 deduction for purposes of section 163(j).* First, for purposes of applying section 163(j), the amount of the deduction allowed to DC under section 250(a)(1) is determined without regard to the application of section 163(j) and the section 163(j) regulations, without regard to section 172, and without regard to section 250(a)(2) and paragraph (b)(2) of this section (*tentative section 250 deduction*). See § 1.163(j)–1(b)(37)(ii); see also § 1.250(b)–1(d)(2)(ii). Therefore, solely for purposes of calculating DC's tentative section 250 deduction, DC's allowable deductions under § 1.250(b)–1(d)(2)(ii) for computing its foreign-derived intangible income are $100x, the amount of its business interest before the application of section 163(j). DC's deduction eligible income (as defined in § 1.250(b)–1(c)(2)) is $200x, the excess of its gross DEI (as defined in § 1.250(b)–1(c)(14)) of $300x, over its deductions properly allocable to gross DEI of $100x. DC's foreign-derived deduction eligible income (as defined in § 1.250(b)–1(c)(12)) is also $200x, the excess of its gross FDDEI of $300x over its deductions properly allocable to gross FDDEI of $100x. DC's foreign-derived ratio (as defined in § 1.250(b)–1(c)(13)) is 100%, which is the ratio of DC's foreign-derived deduction eligible income of $200x to DC's deduction eligible income of $200x. DC's deemed intangible income (as defined § 1.250(b)–1(c)(3)) is $200x, the excess of its deduction eligible income of $200x over its qualified business asset investment of $0. Therefore, DC's foreign-derived intangible income for purposes of the tentative section 250 deduction is $200x, which is equal to DC's deemed intangible income of $200x multiplied by its foreign-derived ratio of 100%. Accordingly, DC's tentative section 250 deduction is $75x ($200x × 0.375).

(B) *Calculation of disallowance under section 163(j)(1).* Second, the amount of DC's business interest deduction allowed under section 163(j) is determined taking into account the tentative section 250 deduction, but without regard to section 172(a). See section 163(j)(8)(A)(iii). Under section 163(j)(1) and § 1.163(j)–2(b), DC's deduction for business interest is limited to 30% of adjusted taxable income plus the amount of any business interest income for the taxable year and the amount of any floor plan financing interest for the taxable year. In this case, DC has no business interest income or floor plan financing interest for the taxable year and therefore DC's deduction for business interest is limited to 30% of DC's adjusted taxable income for the taxable year. DC's adjusted taxable income is equal to DC's taxable income with the relevant adjustments set forth under section 163(j)(8) and the regulations under section 163(j). For this purpose, DC's taxable income is computed without regard to DC's business interest and the amount of any net operating loss deduction under section 172, but taking into account the tentative section 250 deduction. Taking into account the tentative section 250 deduction, DC's adjusted taxable income is $225x ($300x—$75x). Therefore, the amount of DC's allowable deduction for business interest is $67.5x ($225x × 0.30) and the remaining $32.5x of DC's business interest expense will be carried forward to the succeeding taxable year.

(C) *Calculation of net operating loss deduction under section 172(a).* Third, the amount of DC's net operating loss deduction under section 172(a) is determined taking into account section 163(j), but without regard to section 250(a) and paragraph (b)(1) of this section. See § 1.250(b)–1(d)(2)(ii). Under section 172(a)(2), the amount of DC's net operating loss deduction is limited to 80% of taxable income. Taking into account the allowable deduction for business interest (but not its deduction allowed under section 250(a)), DC's taxable income is $232.5x ($300x − $67.5x), and its taxable income limitation under section 172(a)(2) is $186x ($232.5x × 0.80). DC is entitled to a net operating loss deduction equal to its entire net operating loss carryover of $130x, because such amount is less than $186x.

(D) *Calculation of FDII.* Fourth, the amount of DC's foreign-derived intangible income is determined, taking into account the deductions allowed after the application of sections 163(j) and 172(a). DC's allowable deductions under § 1.250(b)–1(d)(2)(ii) for computing its foreign-derived intangible income are $197.5x, which is equal to its allowed deduction for business interest of $67.5x plus its net operating loss deduction of $130x. Accordingly, DC's deduction eligible income (as defined in § 1.250(b)–1(c)(2)) is $102.5x, the excess of its gross DEI (as defined in § 1.250(b)–1(c)(14)) of $300x, over its deductions properly allocable to gross DEI of $197.5x. DC's foreign-derived deduction eligible income (as defined in § 1.250(b)–1(c)(12)) is also $102.5x, the excess of its gross FDDEI of $300x, over its deductions properly allocable to gross FDDEI of $197.5x. DC's foreign-derived ratio (as defined in § 1.250(b)–1(c)(13)) is 100%, which is the ratio of DC's foreign-derived deduction eligible income of $102.5x to DC's deduction eligible income of $102.5x. DC's deemed intangible income (as defined in § 1.250(b)–1(c)(3)) is $102.5x, the excess of its deduction eligible income of $102.5x over its qualified business asset investment of $0. Accordingly, DC's foreign-derived intangible income before application of section 250(a)(2) and paragraph (b)(2) of this section is

$102.5x, which is equal to DC's deemed intangible income of $102.5x multiplied by its foreign-derived ratio of 100%.

(E) *Calculation of section 250 deduction.* Finally, the amount of DC's deduction under section 250 is determined after the application of section 250(a)(2), which is applied taking into account DC's business interest allowed under section 163(j) and its net operating loss deduction under section 172(a). DC's taxable income for purposes of section 250(a)(2) and paragraph (b)(2) of this section is $102.5x, which is $300x of gross income minus $197.5x, which is equal to its deduction for business interest of $67.5x plus its net operating loss deduction of $130x. DC does not have a section 250(a)(2) amount (as defined in paragraph (c)(4) of this section) for the year because DC's foreign-derived intangible income of $102.5x, determined without regard to section 250(a)(2) and paragraph (b)(2) of this section, does not exceed DC's taxable income of $102.5x. Therefore, the amount of DC's foreign-derived intangible income is not reduced under section 250(a)(2) and paragraph (b)(2) of this section. Accordingly, for the taxable year, DC is allowed a deduction under section 250(a)(1) and paragraph (b)(1) of this section of $38.44x ($102.5x × 0.375).

§ 1.250(b)–1 Computation of foreign-derived intangible income (FDII).

(a) *Scope.* This section provides rules for computing foreign-derived intangible income. Paragraph (b) of this section defines foreign-derived intangible income. Paragraph (c) of this section provides definitions that are relevant for computing foreign-derived intangible income. Paragraph (d) of this section provides rules for computing gross income and allocating and apportioning deductions for purposes of computing deduction eligible income and foreign-derived deduction eligible income. Paragraph (e) of this section provides rules for computing the deduction eligible income and foreign-derived deduction eligible income of a domestic corporate partner. Paragraph (f) of this section provides a rule for computing the foreign-derived intangible income of a member of a consolidated group. Paragraph (g) of this section provides a rule for computing the foreign-derived intangible income of a tax-exempt corporation.

(b) *Definition of foreign-derived intangible income.* Subject to the provisions of this section, the term *foreign-derived intangible income* means, with respect to a domestic corporation for a taxable year, the corporation's deemed intangible income for the year multiplied by the corporation's foreign-derived ratio for the year.

(c) *Definitions.* This paragraph (c) provides definitions that apply for purposes of this section and §§ 1.250(b)-2 through 1.250(b)-6.

(1) *Controlled foreign corporation.* The term *controlled foreign corporation* has the meaning set forth in section 957(a).

(2) *Deduction eligible income.* The term *deduction eligible income* means, with respect to a domestic corporation for a taxable year, the excess (if any) of the corporation's gross DEI for the year, over the deductions properly allocable to gross DEI for the year, as determined under paragraph (d)(2) of this section.

(3) *Deemed intangible income.* The term *deemed intangible income* means, with respect to a domestic corporation for a taxable year, the excess (if any) of the corporation's deduction eligible income for the year, over the corporation's deemed tangible income return for the year.

(4) *Deemed tangible income return.* The term *deemed tangible income return* means, with respect to a domestic corporation and a taxable year, 10 percent of the corporation's qualified business asset investment for the year.

(5) *Dividend.* The term *dividend* has the meaning set forth in section 316, and includes any amount treated as a dividend under any other provision of subtitle A of the Internal Revenue Code or the regulations thereunder (for example, under section 78, 356(a)(2), 367(b), or 1248).

(6) *Domestic corporation.* The term *domestic corporation* has the meaning set forth in § 1.250(a)–1(c)(1).

(7) *Domestic oil and gas extraction income.* The term *domestic oil and gas extraction income* means income described in section 907(c)(1), substituting ''within the United States'' for ''without the United States.''

(8) *FDDEI sale.* The term *FDDEI sale* has the meaning set forth in § 1.250(b)–4(b).

(9) *FDDEI service.* The term *FDDEI service* has the meaning set forth in § 1.250(b)–5(b).

(10) *FDDEI transaction.* The term *FDDEI transaction* means a FDDEI sale or a FDDEI service.

(11) *Foreign branch income.* The term *foreign branch income* means gross income attributable to a foreign branch of a domestic corporation or a partnership under § 1.904–4(f)(2), except that the term also includes any income or gain that would not be treated as gross income attributable to a foreign branch under § 1.904–4(f) but that arises from the direct or indirect sale (as defined in § 1.250(b)–3(b)(7)) of any asset (other than stock) that produces gross income attributable to a foreign branch, including by reason of the sale of a disregarded entity or interest in a partnership. See also § 1.904–4(f)(2)(v) (providing that if a principal purpose of recording or failing to record an item of gross income on the books and records of a foreign branch is the avoidance of the purposes of section 250 (in connection with section 250(b)(3)(A)(i)(VI)), the item must be attributed to one or more foreign branches of the foreign branch owner in a manner that reflects the substance of the transaction).

(12) *Foreign-derived deduction eligible income.* The term *foreign-derived deduction eligible income* means, with respect to a domestic corporation for a taxable year, the excess (if any) of the corporation's gross FDDEI for the year, over the deductions properly allocable to gross FDDEI for the year, as determined under paragraph (d)(2) of this section.

(13) *Foreign-derived ratio.* The term *foreign-derived ratio* means, with respect to a domestic corporation for a taxable year, the ratio (not to exceed one) of the corporation's foreign-derived deduction eligible income for the year to the corporation's deduction eligible income for the year. If a domestic corporation has no foreign-derived deduction eligible income for a taxable year, the corporation's foreign-derived ratio is zero for the year.

(14) *Gross DEI.* The term *gross DEI* means, with respect to a domestic corporation or a partnership for a taxable year, the gross income of the corporation or partnership for the year determined without regard to the following items of gross income—

(i) Amounts included in gross income under section 951(a)(1);

(ii) Global intangible low-taxed income (as defined in § 1.250(a)–1(c)(3));

(iii) Financial services income (as defined in section 904(d)(2)(D) and § 1.904–4(e)(1)(ii));

(iv) Dividends received from a controlled foreign corporation with respect to which the corporation or partnership is a United States shareholder;

(v) Domestic oil and gas extraction income; and

(vi) Foreign branch income.

(15) *Gross FDDEI.* The term *gross FDDEI* means, with respect to a domestic corporation or a partnership for a taxable year, the portion of the gross DEI of the corporation or partnership for the year which is

derived from all of its FDDEI transactions.

(16) *Gross non-FDDEI.* The term *gross non-FDDEI* means, with respect to a domestic corporation for a taxable year, the portion of the corporation's gross DEI that is not included in gross FDDEI.

(17) *Modified affiliated group*—(i) *In general.* The term *modified affiliated group* means an affiliated group as defined in section 1504(a) determined by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears, and without regard to section 1504(b)(2) and (3).

(ii) *Special rule for noncorporate entities.* Any person (other than a corporation) that is controlled by one or more members of a modified affiliated group (including one or more persons treated as a member or members of a modified affiliated group by reason of this paragraph (c)(17)(ii)) or that controls any such member is treated as a member of the modified affiliated group.

(iii) *Definition of control.* For purposes of paragraph (c)(17)(ii) of this section, the term *control* has the meaning set forth in section 954(d)(3).

(18) *Qualified business asset investment.* The term *qualified business asset investment* has the meaning set forth in § 1.250(b)–2(b).

(19) *Related party.* The term *related party* means, with respect to any person, any member of a modified affiliated group that includes such person.

(20) *United States shareholder.* The term *United States shareholder* has the meaning set forth in section 951(b) and § 1.951–1(g).

(d) *Treatment of cost of goods sold and allocation and apportionment of deductions*—(1) *Cost of goods sold for determining gross DEI and gross FDDEI.* For purposes of determining the gross income included in gross DEI and gross FDDEI of a domestic corporation or a partnership, the cost of goods sold of the corporation or partnership is attributed to gross receipts with respect to gross DEI or gross FDDEI under any reasonable method. Cost of goods sold must be attributed to gross receipts with respect to gross DEI or gross FDDEI regardless of whether certain costs included in cost of goods sold can be associated with activities undertaken in an earlier taxable year (including a year before the effective date of section 250). A domestic corporation or partnership may not segregate cost of goods sold with respect to a particular product into component costs and attribute those component costs disproportionately to gross receipts with respect to amounts excluded from gross DEI or gross FDDEI, as applicable.

(2) *Deductions properly allocable to gross DEI and gross FDDEI*—(i) *In general.* For purposes of determining a domestic corporation's deductions that are properly allocable to gross DEI and gross FDDEI, the corporation's deductions are allocated and apportioned to gross DEI and gross FDDEI under the rules of §§ 1.861–8 through 1.861–14T and 1.861–17 by treating section 250(b) as an operative section described in § 1.861–8(f). In allocating and apportioning deductions under §§ 1.861–8 through 1.861–14T and 1.861–17, gross FDDEI and gross non-FDDEI are treated as separate statutory groupings. The deductions allocated and apportioned to gross DEI equal the sum of the deductions allocated and apportioned to gross FDDEI and gross non-FDDEI. All items of gross income described in paragraphs (c)(14)(i) through (vi) of this section are in the residual grouping. For purposes of this paragraph (d)(2)(i), research and experimental expenditures are allocated and apportioned in accordance with § 1.861–17 without taking into account the exclusive apportionment rule of § 1.861–17(b).

(ii) *Determination of deductions to allocate.* All deductions allowed to a domestic corporation are allocated and apportioned to gross DEI and gross FDDEI for a taxable year under paragraph (d)(2)(i) of this section, other than the deduction allowed under section 250(a) and § 1.250(a)–1(b). For this purpose, the amount of the net operating loss deduction under section 172(a) is determined without regard to section 250. See also § 1.163(j)–1(b)(37)(ii) (for purposes of determining the limitation under section 163(j)(1), the deduction under section 250(a)(1) is determined without regard to the application of section 163(j) and the section 163(j) regulations and without regard to the taxable income limitation of section 250(a)(2) and § 1.250(a)–1(b)(2)).

(3) *Examples.* The following example illustrates the application of this paragraph (d).

(i) *Presumed facts.* The following facts are assumed for purposes of the examples—

(A) DC is a domestic corporation that is not a member of a consolidated group.

(B) All sales and services are provided to persons that are not related parties.

(C) All sales and services to foreign persons qualify as FDDEI transactions.

(ii) *Examples.*

(A) *Example 1: Allocation of deductions*—(*1*) *Facts.*

For a taxable year, DC manufactures products A and B in the United States. DC sells products A and B and provides services associated with products A and B to United States and foreign persons. DC's qualified business asset investment for the taxable year is $1,000x. DC has $300x of deductible interest expense allowed under section 163. DC has assets with a tax book value of $2,500x. The tax book value of DC's assets used to produce products A and B and services is split evenly between assets that produce gross FDDEI and assets that produce gross non-FDDEI. DC has $840x of supportive deductions, as defined in § 1.861–8(b)(3), attributable to general and administrative expenses incurred for the purpose of generating the class of gross income that consists of gross DEI. DC apportions the $840x of deductions on the basis of gross income in accordance with § 1.861–8T(c)(1). For purposes of determining gross FDDEI and gross DEI under paragraph (d)(1) of this section, DC attributes $200x of cost of goods sold to Product A and $400x of cost of goods sold to Product B, and then attributes the cost of goods sold for each product ratably between the gross receipts of such product sold to foreign persons and the gross receipts of such product sold to United States persons. The manner in which DC attributes the cost of goods sold is a reasonable method. DC has no other items of income, loss, or deduction. For the taxable year, DC has the following income tax items relevant to the determination of its foreign-derived intangible income:

TABLE 1 TO PARAGRAPH (D)(3)(II)(A)(*1*)

	Product A	Product B	Services	Total
Gross receipts from U.S. persons	$200x	$800x	$100x	$1,100x
Gross receipts from foreign persons	200x	800x	100x	1,100x
Total gross receipts	400x	1,600x	200x	2,200x
Cost of goods sold for gross receipts from U.S. persons	100x	200x	0	300x
Cost of goods sold for gross receipts from foreign persons	100x	200x	0	300x
Total cost of goods sold	200x	400x	0	600x
Gross income	200x	1,200x	200x	1,600x

TABLE 1 TO PARAGRAPH (D)(3)(II)(A)(*1*)—Continued

	Product A	Product B	Services	Total
Tax book value of assets used to produce products/services	500x	500x	1,500x	2,500x

(*2*) *Analysis*—(*i*) *Determination of gross FDDEI and gross non-FDDEI.* Because DC does not have any income described in section 250(b)(3)(A)(i)(I) through (VI) and paragraphs (c)(14)(i) through (vi) of this section, none of its gross income is excluded from gross DEI. DC's gross DEI is $1,600x ($2,200x total gross receipts less $600x total cost of goods sold). DC's gross FDDEI is $800x ($1,100x of gross receipts from foreign persons minus attributable cost of goods sold of $300x).

(*ii*) *Determination of foreign-derived deduction eligible income.* To calculate its foreign-derived deduction eligible income, DC must determine the amount of its deductions that are allocated and apportioned to gross FDDEI and then subtract those amounts from gross FDDEI. DC's interest deduction of $300x is allocated and apportioned to gross FDDEI on the basis of the average total value of DC's assets in each grouping. DC has assets with a tax book value of $2,500x split evenly between assets that produce gross FDDEI and assets that produce gross non-FDDEI. Accordingly, an interest expense deduction of $150x is apportioned to DC's gross FDDEI. With respect to DC's supportive deductions of $840x that are related to DC's gross DEI, DC apportions such deductions between gross FDDEI and gross non-FDDEI on the basis of gross income. Accordingly, supportive deductions of $420x are apportioned to DC's gross FDDEI. Thus, DC's foreign-derived deduction eligible income is $230x, which is equal to its gross FDDEI of $800x less $150x of interest expense deduction and $420x of supportive deductions.

(*iii*) *Determination of deemed intangible income.* DC's deemed tangible income return is $100x, which is equal to 10% of its qualified business asset investment of $1,000x. DC's deduction eligible income is $460x, which is equal to its gross DEI of $1,600x less $300x of interest expense deductions and $840x of supportive deductions. Therefore, DC's deemed intangible income is $360x, which is equal to the excess of its deduction eligible income of $460x over its deemed tangible income return of $100x.

(*iv*) *Determination of foreign-derived intangible income.* DC's foreign-derived ratio is 50%, which is the ratio of DC's foreign-derived deduction eligible income of $230x to DC's deduction eligible income of $460x. Therefore, DC's foreign-derived intangible income is $180x, which is equal to DC's deemed intangible income of $360x multiplied by its foreign-derived ratio of 50%.

(B) *Example 2: Allocation of deductions with respect to a partnership*—(*1*) *Facts*—(*i*) *DC's operations.* DC is engaged in the production and sale of products consisting of two separate product groups in three-digit Standard Industrial Classification (SIC) Industry Groups, hereafter referred to as Group AAA and Group BBB. All of the gross income of DC is included in gross DEI. DC incurs $250x of research and experimental (R&E) expenditures in the United States that are deductible under section 174. None of the R&E is legally mandated as described in § 1.861–17(a)(4) and none is included in cost of goods sold. For purposes of determining gross FDDEI and gross DEI under paragraph (d)(1) of this section, DC attributes $210x of cost of goods sold to Group AAA products and $900x of cost of goods sold to Group BBB products, and then attributes the cost of goods sold with respect to each such product group ratably between the gross receipts with respect to such product group sold to foreign persons and the gross receipts with respect to such product group not sold to foreign persons. The manner in which DC attributes the cost of goods sold is a reasonable method. For the taxable year, DC has the following income tax items relevant to the determination of its foreign-derived intangible income:

TABLE 2 TO (D)(3)(II)(B)(*1*)(*i*)

	Group AAA products	Group BBB products	Total
Gross receipts from U.S. persons	$200x	$800x	$1,000x
Gross receipts from foreign persons	100x	400x	500x
Total gross receipts	300x	1,200x	1,500x
Cost of goods sold for gross receipts from U.S. persons	140x	600x	750x
Cost of goods sold for gross receipts from foreign persons	70x	300x	370x
Total cost of goods sold	210x	900x	1,110x
Gross income	90x	300x	390x
R&E deductions	40x	210x	250x

(*ii*) *PRS's operations.* In addition to its own operations, DC is a partner in PRS, a partnership that also produces products described in SIC Group AAA. DC is allocated 50% of all income, gain, loss, and deductions of PRS. During the taxable year, PRS sells Group AAA products solely to foreign persons, and all of its gross income is included in gross DEI. PRS has $400 of gross receipts from sales of Group AAA products for the taxable year and incurs $100x of research and experimental (R&E) expenditures in the United States that are deductible under section 174. None of the R&E is legally mandated as described in § 1.861–17(a)(4) and none is included in cost of goods sold. For purposes of determining gross FDDEI and gross DEI under paragraph (d)(1) of this section, PRS attributes $200x of cost of goods sold to Group AAA products, and then attributes the cost of goods sold with respect to such product group ratably between the gross receipts with respect to such product group sold to foreign persons and the gross receipts with respect to such product group not sold to foreign persons. The manner in which PRS attributes the cost of goods sold is a reasonable method. DC's distributive share of PRS taxable items is $100x of gross income and $50x of R&E deductions, and DC's share of PRS's gross receipts from sales of Group AAA products for the taxable year is $200x under § 1.861–17(f)(3).

(*iii*) *Election to use sales method to allocate and apportion R&E.* DC has elected to use the sales method to apportion its R&E deductions under § 1.861–17. Neither DC nor PRS licenses or sells its intangible property to controlled or uncontrolled corporations in a manner that necessitates including the sales by such corporations for purposes of apportioning DC's R&E deductions.

(*2*) *Analysis*—(*i*) *Determination of gross DEI and gross FDDEI.* Under paragraph (e)(1) of this section, DC's gross DEI, gross FDDEI, and deductions allocable to those amounts include its distributive share of gross DEI, gross FDDEI, and deductions of PRS. Thus, DC's gross DEI for the year is $490x ($390x attributable to DC and $100x attributable to DC's interest in PRS). DC's gross income from sales of Group AAA products to foreign persons is $30x ($100x of gross receipts minus attributable cost of goods sold of $70x). DC's gross income from sales of Group BBB products to foreign persons is $100x ($400x of gross receipts minus attributable cost of goods sold of $300x). DC's gross FDDEI for the year is $230x ($30x from DC's

sale of Group AAA products plus $100x from DC's sale of Group BBB products plus DC's distributive of PRS's gross FDDEI of $100x).

(*ii*) *Allocation and apportionment of R&E deductions.* To determine foreign-derived deduction eligible income, DC must allocate and apportion its R&E expense of $300x ($250x incurred directly by DC and $50x incurred indirectly through DC's interest in PRS). In accordance with § 1.861–17, R&E expenses are first allocated to a class of gross income related to a three-digit SIC group code. DC's R&E expenses related to products in Group AAA are $90x ($40x incurred directly by DC and $50x incurred indirectly through DC's interest in PRS) and its expenses related to Group BBB are $210x. None of those expenses were legally mandated by a particular country and therefore do not require the allocation of R&E expense solely to income arising from that jurisdiction. The exclusive apportionment rule in § 1.861–17(b) does not apply for purposes of apportioning R&E to gross DEI and gross FDDEI. See paragraph (d)(2)(i) of this section. Accordingly, all R&E expense attributable to a particular SIC group code is apportioned on the basis of the amounts of sales within that SIC group code. Total sales within Group AAA were $500x ($300x directly by DC and $200x attributable to DC's interest in PRS), $300x of which were made to foreign persons ($100x directly by DC and $200x attributable to DC's interest in PRS). Therefore, the $90x of R&E expense related to Group AAA is apportioned $54x to gross FDDEI ($90x × $300x/$500x) and $36x to gross non-FDDEI ($90x × $200x/$500x). Total sales within Group BBB were $1,200x, $400x of which were made to foreign persons. Therefore, the $210x of R&E expense related to products in Group BBB is apportioned $70x to gross FDDEI ($210x × $400x/$1,200x) and $140x to gross non-FDDEI ($210x × $800x/$1,200x). Accordingly, DC's foreign-derived deduction eligible income for the tax year is $106x ($230x gross FDDEI minus $124x of R&E ($54x + $70x) allocated and apportioned to gross FDDEI).

(e) *Domestic corporate partners*—(1) *In general.* A domestic corporation's deduction eligible income and foreign-derived deduction eligible income for a taxable year are determined taking into account the corporation's share of gross DEI, gross FDDEI, and deductions of any partnership (whether domestic or foreign) in which the corporation is a direct or indirect partner. For purposes of the preceding sentence, a domestic corporation's share of each such item of a partnership is determined in accordance with the corporation's distributive share of the underlying items of income, gain, deduction, and loss of the partnership that comprise such amounts. See § 1.250(b)–2(g) for rules calculating the increase to a domestic corporation's qualified business asset investment by the corporation's share of partnership QBAI.

(2) *Reporting requirement for partnership with domestic corporate partners.* A partnership that has one or more direct or indirect partners that are domestic corporations and that is required to file a return under section 6031 must furnish to each such partner on or with such partner's Schedule K–1 (Form 1065 or any successor form) by the due date (including extensions) for furnishing Schedule K–1 the partner's share of the partnership's gross DEI, gross FDDEI, deductions that are definitely related to the partnership's gross DEI and gross FDDEI, and partnership QBAI (as determined under § 1.250(b)–2(g)) for each taxable year in which the partnership has gross DEI, gross FDDEI, deductions that are definitely related to the partnership's gross DEI or gross FDDEI, or partnership specified tangible property (as defined in § 1.250(b)–2(g)(2)(iii)).

(3) *Examples.* The following examples illustrate the application of this paragraph (e).

(i) *Presumed facts.* The following facts are assumed for purposes of the examples—

(A) DC, a domestic corporation, is a partner in PRS, a partnership.

(B) FP and FP2 are foreign persons.

(C) FC is a foreign corporation.

(D) The allocations under PRS's partnership agreement satisfy the requirements of section 704.

(E) No partner of PRS is a related party of DC.

(F) DC, PRS, and FC all use the calendar year as their taxable year.

(G) PRS has no items of income, loss, or deduction for its taxable year, except the items of income described.

(ii) *Examples.*

(A) *Example 1: Sale by partnership to foreign person*—(*1*) *Facts.* Under the terms of the partnership agreement, DC is allocated 50% of all income, gain, loss, and deductions of PRS. For the taxable year, PRS recognizes $20x of gross income on the sale of general property (as defined in § 1.250(b)–3(b)(3)) to FP, a foreign person (as determined under § 1.250(b)–4(c)), for a foreign use (as determined under § 1.250(b)–4(d)). The gross income recognized on the sale of property is not described in section 250(b)(3)(A)(I) through (VI) or paragraphs (c)(14)(i) through (vi) of this section.

(*2*) *Analysis.* PRS's sale of property to FP is a FDDEI sale as described in § 1.250(b)–4(b). Therefore, the gross income derived from the sale ($20x) is included in PRS's gross DEI and gross FDDEI, and DC's share of PRS's gross DEI and gross FDDEI ($10x) is included in DC's gross DEI and gross FDDEI for the taxable year.

(B) *Example 2: Sale by partnership to foreign person attributable to foreign branch*—(*1*) *Facts.* The facts are the same as in paragraph (e)(3)(ii)(A)(*1*) of this section (the facts in *Example 1*), except the income from the sale of property to FP is attributable to a foreign branch of PRS.

(*2*) *Analysis.* PRS's sale of property to FP is excluded from PRS's gross DEI under section 250(b)(3)(A)(VI) and paragraph (c)(14)(vi) of this section. Accordingly, DC's share of PRS's gross income of $10x from the sale is not included in DC's gross DEI or gross FDDEI for the taxable year.

(C) *Example 3: Partnership with a loss in gross FDDEI*—(*1*) *Facts.* The facts are the same as in paragraph (e)(3)(ii)(A)(*1*) of this section (the facts in *Example 1*), except that in the same taxable year, PRS also sells property to FP2, a foreign person (as determined under § 1.250(b)–4(c)), for a foreign use (as determined under § 1.250(b)–4(d)). After taking into account both sales, PRS has a gross loss of $30x.

(*2*) *Analysis.* Both the sale of property to FP and the sale of property to FP2 are FDDEI sales because each sale is described in § 1.250(b)–4(b). DC's share of PRS's gross loss ($15x) from the sales is included in DC's gross DEI and gross FDDEI.

(D) *Example 4: Sale by partnership to foreign related party of the partnership*—(*1*) *Facts.* Under the terms of the partnership agreement, DC has 25% of the capital and profits interest in the partnership and is allocated 25% of all income, gain, loss, and deductions of PRS. PRS owns 100% of the single class of stock of FC. In the taxable year, PRS has $20x of gain on the sale of general property (as defined in § 1.250(b)–3(b)(3)) to FC, and FC makes a material physical change to the property within the meaning of § 1.250(b)–4(d)(2)(iii) outside the United States before selling the property to customers in the United States. PRS satisfies the documentation requirement of § 1.250(b)–4(d)(3) with respect to the sale.

(*2*) *Analysis.* The sale of property by PRS to FC is described in § 1.250(b)–4(b) without regard to the application of § 1.250(b)–6, since the sale is to a foreign person (as determined under § 1.250(b)–4(c)) for a foreign use (as determined under § 1.250(b)–4(d)). However, FC is a foreign related party of PRS within the meaning of section 250(b)(5)(D) and § 1.250(b)–6(b)(1), because FC and PRS are members of a modified affiliated group within the meaning of paragraph (c)(17) of this section. Therefore, the sale by PRS to FC is a related party sale within the meaning of § 1.250(b)–6(b)(3). Under section 250(b)(5)(C)(i) and § 1.250(b)–6(c), because FC did not sell the property, or use the property in connection with other property sold or the provision of a service, to a foreign unrelated party before the property was subject to a domestic use, the sale by PRS to FC is not a FDDEI sale. See § 1.250(b)–6(c)(1). Accordingly, the gain from the sale ($20x) is included in PRS's gross DEI but not its gross FDDEI, and DC's share of PRS's gain ($5x) is included in DC's gross DEI but not gross FDDEI. This is the result notwithstanding that FC is not a related party of DC because FC and DC are not members of a modified affiliated group within the meaning of paragraph (c)(17) of this section.

(f) *Determination of foreign-derived intangible income for consolidated groups.* A member of a consolidated group (as defined in § 1.1502–1(h))

determines its foreign-derived intangible income under the rules provided in § 1.1502–50.

(g) *Determination of foreign-derived intangible income for tax-exempt corporations.* The foreign-derived intangible income of a corporation that is subject to the unrelated business income tax under section 511 is determined only by reference to that corporation's items of income, gain, deduction, or loss, and adjusted bases in property, that are taken into account in computing the corporation's unrelated business taxable income (as defined in section 512). For example, if a corporation that is subject to the unrelated business income tax under section 511 has tangible property used in the production of both unrelated business income and gross income that is not unrelated business income, only the portion of the basis of such property taken into account in computing the corporation's unrelated business taxable income is taken into account in determining the corporation's qualified business asset investment. Similarly, if a corporation that is subject to the unrelated business income tax under section 511 has tangible property that is used in both the production of gross DEI and the production of gross income that is not gross DEI, only the corporation's unrelated business income is taken into account in determining the corporation's dual use ratio with respect to such property under § 1.250(b)–2(d)(2).

§ 1.250(b)–2 Qualified business asset investment.

(a) *Scope.* This section provides general rules for determining the qualified business asset investment of a domestic corporation for purposes of determining its deemed tangible income return under § 1.250(b)–1(c)(4). Paragraph (b) of this section defines qualified business asset investment. Paragraph (c) of this section defines tangible property and specified tangible property. Paragraph (d) of this section provides rules for determining the portion of property that is specified tangible property when the property is used in the production of both gross DEI and gross income that is not gross DEI. Paragraph (e) of this section provides rules for determining the adjusted basis of specified tangible property. Paragraph (f) of this section provides rules for determining qualified business asset investment of a domestic corporation with a short taxable year. Paragraph (g) of this section provides rules for increasing the qualified business asset investment of a domestic corporation by reason of property owned through a partnership. Paragraph (h) of this section provides an anti-avoidance rule that disregards certain transfers when determining the qualified business asset investment of a domestic corporation.

(b) *Definition of qualified business asset investment.* The term *qualified business asset investment* means the average of a domestic corporation's aggregate adjusted bases as of the close of each quarter of a domestic corporation's taxable year in specified tangible property that is used in a trade or business of the domestic corporation and is of a type with respect to which a deduction is allowable under section 167. See paragraph (f) of this section for rules relating to the qualified business asset investment of a domestic corporation with a short taxable year.

(c) *Specified tangible property*—(1) *In general.* The term *specified tangible property* means, subject to paragraph (d) of this section, tangible property used in the production of gross DEI.

(2) *Tangible property.* For purposes of paragraph (c)(1) of this section, the term *tangible property* means property for which the depreciation deduction provided by section 167(a) is eligible to be determined under section 168 without regard to section 168(f)(1), (2), or (5) and the date placed in service.

(d) *Dual use property*—(1) *In general.* In the case of tangible property (as defined in paragraph (c)(2) of this section) of a domestic corporation that is used in both the production of gross DEI and the production of gross income that is not gross DEI in a domestic corporation's taxable year, the portion of the adjusted basis in the property treated as adjusted basis in specified tangible property for the domestic corporation's taxable year is determined by multiplying the average of the domestic corporation's adjusted basis in the property by the dual use ratio with respect to the property for the domestic corporation's taxable year.

(2) *Dual use ratio.* The term *dual use ratio* means, with respect to specified tangible property—

(i) In the case of specified tangible property that produces directly identifiable income for a domestic corporation's taxable year, the ratio of the gross DEI produced by the property for the taxable year to the total amount of gross income produced by the property for the taxable year.

(ii) In the case of specified tangible property that does not produce directly identifiable income for a domestic corporation's taxable year, the ratio of the gross DEI of the domestic corporation for the taxable year to the total amount of gross income of the domestic corporation for the taxable year.

(3) *Example.* The following example illustrates the application of this paragraph (d).

(i) *Facts.* DC, a domestic corporation, owns a machine that produces both gross DEI and domestic oil and gas extraction income. For the taxable year, the machine produces gross DEI of $750x and domestic oil and gas extraction income of $250x. The average adjusted basis of the machine for the taxable year in the hands of DC is $4,000x. DC also owns an office building for its administrative functions with an average adjusted basis for the taxable year of $10,000x. The office building does not produce directly identifiable income. DC has no other specified tangible property. For the taxable year, DC's gross DEI is $2,000x and its gross income is $5,000x.

(ii) *Analysis.* The machine and office building are both property for which the depreciation deduction provided by section 167(a) are eligible to be determined under section 168. Therefore, under paragraph (c)(2) of this section, the machine and office building are tangible property. The machine and office building are used in both the production of gross income that is included in gross DEI and gross income that is not included in gross DEI, because domestic oil and gas extraction income is an item of gross income excluded from gross DEI under section 250(b)(3)(A)(i)(V) and § 1.250(b)–1(c)(14)(v). Therefore, under paragraph (d)(1) of this section, the portion of the basis in the machine treated as basis in specified tangible property is equal to DC's average basis in the machine for the year ($4,000x), multiplied by the dual use ratio under paragraph (d)(2)(i) of this section (0.75), which is the proportion that the gross DEI produced by the property ($750x) bears to the total gross income produced with respect to the property ($1,000x). Accordingly, $3,000x ($4,000x × 0.75) of DC's adjusted basis in the machine is taken into account in determining DC's qualified business asset investment. Under paragraph (d)(1) of this section, the portion of the basis in the office building treated as basis in specified tangible property is equal to DC's average basis in the office building for the year ($10,000x), multiplied by the dual use ratio under paragraph (d)(2)(ii) of this section (0.40), which is the ratio of DC's gross DEI for the taxable year ($2,000x) to DC's total gross income for the taxable year ($5,000x). Accordingly, $4,000x ($10,000x × 0.40) of DC's adjusted basis in the office building is taken into account in determining DC's qualified business asset investment under paragraph (b) of this section. Accordingly, DC's total qualified business asset investment is $7,000x ($3,000x + $4,000x).

(e) *Determination of adjusted basis of specified tangible property*—(1) *In general.* The adjusted basis in specified tangible property is determined by using the alternative depreciation system under section 168(g), and by allocating the depreciation deduction with respect to such property for the domestic

corporation's taxable year ratably to each day during the period in the taxable year to which such depreciation relates.

(2) *Effect of change in law.* The determination of adjusted basis for purposes of paragraph (b) of this section is made without regard to any provision of law enacted after December 22, 2017, unless such later enacted law specifically and directly amends the definition of qualified business asset investment under section 250 or section 951A.

(3) *Specified tangible property placed in service before enactment of section 250.* The adjusted basis in property placed in service before December 22, 2017, is determined using the alternative depreciation system under section 168(g), as if this system had applied from the date that the property was placed in service.

(f) *Special rules for short taxable years*—(1) *In general.* In the case of a domestic corporation that has a taxable year that is less than twelve months (a *short taxable year*), the rules for determining the qualified business asset investment of the domestic corporation under this section are modified as provided in paragraphs (f)(2) and (3) of this section with respect to the taxable year.

(2) *Determination of quarter closes.* For purposes of determining quarter closes, in computing the qualified business asset investment of a domestic corporation for a short taxable year, the quarters of the domestic corporation for purposes of this section are the full quarters beginning and ending within the short taxable year (if any), determining quarter length as if the domestic corporation did not have a short taxable year, plus one or more short quarters (if any).

(3) *Reduction of qualified business asset investment.* The qualified business asset investment of a domestic corporation for a short taxable year is the sum of—

(i) The sum of the domestic corporation's aggregate adjusted bases in specified tangible property as of the close of each full quarter (if any) in the domestic corporation's taxable year divided by four; plus

(ii) The domestic corporation's aggregate adjusted bases in specified tangible property as of the close of each short quarter (if any) in the domestic corporation's taxable year multiplied by the sum of the number of days in each short quarter divided by 365.

(4) *Example.* The following example illustrates the application of this paragraph (f).

(i) *Facts.* A, an individual, owns all of the stock of DC, a domestic corporation. A owns DC from the beginning of the taxable year. On July 15 of the taxable year, A sells DC to USP, a domestic corporation that is unrelated to A. DC becomes a member of the consolidated group of which USP is the common parent and as a result, under § 1.1502–76(b)(2)(ii), DC's taxable year is treated as ending on July 15. USP and DC both use the calendar year as their taxable year. DC's aggregate adjusted bases in specified tangible property for the taxable year are $250x as of March 31, $300x as of June 30, $275x as of July 15, $500x as of September 30, and $450x as of December 31.

(ii) *Analysis*—(A) *Determination of short taxable years and quarters.* DC has two short taxable years during the taxable year. The first short taxable year is from January 1 to July 15, with two full quarters (January 1–March 31 and April 1–June 30) and one short quarter (July 1–July 15). The second taxable year is from July 16 to December 31, with one short quarter (July 16–September 30) and one full quarter (October 1–December 31).

(B) *Calculation of qualified business asset investment for the first short taxable year.* Under paragraph (f)(2) of this section, for the first short taxable year, DC has three quarter closes (March 31, June 30, and July 15). Under paragraph (f)(3) of this section, the qualified business asset investment of DC for the first short taxable year is $148.80x, the sum of $137.50x (($250x + $300x)/4) attributable to the two full quarters and $11.30x ($275x × 15/365) attributable to the short quarter.

(C) *Calculation of qualified business asset investment for the second short taxable year.* Under paragraph (f)(2) of this section, for the second short taxable year, DC has two quarter closes (September 30 and December 31). Under paragraph (f)(3) of this section, the qualified business asset investment of DC for the second short taxable year is $217.98x, the sum of $112.50x ($450x/4) attributable to the one full quarter and $105.48x ($500x × 77/365) attributable to the short quarter.

(g) *Partnership property*—(1) *In general.* For purposes of paragraph (b) of this section, if a domestic corporation holds an interest in one or more partnerships as of the close of the domestic corporation's taxable year, the qualified business asset investment of the domestic corporation for its taxable year is increased by the sum of the domestic corporation's partnership QBAI with respect to each partnership for the domestic corporation's taxable year.

(2) *Definitions related to partnership QBAI*—(i) *In general.* The term *partnership QBAI* means the sum of the domestic corporation's share of the partnership's adjusted basis in partnership specified tangible property as of the close of a partnership taxable year that ends with or within a domestic corporation's taxable year. A domestic corporation's share of the partnership's adjusted basis in partnership specified tangible property is determined separately with respect to each partnership specified tangible property of the partnership by multiplying the partnership's adjusted basis in the property by the partnership QBAI ratio with respect to the property. If the partnership's taxable year is less than twelve months, the principles of paragraph (f) of this section apply in determining a domestic corporation's partnership QBAI with respect to the partnership.

(ii) *Partnership QBAI ratio.* The term *partnership QBAI ratio* means, with respect to partnership specified tangible property—

(A) In the case of partnership specified tangible property that produces directly identifiable income for a partnership taxable year, the ratio of the domestic corporation's distributive share of the gross income produced by the property for the partnership taxable year that is included in the gross DEI of the domestic corporation for its taxable year to the total gross income produced by the property for the partnership taxable year.

(B) In the case of partnership specified tangible property that does not produce directly identifiable income for a partnership taxable year, the ratio of the domestic corporation's distributive share of the gross income of the partnership for the partnership taxable year that is included in the gross DEI of the domestic corporation for its taxable year to the total amount of gross income of the partnership for the partnership taxable year.

(iii) *Partnership specified tangible property.* The term *partnership specified tangible property* means tangible property (as defined in paragraph (c)(2) of this section) of a partnership that is—

(A) Used in the trade or business of the partnership;

(B) Of a type with respect to which a deduction is allowable under section 167; and

(C) Used in the production of gross DEI.

(3) *Determination of adjusted basis.* For purposes of this paragraph (g), a partnership's adjusted basis in partnership specified tangible property is determined based on the average of the partnership's adjusted basis in the property as of the close of each quarter in the partnership taxable year. The principles of paragraphs (e) and (h) of this section apply for purposes of

determining a partnership's adjusted basis in partnership specified tangible property and the portion of such adjusted basis taken into account in determining a domestic corporation's partnership QBAI.

(4) *Example.* The following example illustrates the rules of this paragraph (g).

(i) *Facts.* DC, a domestic corporation, is a partner in PRS. Both DC and PRS use the calendar year as their taxable year. PRS owns two assets, Asset A and Asset B, both of which are tangible property used in PRS's trade or business that it depreciates under section 168. Asset A and Asset B are used solely in the production of gross DEI. The average of PRS's adjusted basis as of the close of each quarter of PRS's taxable year in Asset A is $100x, and the average of PRS's adjusted basis as of the close of each quarter of PRS's taxable year in Asset B is $50x. Asset A produces $10x of directly identifiable gross income for the taxable year, and Asset B produces $50x of directly identifiable gross income for the taxable year. DC's distributive share of the gross income from Asset A is $8x and its distributive share of the gross income from Asset B is $10x. DC's entire distributive share of income from Asset A and Asset B is included in DC's gross DEI for the taxable year. See § 1.250(b)–1(e)(1). DC's distributive share satisfies the requirements of section 704(b).

(ii) *Analysis.* Each of Asset A and Asset B is partnership specified tangible property because each is tangible property, of a type with respect to which a deduction is allowable under section 167, used in PRS's trade or business, and used in the production of gross DEI. DC's partnership QBAI ratio for Asset A is 80%, the ratio of DC's distributive share of the gross income from Asset A for the taxable year that is included in DC's gross DEI ($8x) to the total gross income produced by Asset A for the taxable year ($10x). DC's partnership QBAI ratio for Asset B is 20%, the ratio of DC's distributive share of the gross income from Asset B for the taxable year that is included in DC's gross DEI ($10x) to the total gross income produced by Asset B for the taxable year ($50x). DC's share of the average of PRS's adjusted basis of Asset A is $80x, PRS's adjusted basis in Asset A of $100x multiplied by DC's partnership QBAI ratio for Asset A of 80%. DC's share of the average of PRS's adjusted basis of Asset B is $10x, PRS's adjusted basis in Asset B of $50x multiplied by DC's partnership QBAI ratio for Asset B of 20%. Therefore, DC's partnership QBAI with respect to PRS is $90x ($80x + $10x). Accordingly, under paragraph (g)(1) of this section, DC increases its qualified business asset investment for the taxable year by $90x.

(h) *Anti-avoidance rule for certain transfers of property*—(1) *In general.* If, with a principal purpose of decreasing the amount of its deemed tangible income return, a domestic corporation transfers specified tangible property (*transferred property*) to a specified related party of the domestic corporation and, within the disqualified period, the domestic corporation or an FDII-eligible related party of the domestic corporation leases the same or substantially similar property from any specified related party, then, solely for purposes of determining the qualified business asset investment of the domestic corporation under paragraph (b) of this section, the domestic corporation is treated as owning the transferred property from the later of the beginning of the term of the lease or date of the transfer of the property until the earlier of the end of the term of the lease or the end of the recovery period of the property.

(2) *Rule for structured arrangements.* For purposes of paragraph (h)(1) of this section, a transfer of specified tangible property to a person that is not a related party or lease of property from a person that is not a related party is treated as a transfer to or lease from a specified related party if the transfer or lease is pursuant to a structured arrangement. A structured arrangement exists only if either paragraph (h)(2)(i) or (ii) of this section is satisfied.

(i) The reduction in the domestic corporation's deemed tangible income return is a material factor in the pricing of the arrangement with the transferee.

(ii) Based on all the facts and circumstances, the reduction in the domestic corporation's deemed tangible income return is a principal purpose of the arrangement. Facts and circumstances that indicate the reduction in the domestic corporation's deemed tangible income return is a principal purpose of the arrangement include—

(A) Marketing the arrangement as tax-advantaged where some or all of the tax advantage derives from the reduction in the domestic corporation's deemed tangible income return;

(B) Primarily marketing the arrangement to domestic corporations which earn foreign-derived deduction eligible income;

(C) Features that alter the terms of the arrangement, including the return, in the event the reduction in the domestic corporation's deemed tangible income return is no longer relevant; or

(D) A below-market return absent the tax effects or benefits resulting from the reduction in the domestic corporation's deemed tangible income return.

(3) *Per se rules for certain transactions.* For purposes of paragraph (h)(1) of this section, a transfer of property by a domestic corporation to a specified related party (including a party deemed to be a specified related party under paragraph (h)(2) of this section) followed by a lease of the same or substantially similar property by the domestic corporation or an FDII-eligible related party from a specified related party (including a party deemed to be a specified related party under paragraph (h)(2) of this section) is treated per se as occurring pursuant to a principal purpose of decreasing the amount of the domestic corporation's deemed tangible income return if both the transfer and the lease occur within a six-month period.

(4) *Definitions related to anti-avoidance rule.* The following definitions apply for purpose of this paragraph (h).

(i) *Disqualified period.* The term *disqualified period* means, with respect to a transfer, the period beginning one year before the date of the transfer and ending the earlier of the end of the remaining recovery period (under the system described in section 951A(d)(3)(A)) of the property or one year after the date of the transfer.

(ii) *FDII-eligible related party.* The term *FDII-eligible related party* means, with respect to a domestic corporation, a member of the same consolidated group as the domestic corporation or a partnership with respect to which at least 80 percent of the interests in partnership capital and profits are owned, directly or indirectly, by the domestic corporation or one or more members of the consolidated group that includes the domestic corporation.

(iii) *Specified related party.* The term *specified related party* means, with respect to a domestic corporation, a related party (as defined in § 1.250(b)–1(c)(19)) other than an FDII-eligible related party.

(iv) *Transfer.* The term *transfer* means any disposition, exchange, contribution, or distribution of property, and includes an indirect transfer. For example, a transfer of an interest in a partnership is treated as a transfer of the assets of the partnership. In addition, if paragraph (h)(1) of this section applies to treat a domestic corporation as owning specified tangible property by reason of a lease of the property, the termination or lapse of the lease of the property is treated as a transfer of the property by the domestic corporation to the lessor.

(5) *Examples.* The following examples illustrate the application of this paragraph (h).

(i) *Example 1: Sale-leaseback with a related party*—(A) *Facts.* DC, a domestic corporation, owns Asset A, which is specified tangible property. DC also owns all the single class of stock of DS, a domestic corporation, and FS1 and FS2, each a controlled foreign corporation. DC and DS are members of the same consolidated group. On January 1, Year 1, DC sells Asset A to FS1. At the time of the sale, Asset A had a

remaining recovery period of 10 years under the alternative depreciation system. On February 1, Year 1, FS2 leases Asset B, which is substantially similar to Asset A, to DS for a five-year term ending on January 31, Year 6.

(B) *Analysis.* Because DC transfers specified tangible property (Asset A), to a specified related party of DC (FS1), and, within a six month period (January 1, Year 1 to February 1, Year 1), an FDII-eligible related party of DC (DS) leases a substantially similar property (Asset B), DC's transfer of Asset A and lease of Asset B are treated as per se occurring pursuant to a principal purpose of decreasing the amount of its deemed tangible income return. Accordingly, for purposes of determining DC's qualified business asset investment, DC is treated as owning Asset A from February 1, Year 1, the later of the date of the transfer of Asset A (January 1, Year 1) and the beginning of the term of the lease of Asset B (February 1, Year 1), until January 31, Year 6, the earlier of the end of the term of the lease of Asset B (January 31, Year 6) or the remaining recovery period of Asset A (December 31, Year 10).

(ii) *Example 2: Sale-leaseback with a related party; lapse of initial lease*—(A) *Facts.* The facts are the same as in paragraph (h)(5)(i)(A) of this section (the facts in *Example 1*). In addition, DS allows the lease of Asset B to expire on February 1, Year 6. On June 1, Year 6, DS and FS2 renew the lease for a five-year term ending on May 31, Year 11.

(B) *Analysis.* Because DC is treated as owning Asset A under paragraph (h)(1) of this section, the lapse of the lease of Asset B is treated as a transfer of Asset A to FS2 on February 1, Year 6, under paragraph (h)(4)(iv) of this section. Further, because DC is deemed to transfer specified tangible property (Asset A) to a specified related party (FS2) upon the lapse of the lease, and within a six month period (February 1, Year 6 to June 1, Year 6), an FDII-eligible related party of DC (DS) leases a substantially similar property (Asset B), DC's deemed transfer of Asset A under paragraph (h)(4)(iv) of this section and lease of Asset B are treated as per se occurring pursuant to a principal purpose of decreasing the amount of its deemed tangible income return. Accordingly, for purposes of determining DC's qualified business asset investment, DC is treated as owning Asset A from June 1, Year 6, the later of the date of the deemed transfer of Asset A (February 1, Year 6) and the beginning of the term of the lease of Asset B (June 1, Year 6), until December 31, Year 10, the earlier of the end of the term of the lease of Asset B (May 31, Year 11) or the remaining recovery period of Asset A (December 31, Year 10).

§ 1.250(b)–3 FDDEI transactions.

(a) *Scope.* This section provides rules related to the determination of whether a sale of property or provision of a service is a FDDEI transaction. Paragraph (b) of this section provides definitions related to the determination of whether a sale of property or provision of a service is a FDDEI transaction. Paragraph (c) of this section provides rules regarding a sale of property or provision of a service to a foreign government or an international organization. Paragraph (d) of this section provides rules for determining the reliability of documentation. Paragraph (e) of this section provides a rule for characterizing a transaction with both sales and services elements. Paragraph (f) of this section provides a rule for treating certain loss transactions as FDDEI transactions. Paragraph (g) of this section provides a rule for determining whether a sale of property or provision of a service to a partnership is a FDDEI transaction.

(b) *Definitions.* This paragraph (b) provides definitions that apply for purposes of this section and §§ 1.250(b)–4 through 1.250(b)–6.

(1) *FDII filing date.* The term *FDII filing date* means, with respect to a sale of property by a seller or provision of a service by a renderer, the date, including extensions, by which the seller or renderer is required to file an income tax return (or in the case of a seller or renderer that is a partnership, a return of partnership income) for the taxable year in which the gross income from the sale of property or provision of a service is included in the gross income of the seller or renderer.

(2) *Foreign person.* The term *foreign person* means a person that is not a United States person, and includes a foreign government or an international organization.

(3) *General property.* The term *general property* means any property other than—

(i) Intangible property;

(ii) A security (as defined in section 475(c)(2)); or

(iii) A commodity (as defined in section 475(e)(2)(B) through (D)).

(4) *Intangible property.* The term *intangible property* has the meaning set forth in section 367(d)(4).

(5) *Recipient.* The term *recipient* means a person that purchases property or services from a seller or renderer.

(6) *Renderer.* The term *renderer* means a person that provides a service to a recipient.

(7) *Sale.* The term *sale* means any sale, lease, license, exchange, or disposition of property, and includes any transfer of property in which gain or income is recognized under section 367.

(8) *Seller.* The term *seller* means a person that sells property to a recipient.

(9) *United States.* The term *United States* has the meaning set forth in section 7701(a)(9), as expanded by section 638(1) with respect to mines, oil and gas wells, and other natural deposits.

(10) *United States person.* The term *United States person* has the meaning set forth in section 7701(a)(30), except that the term does not include an individual that is a bona fide resident of a United States territory within the meaning of section 937(a).

(11) *United States territory.* The term *United States territory* means American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands.

(c) *Foreign military sales.* For purposes of determining whether a sale of property or a provision of a service is a FDDEI transaction, if a sale of property or a provision of a service is made to the United States or an instrumentality thereof pursuant to 22 U.S.C. 2751 *et seq.* under which the United States or an instrumentality thereof purchases the property or service for resale or on-service, on commercial terms, to a foreign government or agency or instrumentality thereof, and the contract between the seller or renderer and the United States or an instrumentality thereof provides that the sale or service is purchased for resale or on-service to such foreign government or agency or instrumentality thereof, then the sale of property or provision of a service is treated as a sale of property or a provision of a service to the foreign government.

(d) *Reliability of documentation.* For purposes of the documentation requirements described in §§ 1.250(b)–4 through 1.250(b)–6, documentation is reliable only if each of the requirements described in paragraphs (d)(1) through (3) of this section is satisfied.

(1) As of the FDII filing date, the seller or renderer does not know and does not have reason to know that the documentation is unreliable or incorrect. For this purpose, a seller or renderer has reason to know that documentation is unreliable or incorrect if its knowledge of all the relevant facts or statements contained in the documentation is such that a reasonably prudent person in the position of the seller or renderer would question the accuracy or reliability of the documentation.

(2) The documentation is obtained by the seller or renderer by the FDII filing date with respect to the sale or service.

(3) The documentation is obtained no earlier than one year before the date of the sale or service.

(e) *Transactions with multiple elements.* If a transaction includes both a sale component and a service component, the transaction is classified

according to the overall predominant character of the transaction for purposes of determining whether the transaction is subject to § 1.250(b)–4 or § 1.250(b)–5.

(f) *Treatment of certain loss transactions*—(1) *In general.* If a seller knows or has reason to know that property is sold to a foreign person for a foreign use (within the meaning of § 1.250(b)–4(d)(2) or (e)(2)) or a renderer knows or has reason to know that a general service (as defined in § 1.250(b)–5(c)(4)) is provided to a person located outside the United States (within the meaning of § 1.250(b)–5(d)(2) or (e)(2)), but the seller or renderer does not satisfy the documentation requirements described in § 1.250(b)–4(c)(2), (d)(3), or (e)(3) or § 1.250(b)–5(d)(3) or (e)(3), as applicable, the transaction is deemed to be a FDDEI transaction with respect to a domestic corporation if not treating the transaction as a FDDEI transaction would increase the amount of the corporation's foreign-derived deduction eligible income for the taxable year relative to its foreign-derived deduction eligible income that would be determined if the transaction were treated as a FDDEI transaction. If a seller or renderer engages in more than one transaction described in the preceding sentence in a taxable year, the previous sentence applies by comparing the corporation's foreign-derived deduction eligible income if each such transaction were not treated as a FDDEI transaction to its foreign-derived deduction eligible income if each such transaction were treated as a FDDEI transaction.

(2) *Example.* The following example illustrates the application of this paragraph (f).

(i) *Facts.* During a taxable year, DC, a domestic corporation, manufactures products A and B in the United States. DC sells product A for $200x and product B for $800x. DC knows or has reason to know that all of its sales of product A and product B are to foreign persons for a foreign use. DC establishes that its sales of product B are to foreign persons for a foreign use but does not obtain documentation establishing that any sales of product A are to foreign person for a foreign use. DC's cost of goods sold is $450x. For purposes of determining gross FDDEI, under § 1.250(b)–1(d)(1) DC attributes $250x of cost of goods sold to product A and $200x of cost of goods sold to product B, and then attributes the cost of goods sold for each product ratably between the gross receipts of such product sold to foreign persons and the gross receipts of such product not sold to foreign persons. The manner in which DC attributes the cost of goods sold is a reasonable method. DC has no other items of income, loss, or deduction.

TABLE 1 TO PARAGRAPH (f)(2)(i)

	Product A	Product B	Total
Gross receipts	$200x	$800x	$1,000x
Cost of Goods Sold	250x	200x	450x
Gross Income (Loss)	(50x)	600x	550x

(ii) *Analysis.* By not treating the sales of product A as FDDEI sales, the amount of DC's foreign-derived deduction eligible income would increase by $50x relative to its foreign-derived deduction eligible income if the sales of product A were treated as FDDEI sales. Accordingly, because DC knows or has reason to know that its sales of product A are to foreign persons for a foreign use, the sales of product A constitute FDDEI sales under paragraph (f)(1) of this section, and thus the $50x loss from the sale of product A is included in DC's gross FDDEI.

(g) *Treatment of partnerships*—(1) *In general.* For purposes of determining whether a sale of property to or by a partnership or a provision of a service to or by a partnership is a FDDEI transaction, a partnership is treated as a person. Accordingly, for example, a partnership may be a seller, renderer, recipient, or related party, including a foreign related party (as defined in § 1.250(b)–6(b)(1)).

(2) *Examples.* The following examples illustrate the application of this paragraph (g).

(i) *Example 1: Domestic partner sale to foreign partnership with a foreign branch*—(A) *Facts.* DC, a domestic corporation, is a partner in PRS, a foreign partnership. DC and PRS are not related parties. PRS has a foreign branch within the meaning of § 1.904–4(f)(3)(iii). DC and PRS both use the calendar year as their taxable year. For the taxable year, DC recognizes $20x of gain on the sale of general property to PRS for a foreign use (as determined under § 1.250(b)–4(d)). During the same taxable year, PRS recognizes an additional $20x of gain on the sale of the property to a foreign person for a foreign use (as determined under § 1.250(b)–4(d)). PRS's income on the sale of the property is attributable to its foreign branch.

(B) *Analysis.* DC's sale of property to PRS, a foreign partnership, is a FDDEI sale because it is a sale to a foreign person for a foreign use. Therefore, DC's gain of $20x on the sale to PRS is included in DC's gross DEI and gross FDDEI. However, PRS's gain of $20x is not included in the gross DEI or gross FDDEI of PRS because the gain is foreign branch income within the meaning of § 1.250(b)–1(c)(11). Accordingly, none of PRS's gain on the sale of property is included in DC's gross DEI or gross FDDEI under § 1.250(b)–1(e)(1).

(ii) *Example 2: Domestic partner sale to domestic partnership without a foreign branch*—(A) *Facts.* The facts are the same as in paragraph (g)(2)(i)(A) of this section (the facts in *Example 1*), except PRS is a domestic partnership that does not have a foreign branch within the meaning of § 1.904–4(f)(3)(iii).

(B) *Analysis.* DC's sale of property to PRS, a domestic partnership, is not a FDDEI sale because the sale is to a United States person. Therefore, the gross income from DC's sale to PRS is included in DC's gross DEI, but is not included in its gross FDDEI. However, PRS's subsequent sale is a FDDEI sale, and therefore the gain of $20x is included in the gross DEI and gross FDDEI of PRS. Accordingly, DC includes its distributive share of PRS's gain from the sale in determining DC's gross DEI and gross FDDEI for the taxable year under § 1.250(b)–1(e)(1).

§ 1.250(b)–4 FDDEI sales.

(a) *Scope.* This section provides rules for determining whether a sale of property is a FDDEI sale. Paragraph (b) of this section defines a FDDEI sale. Paragraph (c) of this section provides rules for determining whether a recipient is a foreign person. Paragraph (d) of this section provides rules for determining whether general property is sold for a foreign use. Paragraph (e) of this section provides rules for determining whether intangible property is sold for a foreign use. Paragraph (f) of this section provides a special rule for the sale of certain financial instruments.

(b) *Definition of FDDEI sale.* Except as provided in § 1.250(b)–6(c), the term *FDDEI sale* means a sale of general property or intangible property to a foreign person (as determined under paragraph (c) of this section) for a foreign use (as determined under paragraphs (d) and (e) of this section).

(c) *Foreign person*—(1) *In general.* A recipient is a foreign person for purposes of paragraph (b) of this section only if the seller establishes that the recipient is a foreign person by obtaining the documentation described in paragraph (c)(2) of this section (which meets the reliability requirements described in § 1.250(b)–3(d)) and, as of the FDII filing date, the seller does not know or have reason to

know that the recipient is not a foreign person.

(2) *Documentation of status as a foreign person*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, a seller establishes the status of a recipient as a foreign person by obtaining one or more of the following types of documentation with respect to the person—

(A) A written statement by the recipient that the recipient is a foreign person;

(B) With respect to a recipient that is an entity, documentation that establishes that the entity is organized or created under the laws of a foreign jurisdiction;

(C) With respect to an individual, any valid identification issued by a foreign government or an agency thereof that is typically used for identification purposes;

(D) Documents filed with a government or an agency or instrumentality thereof that provide the foreign jurisdiction of organization or residence of an entity (for example, a publicly traded corporation's annual report filed with the U.S. Securities and Exchange Commission that includes the jurisdiction of organization or residence of foreign subsidiaries of the corporation); or

(E) Any other forms of documentation as prescribed by the Secretary in forms, instructions, or other guidance.

(ii) *Special rules*—(A) *Special rule for small businesses.* A seller that receives less than $10,000,000 in gross receipts during a prior taxable year establishes the status of any recipient as a foreign person for a taxable year if the seller's shipping address for the recipient is outside the United States. If the seller's prior taxable year was less than 12 months (a short period), gross receipts are annualized by multiplying the gross receipts for the short period by 365 and dividing the result by the number of days in the short period.

(B) *Special rule for small transactions.* A seller that receives less than $5,000 in gross receipts during a taxable year from a recipient establishes the status of such recipient as a foreign person for such taxable year if the seller's shipping address for the recipient is outside the United States.

(d) *Foreign use for general property*—(1) *In general.* The sale of general property is for a foreign use only if the seller establishes that the property is for a foreign use within the meaning of paragraph (d)(2) of this section by obtaining the documentation described in paragraph (d)(3) of this section (which meets the reliability requirements described in § 1.250(b)–3(d)) and, as of the FDII filing date, the seller does not know or have reason to know that the property is not for a foreign use within the meaning of paragraph (d)(2) of this section.

(2) *Determination of foreign use*—(i) *In general.* Except as provided in paragraph (d)(2)(iv) of this section, the sale of general property is for a foreign use if—

(A) The property is not subject to a domestic use within three years of the date of delivery; or

(B) The property is subject to manufacture, assembly, or other processing outside the United States before the property is subject to a domestic use.

(ii) *Determination of domestic use.* General property is subject to domestic use if—

(A) The property is subject to any use, consumption, or disposition within the United States; or

(B) The property is subject to manufacture, assembly, or other processing within the United States.

(iii) *Determination of manufacture, assembly, or other processing*—(A) *In general.* General property is subject to manufacture, assembly, or other processing only if the property is physically and materially changed (as described in paragraph (d)(2)(iii)(B) of this section) or the property is incorporated as a component into a second product (as described in paragraph (d)(2)(iii)(C) of this section).

(B) *Property subject to a physical and material change.* For purposes of paragraph (d)(2)(iii)(A) of this section, the determination of whether general property is subject to a physical and material change is made based on all the relevant facts and circumstances. However, general property is not considered subject to physical and material change if it is subject only to minor assembly, packaging, or labeling.

(C) *Property incorporated into second product as a component.* For purposes of paragraph (d)(2)(iii)(A) of this section, general property is treated as a component incorporated into a second product only if the fair market value of such property when it is delivered to the recipient constitutes no more than 20 percent of the fair market value of the second product, determined when the second product is completed. For purposes of the preceding sentence, all general property that is sold by the seller and incorporated into the second product is treated as a single item of property.

(iv) *Determination of foreign use for transportation property.* In the case of aircraft, railroad rolling stock, vessel, motor vehicle, or similar property that provides a mode of transportation and is capable of traveling internationally (*international transportation property*), such property is for a foreign use only if, during the three year period from the date of delivery, the property is located outside the United States more than 50 percent of the time and more than 50 percent of the miles traversed in the use of the property are traversed outside the United States. For purposes of the preceding sentence, international transportation property is deemed to be within the United States at all times during which it is engaged in transport between any two points within the United States, except where the transport constitutes uninterrupted international air transportation within the meaning of section 4262(c)(3) and the regulations under that section (relating to tax on air transportation of persons).

(3) *Documentation of foreign use of general property*—(i) *In general.* Except as provided in paragraphs (d)(3)(ii) and (iii) of this section, a seller establishes that general property, or a portion of a particular class of fungible general property, is for a foreign use only if the seller obtains one or more of the following types of documentation with respect to the sale—

(A) A written statement from the recipient or a related party of the recipient that the recipient's use or intended use of the property is for a foreign use (within the meaning of paragraph (d)(2) of this section);

(B) A binding contract between the seller and the recipient which provides that the recipient's use or intended use of the property is for a foreign use (within the meaning of paragraph (d)(2) of this section);

(C) Except in the case of international transportation property, documentation of shipment of the general property (including both property located within the United States or outside the United States, such as in a warehouse, storage facility, or assembly site located outside United States) to a location outside the United States (for example, a copy of the export bill of lading issued by the carrier which delivered the property, or a copy of the certificate of lading for the property executed by a customs officer of the country to which the property is delivered); or

(D) Any other forms of documentation as prescribed by the Secretary in forms, instructions, or other guidance.

(ii) *Special rules*—(A) *Special rule for small businesses.* A seller that receives less than $10,000,000 in gross receipts during the prior taxable year establishes that the sale of general property in a taxable year to any recipient is for a

foreign use for the taxable year if the seller's shipping address for the recipient is outside the United States. If the seller's prior taxable year was a short period, gross receipts are annualized by multiplying the gross receipts for the short period by 365 and dividing the result by the number of days in the short period.

(B) *Special rule for small transactions.* A seller that receives less than $5,000 in gross receipts during a taxable year from a recipient establishes that the sale of general property to the recipient is for a foreign use for the taxable year if the seller's shipping address for the recipient is outside the United States.

(iii) *Sales of fungible mass of general property.* In the case of sales of multiple items of general property, which because of their fungible nature cannot reasonably be specifically traced to the location of use (*fungible mass*), as an alternative to obtaining the documentation described in paragraphs (d)(3)(i)(A) through (D) of this section, a seller may establish that a portion of the fungible mass is for a foreign use through market research, including statistical sampling, economic modeling and other similar methods indicating that the property will be subject to a foreign use. If, under the preceding sentence, the seller establishes that 90 percent or more of a fungible mass is for a foreign use, then the entire fungible mass is for a foreign use. If, under the first sentence of this paragraph (d)(3)(iii), the seller does not establish that 10 percent or more of the sale of a fungible mass is for a foreign use, then no portion of the fungible mass is for a foreign use.

(4) *Examples.* The following examples illustrate the application of this paragraph (d).

(i) *Presumed facts.* The following facts are assumed for purposes of the examples—

(A) DC is a domestic corporation.

(B) FP is a foreign person that is a foreign unrelated party (as defined in § 1.250(b)–6(b)(2)) with respect to DC, and DC obtains documentation establishing that FP is a foreign person.

(C) Any documentation obtained meets the reliability requirements described in § 1.250(b)–3(d).

(D) The treatment of any sale as a FDDEI sale would not reduce DC's foreign-derived deduction eligible income for the year.

(ii) *Examples.*

(A) *Example 1: Manufacturing outside the United States*—(*1*) *Facts.* DC sells general property for $18x to FP for manufacture outside the United States and obtains documentation of shipment of the property to a location outside the United States. DC does not know or have reason to know that the property will be subject to a domestic use before manufacture, but DC knows or has reason to know that the property will be subject to a domestic use after manufacture and within three years of delivery to FP. FP will incorporate the property into a second product outside the United States that FP will sell to a United States person for $100x. The property is not physically or materially changed in the process of its incorporation into the second product.

(*2*) *Analysis.* Because the fair market value of the general property FP purchases from DC and incorporates into the second product does not exceed 20% of the fair market value of the second product, the general property FP purchases from DC is a component, and therefore the property is treated as subject to manufacture, assembly, or other processing outside the United States. See paragraphs (d)(2)(iii)(A) and (B) of this section. As a result, notwithstanding that DC knows or has reason to know that the property will be subject to a domestic use within three years of delivery, DC does not know or have reason to know that its sale of general property to FP is not for a foreign use. See paragraph (d)(2)(i)(B) of this section. Accordingly, DC's sale of property to FP is for a foreign use under paragraph (d)(2) of this section, and the sale is a FDDEI sale.

(B) *Example 2: Manufacturing outside the United States*—(*1*) *Facts.* The facts are the same as in paragraph (d)(2)(iv)(A)(*1*) of this section (the facts in *Example 1*), except FP purchases the general property from DC for $25x.

(*2*) *Analysis.* Because the fair market value of the general property FP purchases from DC and incorporates into the second product exceeds 20% of the fair market value of the second product, the general property is not treated as a component of the second product. Because the property is also not subject to a physical and material change in the process of incorporation into the second product, the property is not subject to manufacture, assembly, or other processing outside the United States. As a result, because DC knows or has reason to know that FP will sell the second product, which includes the property, for domestic use, DC knows or has reason to know that its sale of general property to FP is not for a foreign use. Accordingly, DC's sale of the property to FP is not for a foreign use under paragraph (d)(2) of this section, and the sale is not a FDDEI sale.

(C) *Example 3: Sale of a fungible mass of products*—(*1*) *Facts.* DC and persons other than DC sell multiple units of fungible general property to FP during the taxable year. DC obtains documentation of shipment of the property to a location outside the United States, but it knows or has reason to know that some portion of the property will be resold back to customers in the United States. DC also engages in reliable market research that determines that approximately 25% of the fungible general property FP sold during the taxable year is for domestic use.

(*2*) *Analysis.* Notwithstanding that the documentation of shipment meets the reliability requirements of § 1.250(b)–3(d), DC knows or has reason to know that certain units of the property are not for a foreign use. See paragraphs (d)(1) and (2) of this section. However, DC can establish foreign use of a portion of the fungible property through its market research. See paragraphs (d)(1) and (d)(3)(iii) of this section. Based on its market research, DC knows that approximately 25% of the total units of fungible general property that FP purchased from all persons in the taxable year is sold by FP for domestic use. Accordingly, DC satisfies the test for a foreign use under paragraph (d)(2) of this section with respect to 75% of its sales of the property to FP.

(e) *Foreign use for intangible property*—(1) *In general.* A sale of intangible property is for a foreign use only to the extent the seller establishes that the sale is for a foreign use within the meaning of paragraph (e)(2) of this section by obtaining documentation described in paragraph (e)(3) of this section (which meets the reliability requirements described in § 1.250(b)-3(d)) and, as of the FDII filing date, the seller does not know or have reason to know that the portion of the sale of the intangible property for which the seller establishes foreign use is not for a foreign use within the meaning of paragraph (e)(2) of this section.

(2) *Determination of foreign use*—(i) *In general.* A sale of intangible property is for a foreign use only to the extent that the intangible property generates revenue from exploitation outside the United States. A sale of intangible property rights providing for exploitation both within the United States and outside the United States is for a foreign use in proportion to the revenue generated from exploitation of the intangible property outside the United States over the total revenue generated from the exploitation of the intangible property. For intangible property used in the development, manufacture, sale, or distribution of a product, the intangible property is treated as exploited at the location of the end user when the product is sold to the end user. Paragraphs (e)(2)(ii) and (iii) of this section provide rules for how and when to determine revenue from exploitation with respect to different types of sales of intangible property.

(ii) *Sales in exchange for periodic payments.* In the case of a sale of intangible property to a foreign person in exchange for periodic payments, the extent to which the sale is for a foreign use is determined on an annual basis based on the actual revenue earned by the recipient for the taxable year in which a periodic payment is received.

(iii) *Sales in exchange for a lump sum.* In the case of a sale of intangible property to a foreign person for a lump sum, the extent to which the sale is for a foreign use is determined based on the

ratio of the total net present value of revenue the seller would have reasonably expected to earn from the exploitation of the intangible property outside the United States to the total net present value of revenue the seller would have reasonably expected to earn from the exploitation of the intangible property.

(3) *Documentation of foreign use of intangible property*—(i) *Documentation for sales for periodic payments.* Except as provided in paragraph (e)(3)(ii) of this section, a seller establishes the extent to which a sale of intangible property described in paragraph (e)(2)(ii) of this section is for a foreign use by obtaining one or more of the following types of documentation with respect to the sale—

(A) A written statement from the recipient providing the amount of the annual revenue from sales or sublicenses of the intangible property or sales of products with respect to which the intangible property is used that is generated as a result of exploitation of the intangible property outside the United States and the total amount of revenue from such sales or sublicenses worldwide;

(B) A binding contract for the sale of the intangible property that provides that the intangible property can be exploited solely outside the United States;

(C) Audited financial statements or annual reports of the recipient stating the amount of annual revenue earned within the United States and outside the United States from sales of products with respect to which the intangible property is used;

(D) Any statements or documents used by the seller and the recipient to determine the amount of payment due for exploitation of the intangible property if those statements or documents provide reliable data on revenue earned within the United States and outside the United States; or

(E) Any other forms of documentation as prescribed by the Secretary in forms, instructions, or other guidance.

(ii) *Certain sales to foreign unrelated parties.* In the case of a sale of intangible property described in paragraph (e)(2)(ii) of this section that are not contingent on revenue or profit to a foreign unrelated party (as defined in § 1.250(b)–6(b)(2)), where the seller is unable to obtain the documentation described in paragraph (e)(3)(i) of this section without undue burden, a seller establishes the extent to which the sale of intangible property is for a foreign use using the principles of paragraph (e)(3)(iii) of this section, except that the seller must make reasonable projections on an annual basis.

(iii) *Documentation for sales in exchange for a lump sum.* A seller establishes the extent to which a sale of intangible property described in paragraph (e)(2)(iii) of this section is for a foreign use through documentation containing reasonable projections of the amount and location of revenue that the seller would have reasonably expected to earn from exploiting the intangible property. To be considered reasonable, the projections must be consistent with the financial data and projections used by the seller to determine the price it sold the intangible property to the foreign person.

(4) *Examples.* The following examples illustrate the application of this paragraph (e).

(i) *Presumed facts.* The following facts are assumed for purposes of the examples—

(A) DC is a domestic corporation.

(B) Except as otherwise provided, FP and FP2 are foreign persons that are foreign unrelated parties (as defined in § 1.250(b)–6(b)(2)) with respect to DC.

(C) Any documentation obtained meets the reliability requirements described in § 1.250(b)–3(d).

(D) All of DC's income is deduction eligible income.

(E) The treatment of any sale as a FDDEI sale would not reduce DC's foreign-derived deduction eligible income for the year.

(ii) *Examples.*

(A) *Example 1: License of worldwide rights with documentation*—(*1*) *Facts.* DC licenses to FP worldwide rights to the copyright to composition A in exchange for annual royalties of $60x. FP sells composition A to customers through digital downloads from servers. In the taxable year, FP earns $100x in revenue from sales of copies of composition A to customers, of which $60x is from customers located in the United States and the remaining $40x is from customers located outside the United States. FP provides DC with records showing the amount of revenue earned in the taxable year from sales of composition A to establish the royalties owed to DC. These records also provide DC with the amount of revenue earned from sales of composition A in different countries, including the United States.

(*2*) *Analysis.* Based on the information provided, DC has obtained documentation establishing that 40% ($40x/$100x) of the revenue generated by the copyright during the taxable year is earned outside the United States. Accordingly, a portion of DC's license to FP is for a foreign use under paragraph (e)(2) of this section and therefore such portion is a FDDEI sale. The $24x of royalty (0.40 × $60x) derived with respect to such portion is included in DC's gross FDDEI for the taxable year.

(B) *Example 2: License of worldwide rights without documentation*—(*1*) *Facts.* The facts are the same as in paragraph (e)(4)(ii)(A)(*1*) of this section (the facts in *Example 1*), except FP does not provide DC with data showing how much revenue was earned from sales in different countries.

(*2*) *Analysis.* DC has not obtained documentation establishing the amount of revenue FP earned from sales of composition A outside the United States. Accordingly, DC's license of the copyright is not for a foreign use under paragraph (e)(2) of this section and is not a FDDEI sale.

(C) *Example 3: Sale of patent rights protected in the United States and other countries; documentation through financial projections*—(*1*) *Facts.* DC owns a patent for an active pharmaceutical ingredient (''API'') approved for treatment of disease A (''indication A'') in the United States and in Countries A, B, and C. The patent is registered in the United States and in Countries A, B, and C. DC sells to FP all of its patent rights to the API for indication A for a lump sum payment of $1,000x. DC has no basis in the patent rights. To determine the sales price for the patent rights, DC projected that the net present value of the revenue it would earn from selling a pharmaceutical product incorporating the API for indication A was $5,000x, with 15% of the revenue earned from sales within the United States and 85% of the revenue earned from sales outside the United States.

(*2*) *Analysis.* Based on the financial projections DC used to determine the sales price, DC has obtained documentation establishing that 85% of the revenue that will be generated by the patent rights will be outside the United States. Accordingly, a portion of DC's sale to FP is for a foreign use under paragraph (e)(2) of this section and such portion is a FDDEI sale. The $850x (85% × $1,000x) of gain derived with respect to such portion is included in DC's gross FDDEI for the taxable year.

(D) *Example 4: Limited use license of copyrighted computer software; documentation through public filing*—(*1*) *Facts.* DC provides FP with a limited use license to copyrighted computer software in exchange for an annual fee of $100x. The limited use license restricts FP's use of the computer software to 100 of FP's employees. The limited use license prohibits FP from using the computer software in any way other than as an end-user, which includes prohibiting sublicensing, selling, reverse engineering, or modifying the computer software. FP's annual report for the taxable year indicates that all of FP's employees are physically located outside the United States.

(*2*) *Analysis.* The software licensed to FP is exploited where its employees that use the software are located. The revenue DC earns from the limited use license to FP is based on the number of FP's employees allowed to use the computer software as end-users. Based on FP's annual report for the taxable year, DC has obtained documentation establishing that all the revenue generated for the use of the copyrighted computer software is earned outside the United States for the taxable year. Accordingly, DC's license to FP is for a foreign use and therefore a FDDEI

sale. The entire $100x of the license fee is included in DC's gross FDDEI for the taxable year.

(E) *Example 5: Limited use license of copyrighted computer software; documentation through public filing*—(*1*) *Facts.* The facts are the same as in paragraph (e)(4)(ii)(D)(*1*) of this section (the facts in *Example 4*), except that FP's annual report for the taxable year indicates that FP has offices both within and outside the United States, and that 50% of FP's revenue is earned within the United States.

(*2*) *Analysis.* Based on FP's annual report for the taxable year, DC has obtained documentation establishing that 50% of the revenue generated from the use of the copyrighted computer software is outside the United States for the taxable year. Accordingly, a portion of DC's license to FP is for a foreign use and therefore such portion is a FDDEI sale. The $50x of license fee derived with respect to such portion is included in DC's gross FDDEI for the taxable year.

(F) *Example 6: Deemed sale in exchange for contingent payments under section 367(d)*—(*1*) *Facts.* DC owns 100% of the stock of FP, a foreign related party (as defined in § 1.250(b)–6(b)(1)) with respect to DC. FP manufactures and sells product A. For the taxable year, DC contributes to FP exclusive worldwide rights to patents, trademarks, knowhow, customer lists, and goodwill and going concern value (collectively, intangible property) related to product A in an exchange described in section 351. As a result, DC is required to report an annual income inclusion on its Federal income tax return based on the productivity, use, or disposition of the contributed intangible property under section 367(d). DC includes a percentage of FP's revenue in its gross income under section 367(d) each year. In the current taxable year, FP earns $1,000x of revenue from sales of product A. Based on FP's sales records for the taxable year, $300x of its revenue is earned from sales of product A to customers within the United States, and $700x of its revenue is earned from sales of product A to customers outside the United States.

(*2*) *Analysis.* DC's deemed sale of the intangible property to FP in exchange for payments contingent upon the productivity, use, or disposition of the intangible property related to product A under section 367(d) is a sale for purposes of section 250 and this section. See § 1.250(b)–3(b)(7). Based on FP's sales records, DC has obtained documentation that 70% ($700/$1,000x) of the revenue generated by the intangible property is generated outside the United States in the taxable year. Accordingly, for the taxable year, 70% of DC's deemed sale to FP is for a foreign use, and 70% of DC's income inclusion under section 367(d) derived with respect to such portion is included in DC's gross FDDEI for the taxable year.

(f) *Special rule for certain financial instruments.* The sale of a security (as defined in section 475(c)(2)) or a commodity (as defined in section 475(e)(2)(B) through (D)) is not a FDDEI sale.

§ 1.250(b)–5 FDDEI services.

(a) *Scope.* This section provides rules for determining whether a provision of a service is a FDDEI service. Paragraph (b) of this section defines a FDDEI service. Paragraph (c) of this section provides definitions relevant for determining whether a provision of a service is a FDDEI service. Paragraph (d) of this section provides rules for determining whether a general service is provided to a consumer located outside the United States. Paragraph (e) of this section provides rules for determining whether a general service is provided to a business recipient located outside the United States. Paragraph (f) of this section provides rules for determining whether a proximate service is provided to a recipient located outside the United States. Paragraph (g) of this section provides rules for determining whether a service is provided with respect to property located outside the United States. Paragraph (h) of this section provides rules for determining whether a transportation service is provided to a recipient, or with respect to property, located outside the United States.

(b) *Definition of FDDEI service.* Except as provided in § 1.250(b)–6(d), the term *FDDEI service* means a provision of a service described in one of paragraphs (b)(1) through (5) of this section. If only a portion of a service is treated as provided to a person, or with respect to property, outside the United States, the provision of the service is a FDDEI service only to the extent of the gross income derived with respect to such portion.

(1) The provision of a general service to a consumer located outside the United States (as determined under paragraph (d) of this section).

(2) The provision of a general service to a business recipient located outside the United States (as determined under paragraph (e) of this section).

(3) The provision of a proximate service to a recipient located outside the United States (as determined under paragraph (f) of this section).

(4) The provision of a property service with respect to tangible property located outside the United States (as determined under paragraph (g) of this section).

(5) The provision of a transportation service to a recipient, or with respect to property, located outside the United States (as determined under paragraph (h) of this section).

(c) *Definitions.* This paragraph (c) provides definitions that apply for purposes of this section and § 1.250(b)–6.

(1) *Benefit.* The term *benefit* has the meaning set forth in § 1.482–9(l)(3).

(2) *Business recipient.* The term *business recipient* means a recipient other than a consumer.

(3) *Consumer.* The term *consumer* means a recipient that is an individual that purchases a general service for personal use.

(4) *General service.* The term *general service* means any service other than a property service, proximate service, or transportation service.

(5) *Property service.* The term *property service* means a service, other than a transportation service, provided with respect to tangible property, but only if substantially all of the service is performed at the location of the property and results in physical manipulation of the property such as through assembly, maintenance, or repair. Substantially all of a service is performed at the location of property if the renderer spends more than 80 percent of the time providing the service at or near the location of the property.

(6) *Proximate service.* The term *proximate service* means a service, other than a property service or a transportation service, provided to a recipient, but only if substantially all of the service is performed in the physical presence of the recipient or, in the case of a business recipient, its employees. Substantially all of a service is performed in the physical presence of the recipient or its employees if the renderer spends more than 80 percent of the time providing the service in the physical presence of the recipient or its employees.

(7) *Transportation service.* The term *transportation service* means a service to transport a person or property using aircraft, railroad rolling stock, vessel, motor vehicle, or any similar mode of transportation.

(d) *General services provided to consumers*—(1) *In general.* A general service is provided to a consumer located outside the United States only if the renderer establishes that the consumer is located outside the United States by obtaining the documentation described in paragraph (d)(3) of this section (which meets the reliability requirements described in § 1.250(b)–3(d)) and, as of the FDII filing date, the renderer does not know or have reason to know that the consumer is located within the United States (as determined under paragraph (d)(2) of this section) when the service is provided.

(2) *Location of consumer.* For purposes of paragraph (d)(1) of this section, the consumer of a general service is located where the consumer resides when the service is provided.

(3) *Documentation of location of consumer*—(i) *In general.* Except as

provided in paragraph (d)(3)(ii) of this section, a renderer establishes that a consumer is located outside the United States only if the renderer obtains one or more of the following types of documentation with respect to the consumer—

(A) A written statement by the consumer indicating that the consumer resides outside the United States when the service is provided;

(B) Any valid identification issued by a foreign government or an agency thereof that is typically used for identification purposes; or

(C) Any other forms of documentation as prescribed by the Secretary in forms, instructions, or other guidance.

(ii) *Special rules*—(A) *Special rule for small businesses.* A renderer that receives less than $10,000,000 in gross receipts during the prior taxable year establishes that any consumer of a service provided in the taxable year is located outside the United States if the renderer's billing address for the consumer is outside of the United States. If a renderer has a prior taxable year of fewer than 12 months (a short period), gross receipts are annualized by multiplying the gross receipts for the short period by 365 and dividing the result by the number of days in the short period.

(B) *Special rule for small transactions.* A renderer that receives less than $5,000 in gross receipts during a taxable year from a consumer establishes that such consumer is located outside the United States for such taxable year if the renderer's billing address for the consumer is outside the United States.

(e) *General services provided to business recipients*—(1) *In general.* A general service is provided to a business recipient located outside the United States only to the extent that the renderer establishes that the service is provided to a business recipient located outside the United States (as determined under paragraph (e)(2) of this section) by obtaining the documentation described in paragraph (e)(3) of this section (which meets the reliability requirements described in § 1.250(b)–3(d)) and, as of the FDII filing date, the renderer does not know or have reason to know that the portion of the service which the seller establishes is provided to a business recipient located outside the United States is provided to a business recipient that is located within the United States when the service is provided.

(2) *Location of business recipient*—(i) *In general.* A service is provided to a business recipient located outside of the United States to the extent that the gross income derived by the renderer from such service is allocated to the business recipient's operations outside the United States under the rules in paragraphs (e)(2)(i)(A) and (B) of this section. A service is provided to a business recipient located within the United States to the extent that a service is not provided to a business recipient located outside the United States.

(A) *Determination of business operations that benefit from the service.* If the renderer provides a service that provides a benefit to the operations of the business recipient in specific locations, gross income of the renderer is allocated to a business recipient's operations outside the United States to the extent that the benefit of the service is conferred on operations of the business recipient that are located outside the United States. However, if the renderer is unable to obtain reliable information regarding the specific locations of the operations of the business recipient to which a benefit is conferred, or if the renderer provides a service that does not provide a benefit to specific locations of the business recipient's operations but rather will generally confer a benefit on all locations of the business recipient's operations, gross income of the renderer is allocated ratably to all of the business recipient's operations at the time the service is provided.

(B) *Determination of amount of benefit conferred on operations outside the United States.* The amount of the benefit conferred on a business recipient's operations located outside the United States is determined under any method that is reasonable under the circumstances. In determining whether a method is reasonable, the principles of § 1.482–9(k) apply, treating the business recipient's operations in different locations as if they were ''recipients'' and treating the renderer's gross income as if they were ''costs'' as those terms are used in § 1.482–9(k). Reasonable methods may include, for example, allocations based on time spent or costs incurred by the renderer or gross receipts, revenue, profits, or assets of the business recipient.

(ii) *Location of business recipient's operations.* For purposes of this paragraph (e), a business recipient is treated as having operations in any location where it maintains an office or other fixed place of business.

(3) *Documentation of location of business recipient*—(i) *In general.* A renderer establishes that a business recipient is located outside the United States only if the renderer obtains one or more of the types of documentation described in paragraphs (e)(3)(i)(A) through (E) of this section. The documentation must also support the renderer's allocation of income described in paragraph (e)(2)(i) of this section.

(A) A written statement from the business recipient that specifies the locations of the operations of the business recipient that benefit from the service.

(B) A binding contract that specifies the locations of the operations of the business recipient that benefit from the service.

(C) Documentation obtained in the ordinary course of the provision of the service that specifies the locations of the operations of the business recipient that benefit from the service.

(D) Publicly available information that establishes the locations of the operations of the business recipient.

(E) Any other forms of documentation as prescribed by the Secretary in forms, instructions, or other guidance.

(ii) *Special rules*—(A) *Special rule for small businesses.* A renderer that receives less than $10,000,000 in gross receipts during a prior taxable year establishes that a business recipient of a service provided in a taxable year is located outside the United States if the renderer's billing address for the business recipient is outside of the United States. If the renderer's prior taxable year is less than 12 months (a short period), gross receipts are annualized by multiplying the gross receipts for the short period by 365 and dividing the result by the number of days in the short period.

(B) *Special rule for small transactions.* A renderer that receives less than $5,000 in gross receipts during a taxable year from services provided to a business recipient in such taxable year establishes that such business recipient is located outside the United States if the renderer's billing address for the business recipient is outside the United States.

(4) *Related parties.* For purposes of this paragraph (e), a reference to a business recipient includes a reference to any related party of the business recipient.

(5) *Examples.* The following examples illustrate the application of this paragraph (e).

(i) *Presumed facts.* The following facts are assumed for purposes of the examples—

(A) DC is a domestic corporation.

(B) A and R are not related parties of DC.

(C) Any documentation obtained meets the reliability requirements described in § 1.250(b)–3(d).

(D) The treatment of any service as a FDDEI service would not reduce DC's

foreign-derived deduction eligible income for the year.

(ii) *Examples.*

(A) *Example 1: Service that benefits specific aspects of the business recipient's business*—(*1*) *Facts.* For the taxable year, DC provides a marketing service to R, a company that operates restaurants within and outside of the United States, in exchange for $150×. Publicly available information indicates that 50% of the revenue earned by R and its related parties is from customers located outside of the United States. However, the marketing service that DC provides relates specifically to a single chain of restaurants that R operates. Sales information that R provides to DC indicates that 70% of the revenue of the restaurant chain is from locations within the United States and 30% of the revenue is from locations outside the United States.

(*2*) *Analysis.* R is located outside the United States in part under paragraph (e)(2)(i) of this section because DC's services benefit both R's operations within the United States and its operations outside the United States. Under paragraph (e)(2)(i) of this section, the portion of the service provided by DC that is treated as provided to a person located outside the United States is determined by the amount of DC's gross income from the service that is allocated to R's operations outside the United States. Because DC provides a service that provides a benefit to R's operations in specific locations, and reliable information about the specific locations of the operations that receive a benefit is available, DC must determine R's location based on information relating specifically to R's business operations that benefits from DC's service. See paragraph (e)(2)(i)(A) of this section. In this case, allocation of DC's gross income based on the revenue of the business recipient is a reasonable method. See paragraph (e)(2)(i)(B) of this section. Therefore, 30% of the provision of the marketing service is treated as the provision of a service to a person located outside the United States and a FDDEI service under paragraph (b)(2) of this section. Accordingly, $45× ($150× × 0.30) of DC's gross income from the provision of the marketing service is included in DC's gross FDDEI for the taxable year.

(B) *Example 2: Service that benefits the business recipient's operations generally*—(*1*) *Facts.* The facts are the same as in paragraph (e)(5)(ii)(A)(*1*) of this section (the facts in *Example 1*), except that DC provides an information technology service to R that benefits R's entire business.

(*2*) *Analysis.* Because the service that DC provides relate to R's entire business, DC may rely on publicly available information indicating that 50% of R's operations are outside of the United States. See paragraph (e)(2)(i)(A) of this section. Therefore, 50% of the provision of the information technology service is treated as a service to a person located outside the United States and a FDDEI service under paragraph (b)(2) of this section. Accordingly, $75x ($150x × 0.50) of DC's gross income from the provision of the information technology service is included in DC's gross FDDEI for the taxable year.

(C) *Example 3: No reliable information about which operations benefit from the service*—(*1*) *Facts.* The facts are the same as in paragraph (e)(5)(ii)(A)(*1*) of this section (the facts in *Example 1*), except that no information is available to DC about the specific chain of restaurants for which the service is provided.

(*2*) *Analysis.* Because the only information available to DC relates to R's entire business, DC may rely on publicly available information indicating that 50% of R's operations are outside of the United States to determine the portion of the service treated as provided to a person located outside the United States. See paragraph (e)(2)(i)(A) of this section. Therefore, 50% of the provision of the marketing service is treated as a service to a person located outside the United States and a FDDEI service under paragraph (b)(2) of this section. Accordingly, $75x ($150x × 0.50) of DC's gross income from the provision of the marketing service is included in DC's gross FDDEI for the taxable year.

(D) *Example 4: Service provided to a domestic intermediary*—(*1*) *Facts.* A, a domestic corporation that operates solely in the United States, enters into a services agreement with R, a company that operates solely outside the United States. Under the agreement, A agrees to perform a consulting service for R. A hires DC to provide a service to A that A will use in the provision of a consulting service to R.

(*2*) *Analysis.* A is located within the United States because the service that DC provides A confers a benefit solely to A's operations within the United States. R is located outside the United States because the service that A provides to R confers a benefit solely to R's operations outside the United States. See paragraph (e)(2)(i) of this section. Because DC provides a service to A, a person located within the United States, DC's provision of the service to A is not a FDDEI service under paragraph (b)(2) of this section, even though the service is used by A in providing a service to R, a person located outside the United States. See also section 250(b)(5)(B)(ii). However, A's provision of the consulting service to R may be a FDDEI service, in which case A's gross income from the provision of such service would be included in A's gross FDDEI.

(f) *Proximate services.* A proximate service is provided with respect to a recipient located outside the United States if the proximate service is performed outside the United States. In the case of a proximate service performed partly within the United States and partly outside of the United States, a proportionate amount of the service is treated as provided to a recipient located outside the United States corresponding to the portion of time the renderer spends providing the service outside of the United States.

(g) *Property services.* A property service is provided with respect to tangible property located outside the United States only if the property is located outside the United States for the duration of the period the service is performed.

(h) *Transportation services.* Except as provided in this paragraph (h), a transportation service is provided to a recipient, or with respect to property, located outside the United States only if both the origin and the destination of the service are outside of the United States. However, in the case of a transportation service provided to a recipient, or with respect to property, where either the origin or the destination of the service is outside of the United States, but not both, then 50 percent of the transportation service is considered provided to a recipient, or with respect to property, located outside the United States.

§ 1.250(b)–6 Related party transactions.

(a) *Scope.* This section provides additional rules for determining whether a sale of property or a provision of a service to a related party is a FDDEI transaction. Paragraph (b) of this section provides additional definitions relevant for determining whether a sale of property or a provision of a service to a related party is a FDDEI transaction. Paragraph (c) of this section provides additional rules for determining whether a sale of general property to a foreign related party is a FDDEI sale. Paragraph (d) of this section provides additional rules for determining whether the provision of a general service to a business recipient that is a related party is a FDDEI service.

(b) *Definitions.* This paragraph (b) provides definitions that apply for purposes of this section.

(1) *Foreign related party.* The term *foreign related party* means, with respect to a seller or renderer, any foreign person that is a related party of the seller or renderer.

(2) *Foreign unrelated party.* The term *foreign unrelated party* means, with respect to a seller, a foreign person that is not a related party of the seller.

(3) *Related party sale.* The term *related party sale* means a sale of general property to a foreign related party that satisfies the requirements described in § 1.250(b)–4(b) without regard to paragraph (c) of this section. See § 1.250(b)–1(e)(3)(ii)(D) (*Example 4*) for an illustration of a related party sale in the case of a seller that is a partnership.

(4) *Related party service.* The term *related party service* means a provision of a general service to a business recipient that is a related party of the renderer and that is described in § 1.250(b)–5(b)(2) without regard to paragraph (d) of this section.

(5) *Unrelated party transaction.* The term *unrelated party transaction* means, with respect to property purchased in a related party sale from a seller—

(i) A sale of the property by a foreign related party to a foreign unrelated party with respect to the seller;

(ii) A sale of property by a foreign related party to a foreign unrelated party with respect to the seller if the property sold in the related party sale is a component of the property sold to the foreign unrelated party;

(iii) A sale of property by a foreign related party to a foreign unrelated party with respect to the seller, other than a sale described in paragraph (b)(5)(ii) of this section, if the property sold in the related party sale is used in connection with the property sold to the foreign unrelated party; or

(iv) A provision of a service by a foreign related party to a foreign unrelated party with respect to the seller, if the property sold in the related party sale was used in connection with the provision of the service.

(c) *Related party sales*—(1) *In general.* A related party sale is a FDDEI sale only if the requirements described in either paragraph (c)(1)(i) or (ii) of this section are satisfied with respect to the related party sale. Section 250(b)(5)(C)(i) and this paragraph (c) does not apply to determine whether a sale of intangible property to a foreign related party is a FDDEI sale.

(i) *Sale of property in an unrelated party transaction.* A related party sale is a FDDEI sale if an unrelated party transaction described in paragraph (b)(5)(i) or (ii) of this section occurs with respect to the property purchased in the related party sale, such unrelated party transaction is described in § 1.250(b)–4(b), and, except as provided in this paragraph (c)(1)(i), the unrelated party transaction occurs on or before the FDII filing date. In the case of an unrelated party transaction that occurs after the FDII filing date with respect to a related party sale, a taxpayer may file an amended return for the taxable year in which the related party sale occurred, within the period of limitations provided by section 6511, claiming the related party sale as a FDDEI sale for purposes of determining the taxpayer's foreign-derived intangible income for that taxable year.

(ii) *Use of property in an unrelated party transaction.* A related party sale is a FDDEI sale if, as of the FDII filing date, the seller in the related party sale reasonably expects that one or more unrelated party transactions described in paragraph (b)(5)(iii) or (iv) of this section will occur with respect to the property purchased in the related party sale, such unrelated party transaction or transactions would be described in § 1.250(b)–4(b) or § 1.250(b)–5(b) without regard to the documentation rules in § 1.250(b)–4 or § 1.250(b)–5, and more than 80 percent of the revenue earned by the foreign related party with respect to the property will be earned from such unrelated party transaction or transactions.

(2) *Treatment of foreign related party as seller or renderer.* For purposes of determining whether a sale of property or provision of a service by a foreign related party is, or would be, described in § 1.250(b)–4 or § 1.250(b)–5 (except for purposes of obtaining documentation), the foreign related party that sells the property or provides the service is treated as a seller or renderer, as applicable, and the foreign unrelated party is treated as the recipient. In the case of an unrelated party transaction described in paragraph (b)(5)(i) or (ii) of this section, the seller in the related party sale must obtain the documentation required in § 1.250(b)–4.

(3) *Transactions between a foreign related party and other foreign related parties.* All foreign related parties of the seller are treated as if they were a single foreign related party for purposes of applying paragraphs (c)(1) and (2) of this section. Accordingly, if a foreign related party sells or uses property purchased in a related party sale in a transaction with a second foreign related party of the seller, transactions between the second foreign related party and unrelated parties may be treated as an unrelated party transaction for purposes of applying paragraph (c)(1) of this section to a related party sale.

(4) *Example.* The following example illustrates the application of paragraph (c) of this section.

(i) *Facts.* DC, a domestic corporation, sells a machine to FC, a foreign related party of DC in a transaction described in § 1.250(b)–4(b) (without regard to § 1.250(b)–6(c)). FC uses the machine solely to manufacture product A. As of the FDII filing date for the taxable year, FC reasonably expects that more than 80% of future revenue from sales of product A will be from sales that would be described in § 1.250(b)–4(b) without regard to the documentation requirements of § 1.250(b)–4(c) and (d).

(ii) *Analysis.* The sale by DC to FC is a related party sale. Because FC uses the machine to make product A, but the machine is not a component of product A, FC's sale of product A is an unrelated party transaction described in paragraph (b)(5)(iii) of this section. Therefore, DC's sale of the machine is only a FDDEI sale if the requirements of paragraph (c)(1)(ii) of this section are satisfied. Because DC reasonably expects that more than 80% of the revenue from future sales of product A will be from unrelated party transactions that would be described in § 1.250(b)–4(b), DC's sale of the machine to FC is a FDDEI sale.

(d) *Related party services*—(1) *In general.* Except as provided in this paragraph (d)(1), a related party service is a FDDEI service only if the related party service is not substantially similar to a service provided by the related party to a person located within the United States. However, if a related party service is substantially similar to a service provided (in whole or in part) by the related party to a person located in the United States solely by reason of paragraph (d)(2)(ii) of this section, the amount of gross income from the related party service attributable to a FDDEI service is equal to the gross income from the related party service multiplied by a fraction, the numerator of which is the sum of the benefits conferred by the related party service to persons not located within the United States and the denominator of which is the sum of all benefits conferred by the related party service. Section 250(b)(5)(C)(ii) and this paragraph (d)(1) apply only to a general service provided to a business recipient and are not applicable with respect to any other service provided to a foreign related party.

(2) *Substantially similar services.* A related party service is substantially similar to a service provided by the related party to a person located within the United States only if the related party service is used by the related party to provide a service to a person located within the United States and either—

(i) 60 percent or more of the benefits conferred by the related party service are to persons located within the United States; or

(ii) 60 percent or more of the price paid by persons located within the United States for the service provided by the related party is attributable to the related party service.

(3) *Location of recipient of services provided by related party.* For purposes of paragraph (d) of this section, the location of a consumer or business recipient with respect to a related party service is determined under the principles of § 1.250(b)–5(d)(2) and (e)(2), respectively.

(4) *Examples.* The following examples illustrate the application of this paragraph (d).

(i) *Presumed facts.* The following facts are assumed for purposes of the examples—

(A) DC is a domestic corporation.

(B) FC is a foreign corporation and a foreign related party of DC that operates solely outside the United States.

(C) The service DC provides to FC is a general service provided to a business

recipient located outside the United States as described in § 1.250(b)–5(b)(2) without regard to the application of paragraph (d) of this section.

(D) The benefits conferred by DC's service to FC's customers are not indirect or remote within the meaning of § 1.482–9(l)(3)(ii).

(ii) *Examples.*

(A) *Example 1: Services that are substantially similar services under paragraph (d)(2)(i) of this section*—(*1*) *Facts.* FC enters into a services agreement with R, a company that operates restaurant chains within and outside the United States. Under the agreement, FC agrees to furnish a design for the renovation of a chain of restaurants that R owns, which design will include architectural plans. FC hires DC to provide an architectural service to FC that FC will use in the provision of its design service to R. The architectural service that DC provides to FC will serve no other purpose than to enable FC to provide its service to R. The architectural service will benefit solely R's operations within the United States. FC pays an arm's length price of $50x to DC for the architectural service and DC recognizes $50x of gross income from the service. FC incurs additional costs to add additional design elements to the plans and charges R a total of $100x for its service.

(*2*) *Analysis.* The service that DC provides to FC is used in the provision of a service to R. R is treated as entirely located within the United States under paragraph (d)(3) of this section and the principles of § 1.250(b)–5(e)(2) because only its U.S. operations benefit from the service provided by DC. Because FC uses DC's architectural service to provide its design service to R, and the architectural service that DC provides to FC will serve no purpose other than to enable FC to provide its service to R, 100% of the benefits conferred by DC's architectural service are to R, a person located within the United States. Therefore, the service provided by DC to FC is substantially similar to the service provided by FC to R under paragraph (d)(2)(i) of this section. Accordingly, DC's provision of the architectural service to FC is not a FDDEI service under paragraph (d)(1) of this section and DC's gross income from the architectural service ($50x) is not included in its gross FDDEI.

(B) *Example 2: Services that are substantially similar services under paragraph (d)(2)(ii) of this section*—(*1*) *Facts.* The facts are the same as paragraph (d)(4)(ii)(A)(*1*) (the facts in *Example 1*), except that FC pays an arm's length price of $75× to DC for the architectural service, DC recognizes $75× of gross income from the service, and 90% of the benefits of DC's architectural service are conferred on R's operations outside the United States.

(*2*) *Analysis*—(*i*) *Analysis under paragraph (d)(2)(i) of this section.* R is treated as located within the United States with respect to DC's architectural service under paragraph (d)(3) of this section to the extent of the benefits conferred on its operations within the United States by the architectural service. See § 1.250(b)–5(e)(2). Because 90% of the benefits of DC's architectural service are conferred on R's operations outside the United States, only 10% of the benefits of DC's architectural service are treated as conferred on persons located within the United States under paragraph (d)(3) of this section. Therefore, the architectural service provided by DC to FC is not substantially similar to the design service provided by FC to persons located within the United States under paragraph (d)(2)(i) of this section.

(*ii*) *Analysis under paragraph (d)(2)(ii) of this section.* Because 10% of the benefits of FC's architectural design services are conferred on R's operations within the United States, $10x of the amount paid by R for FC's services (10% x $100) is treated as paid by persons located within the United States. Similarly, because 10% of the benefits of DC's architectural services are conferred on R's operations within the United States, of the $10x paid with respect to R's operations within the United States, $7.5x (10% x $75x) is attributable to DC's architectural service. Accordingly, because 75% ($7.5 × /$10x) of the price paid by R to FC for the design service is attributable to the architectural service provided by DC to FC, and R is a person located within the United States under paragraph (d)(3) of this section and the principles of § 1.250(b)–5(e)(2), the architectural service provided by DC to FC is substantially similar to the design service provided by FC to persons located within the United States under paragraph (d)(2)(ii) of this section.

(*iii*) *Application of paragraph (d)(1) of this section.* Because DC's architectural service is substantially similar to FC's design service provided to R, a person located in the United States, solely by reason of paragraph (d)(2)(ii) of this section, the amount of gross income from DC's architectural service included in its gross FDDEI is $67.5x, which is equal to DC's gross income from the architectural service ($75x) multiplied by 90%, which is the percentage of the benefits of DC's architectural service that are conferred on R's operations outside the United States.

■ **Par. 3.** Section 1.962–1 is amended by adding paragraphs (b)(1)(i)(A)(*2*), (b)(1)(i)(B)(*3*), and revising paragraph (d) to read as follows:

§ 1.962–1 Limitation of tax for individuals on amounts included in gross income under section 951(a).

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) * * *

(*2*) His GILTI inclusion amount (as defined in § 1.951A–1(c)(1)) for the taxable year; plus

* * * * *

(B) * * *

(*3*) The portion of the deduction under section 250 and § 1.250(a)–1 that would be allowed to a domestic corporation equal to the percentage applicable to global intangible low-taxed income for the taxable year under section 250(a)(1)(B) (including as modified by section 250(a)(3)(B)) multiplied by the sum of the amount described in paragraph (b)(1)(i)(A)(*2*) of this section and the amount described in paragraph (b)(1)(i)(A)(*3*) of this section that is attributable to the amount described in paragraph (b)(1)(i)(A)(*2*) of this section.

* * * * *

(d) *Applicability dates.* Except as otherwise provided in this paragraph (d), paragraph (b)(1)(i) of this section applies beginning the last taxable year of a foreign corporation that begins before January 1, 2018, and with respect to a United States person, for the taxable year in which or with which such taxable year of the foreign corporation ends. Paragraph (b)(1)(i)(B)(*3*) applies to taxable years of a foreign corporation ending on or after *March 4, 2019,* and with respect to a United States person, for the taxable year in which or with which such taxable year of the foreign corporation ends.

■ **Par. 4.** Section 1.1502–12, as proposed to be amended in 83 FR 51072 (Oct. 10, 2018), is further amended by adding paragraph (t) to read as follows:

§ 1.1502–12 Separate taxable income.

* * * * *

(t) See § 1.1502–50 for rules relating to the computation of a member's deduction under section 250.

■ **Par. 5.** Section 1.1502–13, as proposed to be amended in 83 FR 67490 (Dec. 28, 2018), is further amended:

■ 1. In paragraph (a)(6)(ii), under the heading ''Matching rule. (§ 1.1502–13(c)(7)(ii))'', by adding entry (T); and

■ 2. Adding paragraph (c)(7)(ii)(T).

The additions read as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *

(6) * * *

(ii) * * *

Matching rule. (§ 1.1502–13(c)(7)(ii))

* * * * *

(T) Example 20. Redetermination of attributes for section 250 purposes.

* * * * *

(c) * * *

(7) * * *

(ii) * * *

(T) *Example 20: Redetermination of attributes for section 250 purposes*—(*1*) *Facts.* S manufactures equipment in the United States and recognizes $75 of gross income included in gross DEI (as defined in § 1.250(b)–1(c)(14)) on the sale of Asset, which is not depreciable property, to B in Year 1 for $100. In Year 2, B sells Asset to X for $125 and recognizes $25 of gross income. The sale is a FDDEI sale (as defined in § 1.250(b)–1(c)(8)), and thus the $25 of income is included in B's gross FDDEI (as defined in § 1.250(b)–1(c)(15)) for Year 2.

(*2*) *Timing and attributes.* S's $75 of intercompany income is taken into account in Year 2 under the matching rule to reflect the $75 difference between B's $25 corresponding item taken into account (based on B's $100 cost basis in Asset) and the recomputed corresponding item (based on the $25 basis that B would have if S and B were divisions of a single corporation and B's basis were determined by reference to S's basis). In determining whether S's gross income included in gross DEI from the sale of Asset is included in gross FDDEI, S and B are treated as divisions of a single corporation. See paragraph (a)(6) of this section. In determining the amount of income included in gross DEI that is included in gross FDDEI, the attributes of S's intercompany item and B's corresponding item may be redetermined to the extent necessary to produce the same effect on consolidated taxable income (and consolidated tax liability) as if S and B were divisions of a single corporation. See paragraph (c)(1)(i) of this section. Applying section 250 and § 1.1502–50 on a single entity basis, all $100 of income included in gross DEI would be gross FDDEI. On a separate entity basis, S would have $75 of gross income included in gross DEI that is included in gross non-FDDEI (as defined in § 1.250(b)–1(c)(16)) and B would have $25 of gross income included in gross DEI that is included in gross FDDEI. Thus, on a separate entity basis, S and B would have, in the aggregate, $100 of gross income included in gross DEI, of which only $25 is included gross FDDEI. Accordingly, under single entity treatment, $75 that would be treated as gross income included in gross DEI that is included in gross non-FDDEI on a separate entity basis is redetermined to be included in gross FDDEI.

(*3*) *Intercompany sale for loss.* The facts are the same as in paragraph (c)(7)(ii)(T)(*1*) (the facts in *Example 20*), except that S recognizes $25 of loss on the sale of Asset. S's $25 of intercompany loss is taken into account under the matching rule to reflect the $25 difference between B's $25 corresponding item taken into account (based on B's $100 cost basis in Asset) and the recomputed corresponding item (based on the $125 basis that B would have if S and B were divisions of a single corporation and B's basis were determined by reference to S's $125 of costs). Applying section 250 and § 1.1502–50 on a single entity basis, $0 of income would be included in gross DEI. In order to reflect this result, under the matching rule, S's $25 loss is allocated and apportioned solely to B's $25 of gross income from the sale of Asset for purposes of determining B's DEI and FDDEI. Furthermore, B's $25 of gross income is not taken into account for purposes of apportioning any other deductions under section 861 and the regulations under that section for purposes of determining any member's DEI or FDDEI.

* * * * *

■ **Par. 6.** Section 1.1502–50 is added to read as follows:

§ 1.1502–50 Consolidated section 250.

(a) *In general*—(1) *Scope.* This section provides rules for applying section 250 and the regulations thereunder (the *section 250 regulations,* see §§ 1.250(a)–1 through 1.250(b)–6) to a member of a consolidated group (*member*). Paragraph (b) of this section provides rules for the determination of the amount of the deduction allowed to a member under section 250(a)(1). Paragraph (c) of this section provides rules governing the impact of intercompany transactions on the determination of a member's qualified business asset investment and the effect of intercompany transactions on the determination of a member's foreign-derived deduction eligible income. Paragraph (d) of this section provides rules governing basis adjustments to member stock resulting from the application of paragraph (b)(1) of this section. Paragraph (e) of this section provides definitions. Paragraph (f) of this section provides examples illustrating the rules of this section. Paragraph (g) of this section provides an applicability date.

(2) *Overview.* The rules of this section ensure that the aggregate amount of deductions allowed under section 250 to members appropriately reflects the income, expenses, gains, losses, and property of all members. Paragraph (b) of this section allocates the consolidated group's overall deduction amount under section 250 to each member on the basis of its contribution to the consolidated foreign-derived deduction eligible income and consolidated global intangible low-taxed income. The definitions in paragraph (e) of this section provide for the aggregation of the deduction eligible income, foreign-derived deduction eligible income, deemed tangible income return, and global intangible low-taxed income of all members in order to calculate the consolidated group's overall deduction amount under section 250.

(b) *Allowance of deduction*—(1) *In general.* A member is allowed a deduction for a consolidated return year under section 250. See § 1.250(a)–1(b). The amount of the deduction is equal to the sum of—

(i) The product of the consolidated FDII deduction amount and the member's FDII deduction allocation ratio; and

(ii) The product of the consolidated GILTI deduction amount and the member's GILTI deduction allocation ratio.

(2) *Consolidated taxable income limitation.* For purposes of applying the limitation described in § 1.250(a)–1(b)(2) to the determination of the consolidated FDII deduction amount and the consolidated GILTI deduction amount of a consolidated group for a consolidated return year—

(i) The consolidated foreign-derived intangible income (if any) is reduced (but not below zero) by an amount which bears the same ratio to the consolidated section 250(a)(2) amount that such consolidated foreign-derived intangible income bears to the sum of the consolidated foreign-derived intangible income and the consolidated global intangible low-taxed income; and

(ii) The consolidated global intangible low-taxed income (if any) is reduced (but not below zero) by the excess of the consolidated section 250(a)(2) amount over the reduction described in paragraph (b)(2)(i) of this section.

(c) *Impact of intercompany transactions*—(1) *Impact on qualified business asset investment determination.* For purposes of determining a member's qualified business asset investment, the basis of specified tangible property does not include an amount equal to any gain or loss realized with respect to such property by another member in an intercompany transaction (as defined in § 1.1502–13(b)(1)), whether or not such gain or loss is deferred. Thus, for example, if a selling member owns specified tangible property with an adjusted basis (within the meaning of section 1011) of $60x and an adjusted basis (for purposes of calculating qualified business asset investment) of $80x, and sells it for $50x to the purchasing member, the basis of such property for purposes of computing the purchasing member's qualified business asset investment is $80x.

(2) *Impact on foreign-derived deduction eligible income characterization.* For purposes of redetermining attributes of members from an intercompany transaction as foreign-derived deduction eligible income, see § 1.1502–13(c)(1)(i) and (c)(7)(ii)(T), *Example 20.*

(d) *Adjustments to the basis of a member.* For adjustments to the basis of a member related to paragraph (b)(1) of this section, see § 1.1502–32(b)(3)(ii)(B).

(e) *Definitions.* The following definitions apply for purposes of this section.

(1) *Consolidated deduction eligible income.* With respect to a consolidated group for a consolidated return year, the term *consolidated deduction eligible income* means the greater of the sum of the deduction eligible income (whether positive or negative) of all members or zero.

(2) *Consolidated deemed intangible income.* With respect to a consolidated group for a consolidated return year, the term *consolidated deemed intangible income* means the excess (if any) of the consolidated deduction eligible income,

over the consolidated deemed tangible income return.

(3) *Consolidated deemed tangible income return.* With respect to a consolidated group for a consolidated return year, the term *consolidated deemed tangible income return* means the sum of the deemed tangible income return of all members.

(4) *Consolidated FDII deduction amount.* With respect to a consolidated group for a consolidated return year, the term *consolidated FDII deduction amount* means the product of the FDII deduction rate and the consolidated foreign-derived intangible income, as adjusted by paragraph (b)(2) of this section.

(5) *Consolidated foreign-derived deduction eligible income.* With respect to a consolidated group for a consolidated return year, the term *consolidated foreign-derived deduction eligible income* means the greater of the sum of the foreign-derived deduction eligible income (whether positive or negative) of all members or zero.

(6) *Consolidated foreign-derived intangible income.* With respect to a consolidated group for a consolidated return year, the term *consolidated foreign-derived intangible income* means, except as provided in paragraph (e) of this section, the product of the consolidated deemed intangible income and the consolidated foreign-derived ratio.

(7) *Consolidated foreign-derived ratio.* With respect to a consolidated group for a consolidated return year, the term *consolidated foreign-derived ratio* means the ratio (not to exceed one) of—

(i) The consolidated foreign-derived deduction eligible income; to

(ii) The consolidated deduction eligible income.

(8) *Consolidated GILTI deduction amount.* With respect to a consolidated group for a consolidated return year, the term *consolidated GILTI deduction amount* means the product of the GILTI deduction rate and the sum of the consolidated global intangible low-taxed income, as adjusted by paragraph (b)(2) of this section, and the amounts treated as dividends received by the members under section 78 which are attributable to their global intangible low-taxed income for the consolidated return year.

(9) *Consolidated global intangible low-taxed income.* With respect to a consolidated group for a consolidated return year, the term *consolidated global intangible low-taxed income* means the sum of the global intangible low-taxed income of all members.

(10) *Consolidated section 250(a)(2) amount.* With respect to a consolidated group for a consolidated return year, the term *consolidated section 250(a)(2) amount* means the excess (if any) of the sum of the consolidated foreign-derived intangible income and the consolidated global intangible low-taxed income (determined without regard to section 250(a)(2) and paragraph (b)(2) of this section), over the consolidated taxable income of the consolidated group (within the meaning of § 1.1502–11) determined with regard to all items of income, deductions, or loss, except for the deduction allowed under section 250 and this section. Therefore, for example, consolidated taxable income under this paragraph (f)(10) is determined taking into account the application of sections 163(j) and 172(a).

(11) *Deduction eligible income.* With respect to a member for a consolidated return year, the term *deduction eligible income* means the member's gross DEI for the year (within the meaning of § 1.250(b)–1(c)(14)) reduced (including below zero) by the deductions properly allocable to gross DEI for the year (as determined under § 1.250(b)–1(d)(2)).

(12) *Deemed tangible income return.* With respect to a member for a consolidated return year, the term *deemed tangible income return* means an amount equal to 10 percent of the member's qualified business asset investment, as adjusted by paragraph (c)(1) of this section.

(13) *FDII deduction allocation ratio.* With respect to a member for a consolidated return year, the term *FDII deduction allocation ratio* means the ratio of—

(i) The member's positive foreign-derived deduction eligible income (if any); to

(ii) The sum of the positive foreign-derived deduction eligible income of all members.

(14) *FDII deduction rate.* The term *FDII deduction rate* means 37.5 percent for consolidated return years beginning before January 1, 2026, and 21.875 percent for consolidated return years beginning after December 31, 2025.

(15) *Foreign-derived deduction eligible income.* With respect to a member for a consolidated return year, the term *foreign-derived deduction eligible income* means the member's gross FDDEI for the year (within the meaning of § 1.250(b)–1(c)(15)) reduced (including below zero) by the deductions properly allocable to gross FDDEI for the year (as determined under § 1.250(b)–1(d)(2)).

(16) *GILTI deduction allocation ratio.* With respect to a member for a consolidated return year, the term *GILTI deduction allocation ratio* means the ratio of—

(i) The sum of the member's global intangible low-taxed income and the amount treated as a dividend received by the member under section 78 which is attributable to its global intangible low-taxed income for the consolidated return year; to

(ii) The sum of consolidated global intangible low-taxed income and the amounts treated as dividends received by the members under section 78 which are attributable to their global intangible low-taxed income for the consolidated return year.

(17) *GILTI deduction rate.* The term *GILTI deduction rate* means 50 percent for consolidated return years beginning before January 1, 2026, and 37.5 percent for consolidated return years beginning after December 31, 2025.

(18) *Global intangible low-taxed income.* With respect to a member for a consolidated return year, the term *global intangible low-taxed income* means the sum of the member's GILTI inclusion amount under § 1.1502–51(b) and the member's distributive share of any domestic partnership's GILTI inclusion amount under § 1.951A–5(b)(2).

(19) *Qualified business asset investment.* The term *qualified business asset investment* has the meaning provided in § 1.250(b)–2(b).

(20) *Specified tangible property.* The term *specified tangible property* has the meaning provided in § 1.250(b)–2(c)(1).

(f) *Examples.* The following examples illustrate the rules of this section.

(1)*Example 1: Calculation of deduction attributable to foreign-derived intangible income*—(i) *Facts.* P is the common parent of the P group and owns all of the only class of stock of subsidiaries USS1 and USS2. The consolidated return year of all persons is the calendar year. In 2018, P has deduction eligible income of $400x, foreign-derived deduction eligible income of $0, and qualified business asset investment of $0; USS1 has deduction eligible income of $200x, foreign-derived deduction eligible income of $200x, and qualified business asset investment of $600x; and USS2 has deduction eligible income of −$100x, foreign-derived deduction eligible income of $100x, and qualified business asset investment of $400x. The P group has consolidated taxable income that is sufficient to make inapplicable the limitation in paragraph (b)(2) of this section. No member of the P group has global intangible low-taxed income.

(ii) *Analysis.* (A) *Consolidated deduction eligible income.* Under paragraph (e)(1) of this section, the P group's consolidated deduction eligible income is $500x, the greater of the sum of the deduction eligible income (whether positive or negative) of all members ($400x + $200x–$100x) or zero.

(B) *Consolidated foreign-derived deduction eligible income.* Under paragraph (e)(5) of this section, the P group's consolidated foreign-derived deduction eligible income is

$300x, the greater of the sum of the foreign-derived deduction eligible income (whether positive or negative) of all members ($0 + $200x + $100x) or zero.

(C) *Consolidated deemed tangible income return.* Under paragraph (e)(12) of this section, a member's deemed tangible income return is 10% of its qualified business asset investment. Therefore, P's deemed tangible income return is $0 (0.10 × $0), USS1's deemed tangible income return is $60x (0.10 × $600x), and USS2's deemed tangible income return is $40x (0.10 × $400x). Under paragraph (e)(3) of this section, the P group's consolidated deemed tangible income return is $100x, the sum of the deemed tangible income return of all members ($0 + $60x + $40x).

(D) *Consolidated deemed intangible income.* Under paragraph (e)(2) of this section, the P group's consolidated deemed intangible income is $400x, the excess of its consolidated deduction eligible income over its consolidated deemed tangible income return ($500x − $100x).

(E) *Consolidated foreign-derived intangible income.* Under paragraph (e)(7) of this section, the P group's consolidated foreign-derived ratio is 0.60, the ratio of its consolidated foreign-derived deduction eligible income to its consolidated deduction eligible income ($300x/$500x). Under paragraph (e)(6) of this section, the P group's consolidated foreign-derived intangible income is $240x, the product of its consolidated deemed intangible income and its consolidated foreign-derived ratio ($400x × 0.60).

(F) *Consolidated FDII deduction amount.* Under paragraph (e)(4) of this section, the P group's consolidated FDII deduction amount is $90x, the product of the FDII deduction rate and the consolidated foreign-derived intangible income (0.375 × $240x).

(G) *Member's deduction attributable to consolidated FDII deduction amount.* Under paragraph (b)(1) of this section, a member is allowed a deduction equal, in part, to the product of the consolidated FDII deduction amount of the consolidated group to which the member belongs and the member's FDII deduction allocation ratio. Under paragraph (e)(13) of this section, a member's FDII deduction allocation ratio is the ratio of its positive foreign-derived deduction eligible income to the sum of each member's positive foreign-derived deduction eligible income for such consolidated return year. As a result, the FDII deduction allocation ratios of P, USS1, and USS2 are 0 ($0/$300x), ⅔ ($200x/$300x), and 1/3 ($100x/$300x), respectively. Therefore, P, USS1, and USS2 are permitted deductions under paragraph (b)(1) of this section in the amount of $0 (0 × $90x), $60x (2/3 × $90x), and $30x (1/3 × $90x), respectively.

(2) *Example 2: Limitation on consolidated foreign-derived deduction eligible income*—(i) *Facts.* The facts are the same as in paragraph (f)(1)(i) of this section (the facts in *Example 1*), except that P's foreign-derived deduction eligible income is $300x.

(ii) *Analysis.* (A) *Consolidated deduction eligible income and consolidated deemed tangible income return.* As in paragraphs (f)(1)(ii)(A) and (C) of this section (the analysis in *Example 1*), the P group's consolidated deduction eligible income is $500x and the P group's consolidated deemed tangible income return is $100x.

(B) *Consolidated foreign-derived deduction eligible income.* Under paragraph (e)(5) of this section, the P group's consolidated foreign-derived deduction eligible income is $600x, the greater of the sum of the foreign-derived deduction eligible income (whether positive or negative) of all members ($300x + $200x + $100x) or zero.

(C) *Consolidated deemed intangible income and consolidated foreign-derived intangible income.* Under paragraph (e)(2) of this section, the P group's consolidated deemed intangible income is $400x ($500x − $100x). Under paragraph (e)(7) of this section, the P group's consolidated foreign-derived ratio is 1.00 ($600x/$500x, but not in excess of one). Under paragraph (e)(6) of this section, the P group's consolidated foreign-derived intangible income is $400x ($400x × 1.00).

(D) *Consolidated FDII deduction amount and member's deduction attributable to consolidated FDII deduction amount.* Under paragraph (e)(4) of this section, the P group's consolidated FDII deduction amount is $150x (0.375 × $400x). Under paragraph (e)(13) of this section, the FDII deduction allocation ratios of P, USS1, and USS2 are 1/2 ($300/$600x), 1/3 ($200x/$600x), and 1/6 ($100x/$600x), respectively. Therefore, P, USS1, and USS2 are permitted deductions under paragraph (b)(1) of this section in the amounts of $75x (1/2 × $150x), $50x (1/3 × $150x), and $25x (1/6 × $150x), respectively.

(3) *Example 3: Member with negative foreign-derived deduction eligible income*—(i) *Facts.* The facts are the same as in paragraph (f)(1)(i) of this section (the facts in *Example 1*), except that P's foreign-derived deduction eligible income is −$100x.

(ii) *Analysis.* (A) *Consolidated deduction eligible income and consolidated deemed tangible income return.* As in paragraphs (f)(1)(ii)(A) and (C) of this section (the facts in *Example 1*), the P group's consolidated deduction eligible income is $500x and the P group's consolidated deemed tangible income return is $100x.

(B) *Consolidated foreign-derived deduction eligible income.* Under paragraph (e)(5) of this section, the P group's consolidated foreign-derived deduction eligible income is $200x, the greater of the sum of the foreign-derived deduction eligible income (whether positive or negative) of all members (−$100x + $200x + $100x) or zero.

(C) *Consolidated deemed intangible income and consolidated foreign-derived intangible income.* Under paragraphs (e)(2) and (6) of this section, the P group's consolidated deemed intangible income is $400x ($500x − $100x), and the P group's consolidated foreign-derived intangible income is $160x ($400x × ($200x/$500x)).

(D) *Consolidated FDII deduction amount and member's deduction attributable to consolidated FDII deduction amount.* Under paragraph (e)(4) of this section, the P group's consolidated FDII deduction amount is $60x (0.375 × $160x). Under paragraph (e)(13) of this section, the FDII deduction allocation ratios of P, USS1, and USS2 are 0 ($0/$300x), 2/3 ($200x/$300x), and 1/3 ($100x/$300x), respectively. Therefore, P, USS1, and USS2 are permitted deductions under paragraph (b)(1) of this section in the amounts of $0 (0 x $60x), $40x (2/3 × $60x), and $20x (1/3 × $60x), respectively.

(4) *Example 4: Calculation of deduction attributable to global intangible low-taxed income*—(i) *Facts.* The facts are the same as in paragraph (f)(1)(i) of this section (the facts in *Example 1*), except that USS1 owns CFC1 and USS2 owns CFC2. USS1 and USS2 have global intangible low-taxed income of $65x and $20x, respectively, and amounts treated as dividends received under section 78 attributable to their global intangible low-taxed income of $10x and $5x, respectively.

(ii) *Analysis.* (A) *Consolidated global intangible low-taxed income.* Under paragraph (e)(9) of this section, the P group's consolidated global intangible low-taxed income is $85x, the sum of the global intangible low-taxed income of all members ($0 + $65x + $20x).

(B) *Consolidated GILTI deduction amount.* Under paragraph (e)(8) of this section, the P group's consolidated GILTI deduction amount is $50x, the product of the GILTI deduction rate and the sum of its consolidated global intangible low-taxed income and the amounts treated as dividends received by the members under section 78 which are attributable to their global intangible low-taxed income for the consolidated return year (0.50 x ($85x + $10x + $5x)).

(C) *Member's deduction attributable to consolidated GILTI deduction amount.* Under paragraph (b)(1) of this section, a member is allowed a deduction equal, in part, to the product of the consolidated GILTI deduction amount of the consolidated group to which the member belongs and the member's GILTI deduction allocation ratio. Under paragraph (e)(16) of this section, a member's GILTI deduction allocation ratio is the ratio of the sum of its global intangible low-taxed income and the amount treated as a dividend received by the member under section 78 which is attributable to its global intangible low-taxed income for the consolidated return year to the sum of the consolidated global intangible low-taxed income and the amounts treated as dividends received by the members under section 78 which are attributable to their global intangible low-taxed income for the consolidated return year. As a result, the GILTI deduction allocation ratios of P, USS1, and USS2 are 0 ($0/($85x + $10x + $5x)), 3/4 (($65x + $10x)/($85x + $10x + $5x)), and 1/4 (($20x + $5x)/($85x + $10x + $5x)), respectively. Therefore, P, USS1, and USS2 are permitted deductions of $0 (0 × $50x), $37.50x (3/4 × $50x), and $12.50x (1/4 × $50x), respectively.

(D) *Member's deduction under section 250.* Under paragraph (b)(1) of this section, a member is allowed a deduction equal to the sum of the member's deduction attributable to the consolidated FDII deduction amount and the member's deduction attributable to the consolidated GILTI deduction amount. As a result P, USS1, and USS2 are entitled to deductions under paragraph (b)(1) of this section of $0 ($0 + $0), $97.50x ($60x + $37.50x), and $42.50x ($30x + $12.50x), respectively.

(5) *Example 5: Taxable income limitation*—(i) *Facts.* The facts are the same as in paragraph (f)(4)(i) of this section (the facts in *Example 4*), except that the P group's consolidated taxable income (within the meaning of paragraph (e)(10) of this section) is $300x.

(ii) *Analysis.* (A) *Determination of whether the limitation described in paragraph (b)(2) of this section applies.* Under paragraph (b)(2) of this section, in the case of a consolidated group with a consolidated section 250(a)(2) amount for a consolidated year, the amount of the consolidated foreign-derived intangible income and the consolidated global intangible low-taxed income otherwise taken into account in the determination of the consolidated FDII deduction amount and the consolidated GILTI deduction amount are subject to reduction. As in paragraph (f)(1)(ii)(E) of this section (the facts in *Example 1*), the P group's consolidated foreign-derived intangible income is $240x. As in paragraph (f)(4)(ii)(A) of this section (the analysis in *Example 4*), the P group's consolidated global intangible low-taxed income is $85x. The P group's consolidated taxable income is $300x. Under paragraph (e)(10) of this section, the P group's consolidated section 250(a)(2) amount is $25x (($240x + $85x) − $300x), the excess of the sum of the consolidated foreign-derived intangible income and the consolidated global intangible low-taxed income, over the P group's consolidated taxable income. Therefore, the limitation described in paragraph (b)(2) of this section applies.

(B) *Allocation of reduction.* Under paragraph (b)(2)(i) of this section, the P group's consolidated foreign-derived intangible income is reduced by an amount which bears the same ratio to the consolidated section 250(a)(2) amount as the consolidated foreign-derived intangible income bears to the sum of the consolidated foreign-derived intangible income and consolidated global intangible low-taxed income, and the P group's consolidated global intangible low-taxed income is reduced by the excess of the consolidated section 250(a)(2) amount over the reduction described in paragraph (b)(2)(i) of this section. Therefore, for purposes of determining the P group's consolidated FDII deduction amount and consolidated GILTI deduction amount, its consolidated foreign-derived intangible income is reduced to $221.54x ($240x − ($25x × ($240x/$325x))) and its consolidated global intangible low-taxed income is reduced to $78.46x ($85x − ($25x − ($25x × ($240x/$325x)))).

(C) *Calculation of consolidated FDII deduction amount and consolidated GILTI deduction amount.* Under paragraph (e)(4) of this section, the P group's consolidated FDII deduction amount is $83.08x ($221.54x × 0.375). Under paragraph (e)(8) of this section, the P group's consolidated GILTI deduction amount is $39.23x ($78.46x × 0.50).

(D) *Member's deduction attributable to the consolidated FDII deduction amount.* As in paragraph (f)(1)(ii)(G) of this section (the analysis in *Example 1*), the FDII deduction allocation ratios of P, USS1, and USS2 are 0, 2/3, and 1/3, respectively. Therefore, P, USS1, and USS2 are permitted deductions attributable to the consolidated FDII deduction amount of $0 (0 × $83.08x), $55.39x (2/3 × $83.08x), and $27.69x (1/3 × $83.08x), respectively.

(E) *Member's deduction attributable to the consolidated GILTI deduction amount.* As in paragraph (f)(4)(ii)(C) of this section (the analysis in *Example 4*), the GILTI deduction allocation ratios of P, USS1, and USS2 are 0, 3/4, and 1/4, respectively. Therefore, P, USS1, and USS2 are permitted deductions attributable to the consolidated GILTI deduction amount of $0 (0 × $39.23x), $29.42x (3/4 × $39.23x), and $9.81x (1/4 × $39.23x), respectively.

(F) *Member's deduction pursuant section 250.* Under paragraph (b)(1) of this section, a member is allowed a deduction equal to the sum of the member's deduction attributable to consolidated FDII deduction amount and the member's deduction attributable to consolidated GILTI deduction amount. As a result P, USS1, and USS2 are entitled to deductions under paragraph (b)(1) of this section of $0 ($0 + $0), $84.81x ($55.39x + $29.42x), and $37.50x ($27.69x + $9.81x), respectively.

(g) *Applicability date.* This section applies to consolidated return years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 7.** Section 1.6038–2, as proposed to be amended at 83 FR 67612 (Dec. 28, 2018), is further amended by adding paragraph (f)(15) and a sentence at the end of paragraph (m) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(f) * * *

(15) *Information reporting under section 250.* If the person required to file Form 5471 (or any successor form) claims a deduction under section 250(a) that is determined, in whole or part, by reference to its foreign-derived intangible income, and any amount required to be reported under paragraph (f)(11) of this section is included in its computation of foreign-derived deduction eligible income, such person will provide on Form 5471 (or any successor form) such information that is prescribed by the form, instructions, publication, or other guidance.

* * * * *

(m) * * * Paragraph (f)(15) of this section applies with respect to information for annual accounting periods beginning on or after March 4, 2019.

■ **Par. 8.** Section 1.6038–3, as proposed to be amended at 83 FR 67612 (Dec. 28, 2018), is further amended by adding paragraph (g)(4) and a sentence to the end of paragraph (l) to read as follows:

§ 1.6038–3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).

* * * * *

(g) * * *

(4) *Additional information required to be submitted by a controlling ten-percent or a controlling fifty-percent partner that has a deduction under section 250 by reason of FDII.* In addition to the information required pursuant to paragraphs (g)(1), (2), and (3) of this section, if, with respect to the partnership's tax year for which the Form 8865 is being filed, a controlling ten-percent partner or a controlling fifty-percent partner has a deduction under section 250 (by reason of having foreign-derived intangible income), determined, in whole or in part, by reference to the income, assets, or activities of the partnership, or transactions between the controlling-ten percent partner or controlling fifty-percent partner and the partnership, the controlling ten-percent partner or controlling fifty-percent partner must provide its share of the partnership's gross DEI, gross FDDEI, deductions that are definitely related to the partnership's gross DEI and gross FDDEI, and partnership QBAI (as those terms are defined in the section 250 regulations) in the form and manner and to the extent prescribed by Form 8865 (or any successor form), instruction, publication, or other guidance.

* * * * *

(l) * * * Paragraph (g)(4) of this section applies for tax years of a foreign partnership beginning on or after March 4, 2019.

■ **Par. 9.** Section 1.6038A–2, as proposed to be amended at 83 FR 67612 (Dec. 28, 2018), is further amended by adding paragraph (b)(5)(iv) and a sentence at the end of paragraph (g) to read as follows:

§ 1.6038A–2 Requirements of return.

* * * * *

(b) * * *

(5) * * *

(iv) *Information reporting under section 250.* If, for the taxable year, the reporting corporation has a deduction under section 250 (by reason of having foreign-derived intangible income) with respect to any amount required to be reported under paragraph (b)(3) or (4) of this section, the reporting corporation will provide on Form 5472 (or any successor form) such information about the deduction in the form and manner and to the extent prescribed by Form 5472 (or any successor form),

instruction, publication, or other guidance.

* * * * *

(g) * * * Paragraph (b)(5)(iv) of this section applies with respect to information for annual accounting periods beginning on or after March 4, 2019.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–03848 Filed 3–4–19; 4:15 pm]

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FEDERAL REGISTER

Vol. 84 Wednesday,
No. 44 March 6, 2019

Part IV

The President

Proclamation 9845—American Red Cross Month, 2019
Proclamation 9846—Irish-American Heritage Month, 2019
Proclamation 9847—Women's History Month, 2019

Federal Register
Vol. 84, No. 44
Wednesday, March 6, 2019

Presidential Documents

Title 3—

The President

Proclamation 9845 of March 1, 2019

American Red Cross Month, 2019

By the President of the United States of America

A Proclamation

Guided by her passionate devotion to humanity, Clara Barton founded the American Red Cross in 1881 as a charitable organization to provide services to people in need. After 138 years, her historic legacy of selfless service still inspires hundreds of thousands of Americans to give their time, resources, and energy to help people in the United States and around the world, aiding those facing natural disasters, donating and supplying blood, and serving our military families. During American Red Cross Month, we recognize and honor the lifesaving work of the dedicated employees and volunteers of the American Red Cross, as well as the remarkable kindness of the American people who give so generously to this organization.

Each year, the American Red Cross provides care, relief, and comfort to Americans who are suffering from natural disasters. Just last year, massive wildfires and major hurricanes caused catastrophic damage, taking numerous lives and leaving communities scarred and families forever changed. In California alone, residents faced some of the most destructive wildfires in their State's history. Through all of these, thousands of American Red Cross volunteers mobilized to provide around-the-clock shelter for victims, work with government and community partners to serve millions of meals and snacks, and distribute other emergency supplies and relief items.

The American Red Cross also maintains a strong presence throughout the world. As part of the world's largest humanitarian network, the organization helps people in some of the most at-risk communities. Last year, the American Red Cross deployed emergency responders to disaster zones in 7 countries and sent humanitarian aid, including financial assistance and lifesaving supplies, to more than 18 countries. In the wake of emergencies and disasters, American Red Cross volunteers work tirelessly to ensure that those affected are able to receive the best possible help during the most challenging of times.

As the single largest supplier of blood products in the country, the American Red Cross is critical in processing, distributing, and ensuring the safety of our Nation's blood supply. Through its collection of more than 4.7 million blood donations and more than 900,000 platelet donations each year, the organization helps accident and burn victims, heart surgery patients, and those receiving cancer treatments. In the aftermath of the tragic shootings that occurred last year in Parkland, Florida; Santa Fe, Texas; Pittsburgh, Pennsylvania; and Thousand Oaks, California, the American Red Cross provided blood and blood products to the injured and wounded. Every year, nearly 2.7 million compassionate volunteer donors give blood and platelet donations that make these lifesaving services possible.

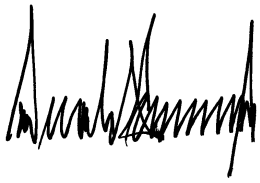
For more than a century, the American Red Cross has maintained a strong partnership with the brave men and women of our Armed Forces. Each day, the American Red Cross serves military personnel and veterans by providing 24/7 global emergency communication services and support in healthcare facilities across the country and around the globe. Since 2001, the American Red Cross has served more than one million military families,

helping them cope with the challenges of deployment and supporting combat veterans as they return and transition back into civilian life.

President Herbert Hoover said: ''The greater glory of the Red Cross belongs to the people themselves. It is a living embodiment of their heart and soul.'' This month, we acknowledge the indispensable value of the American Red Cross, the numerous ways in which the organization's endeavors enhance the well-being of Americans and others worldwide, and the generosity of all those who support its important mission.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2019 as American Red Cross Month. I encourage all Americans to observe this month with appropriate programs, ceremonies, and activities, and to support the work of the American Red Cross and their local chapters.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–04201
Filed 3–5–19; 11:15 am]
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Presidential Documents

Proclamation 9846 of March 1, 2019

Irish-American Heritage Month, 2019

By the President of the United States of America

A Proclamation

During Irish-American Heritage Month, we celebrate the indispensable contributions Irish Americans have made to every chapter of our Nation's history. Generations of Irish immigrants have carried to our shores character, culture, and values that continue to play pivotal roles in the strength and success of America.

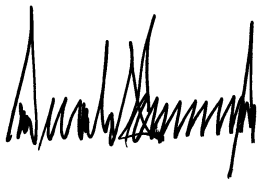
Irish Americans helped define and defend our great Nation in its earliest days. The Continental Congress appointed more than 20 generals of Irish descent to lead the Continental Army through the Revolutionary War. The courage of these Irish generals on the battlefield was as inspiring as it was fierce. The Pennsylvania Line, the backbone of George Washington's Army and one of its largest and hardest-hitting units, consisted of so many soldiers of Irish descent that it was often called the ''Line of Ireland.'' After they fought for our Independence, Irish Americans helped enshrine the visionary principles of self-government outlined in the Declaration of Independence and the Constitution.

Many Irish Americans immigrated to the United States during the terrible years of Ireland's Great Famine in the middle of the 19th century. Despite facing discrimination and poverty, Irish Americans persevered thanks to their industry, leadership, and integral involvement in society. In 1868, Irish-American businessman Edmund McIlhenny grew his first commercial crop of peppers in Avery Island, Louisiana, and created ''Tabasco'' hot sauce. Andrew Mellon, the grandson of Irish immigrants, built a thriving business empire before becoming the Secretary of the Treasury, during which time he advocated for economic policies that sparked the tremendous prosperity of the 1920s. In 1937, he funded the construction of the National Gallery of Art and donated his extensive art collection to the museum.

Today, more than 31 million Americans look back with pride on their Irish heritage and the legacy of their ancestors. The faith, perseverance, and spirit of Irish Americans across our country is indelibly woven into the tapestry of the American story. As we spend this month honoring the incredible history of Irish Americans, especially on St. Patrick's Day, we look forward to a bright future of continued friendship and cooperation between the United States and Ireland.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2019 as Irish-American Heritage Month. I call upon all Americans to celebrate the achievements of Irish Americans and their contributions to our Nation with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–04202
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Presidential Documents

Proclamation 9847 of March 1, 2019

Women's History Month, 2019

By the President of the United States of America

A Proclamation

During Women's History Month, we celebrate the countless women whose courage and resolve have contributed to the character and success of our Nation and the entire world. The equal opportunity of women in every facet of daily life is an essential feature of a free and prosperous society. This month, we honor women who have fought for equality and against the status quo, and who have broken the bonds of discrimination, partiality, and injustice for the benefit of all. These women created a legacy that continues to inspire generations of women to live with confidence, to have a positive impact on their communities, and to improve our Nation every single day.

Throughout our history, women have dedicated their lives to achieving equal rights for all Americans. They envisioned a society where women could pursue a formal education, start a business, serve in the military, or run for elected office. The example of each of these women motivates successive generations to aspire to greatness and to stand tall in the face of adversity. We remember all the American women, past and present, who have inspired and empowered today's women to advocate for their beliefs and pursue their dreams without hesitation.

Catherine Brewer, who in 1840 became the first woman to earn a bachelor's degree, and Dr. Elizabeth Blackwell, who graduated from medical school to become America's first recognized female physician, are in the pantheon of great American women. Both pursued their passion to learn and to achieve advanced degrees in an unprecedented way. Their achievement marked the beginning of our society's move toward equality among men and women in education. They would be proud to know that, today, female students constitute the majority of undergraduates in our colleges and universities.

Women also have a rich history of civilian and military leadership, service, and sacrifice. The Women Airforce Service Pilots (WASP), for example, were remarkable pioneers in military aviation. Founded by Nancy Love and Jacqueline Cochran in 1942, WASP grew to a fleet of 1,102 women pilots who flew every type of World War II military aircraft for non-combat missions domestically. These women were awarded the Congressional Gold Medal for their service, and they paved the way for women pilots like Captain Rosemary Mariner, the Navy's first female fighter pilot and first woman to command a naval aviation squadron. Over the course of her 24 years of honorable service, Captain Mariner broke many barriers for women in the military. When she passed away on January 24, 2019, the Navy conducted an all-female flyover in her honor, a first in the history of the Armed Forces and a fitting honor for a woman of her stature.

Leaders of our Nation also stand on the shoulders of women like Jeannette Rankin, who became the first woman to hold Federal office in 1916. She predicted: ''I may be the first woman member of Congress, but I won't be the last.'' This year, a century after the Congress passed the 19th Amendment guaranteeing women the right to vote, more women are serving in the Congress than at any time in our history.

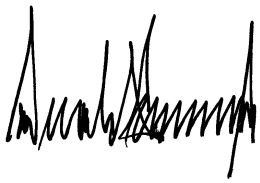
My Administration continues to empower women by creating unprecedented opportunities for them. The United States economy is booming like never before. An all-time record number of women are employed, and, just last year, women filled 58 percent of new jobs. Our economic agenda, including the enactment of the Tax Cuts and Jobs Act and the elimination of unnecessary and burdensome regulations, has driven women's unemployment to the lowest level in 65 years. My Administration fought to provide tax relief to parents by doubling the child tax credit and preserving the child and dependent care credit. To help women thrive in the labor force and provide for their families, we developed a tax credit for employers who offer paid family and medical leave, and I have called on the Congress to pass a nationwide paid family leave program.

Prioritizing the economic empowerment of women has also helped to boost our Nation's economy and security. My Administration is committed to working with States to reform occupational licensing laws, which disproportionately affect women. States and licensing boards can and must do more to eliminate unnecessary barriers to career opportunities and improve license portability to facilitate career continuity. Promoting women's economic empowerment abroad enables developing countries to increase their global financial stability. When women are fully empowered to reach their economic potential, they invest back into their families and communities, which helps their countries thrive. That is why I signed a National Security Presidential Memorandum to launch the Women's Global Development and Prosperity Initiative (W–GDP), which is the first-ever whole-of-government approach to advancing global women's economic empowerment. The W–GDP Initiative aims to benefit 50 million women across the developing world by 2025. It will help women prosper in the workforce by improving their access to quality education and skills training, funding and supporting women's entrepreneurship and access to capital, and working to address legal, regulatory, and cultural barriers that hinder women from fully and freely participating in the economy.

This month, we express our gratitude for all American women who continue to strengthen our families, communities, and workforce. Our future is brighter because of their contributions.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 2019 as Women's History Month. I call upon all Americans to observe this month and to celebrate International Women's Day on March 8, 2019, with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of March, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



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